CHILDREN'S RIGHTS CONVENTION

ALTERNATIVE REPORT BY THE BELGIAN NGOS

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Presentation of the NGOs

The “Coordination des ONG pour les droits de l’enfant” and the “Kinderrechtencoalitie Vlaanderen” have collaborated closely to produce this alternative to the official Belgian report.

1. La Coordination des ONG pour les droits de l’enfant

The “Coordination des ONG pour les droits de l’enfant” (CODE) was founded in 1994 within the framework of the first official Belgian report was an initiative by the Belgian section of the Defence for International Children (DEI).

Members today include: Amnesty International, ATD Quart Monde, the Belgian Committee for UNICEF, DEI International, Justice et Paix, la Ligue des droits de l’homme, la Ligue des familles and OMEP. These different associations have a common objective of developing specific actions to promote and defend children's rights in Belgium and in the world.

Together, they have the following goals:

- To monitor that the Convention concerning Children’s Rights is put in action by Belgium.
- To develop a programme for informing, consciousness raising and educating about children’s rights.

The “Coordination’s” programme aims to be vigilant and constructive.

In order to achieve its objectives the “Coordination” is open to other NGOs that are developing programmes concerning children's rights. The “Coordination” works in particularly close collaboration with the “Kinderrechtencoaltitie Vlaanderen” in order to both coordinate their respective programmes and to undertake common programmes.

For that purpose one of the “Coordination des NGO’s” main objectives is to produce an alternative report to the official one that the Belgian State has to submit to the Children’s Rights Committee every five years in accordance with article 44(e) of the Convention.

Thus, in accordance with article 45(a) of the Convention, National and International NGOs are invited by the Children’s Rights Committee to set out their observations on the state of these Rights and on how they are being implemented. This complements the official reports in areas where the Government’s report does not provide sufficient information, and in sensitive areas where the NGOs consider that the official information provided is incorrect or incomplete.

Furthermore, the NGOs provide a more concrete and practical analysis of the application of Children’s Rights in Belgium as these organisations work in the field and are thus in contact with the various intervening parties.

The “Coordination des ONG pour les droits de l’enfant” receives subsidies from the Ministry of Justice. These subsidies have meant that somebody working part time could be hired, thus assuring the continuity and permanence of their activities.

2. The Kinderrechtencoalitie Vlaanderen

The “Kinderrechtencoalitie Vlaanderen” ASBL (non-profit organisation) is a network of 17 non-governmental organisations for the defence of Children’s Rights. The areas in which these organisations work, the public they target and the levels at which they operate vary, but they all have the child's interest at the heart of their programmes.

The 17 NGOs are the following: Amnesty International, the Belgian Committee for UNICEF, Bond van Grote en Jonge Gezinnen (BGJG), Defence for Children International Vlaanderen (DCI), Dienst Alternatieve Sancties en Voogdijraad vzw, ECPAT, Jeugd en Vrede vzw, Kinderrechtenhuis Limburg, Kinderrechtswinkels, Liga voor de Mensenrechten, Ouders van Dove Kinderen (ODOK vzw), Onderzoekscentrum Kind en Samenleving, Plan International België, Kinder- en Jongerentelefoon, Steunpunt Algemeen Welzijnswerk, Vlaams Welzijnsverbond en Welzijnszorg vzw.

Since December 2000, the Flemish and Federal authorities have financially supported the “Kinderrechtencoalitie”, which has meant that somebody can be employed on a full-time basis.

Globally, the “Coalition” aims to contribute to the application of the International Convention concerning Children’s Rights. This objective leads to the following three elements in the “Coalition’s” statutes:

- The coalition intends to exercise real and efficient control over the application and respect of the C.I.D.E., from the NGO’s viewpoint;
- The coalition intends to actively participate in the promotion of children’s rights;
- The coalition intends to constructively contribute to the presentation of monitoring reports concerning the C.I.D.E.

In practical terms, this means that the ASBL behaves as a critical observer of the situation of children’s rights in Belgium and abroad. Based on the objective of vigilance that the “Coalition” has set itself, it takes a census of all positive and negative facts concerning children’s rights. On the strength of this appraisal, it sets out recommendations and initiates constructive dialogue with other partners in order to increase common efforts.

The “Kinderrechtencoalitie´s” overall goal is above all to promote cooperation between the different NGOs. Thus, they aim to considerably increase the number of members in the short term. The “Coalition” has also undertaken dialogue with public authorities, national and international organisations and with the children and youths themselves. In the future, the “Coalition” hopes to be able to respond to current affairs via the media and thus to enter in contact with the general public.

The most important achievement of the “Coalition” is the writing of the NGO’s alternative report concerning C.I.D.E. in Belgium.

An important activity that takes place every four months is known as the "Open Forum", and is when invited speakers talk on a theme relating to Children’s Rights. The Forum is open to all those interested in Children’s Rights, and therefore also to non-members.

In future, we hope that a large number of NGOs will join the “Coalition”, such that it will become a strong structure that cannot be ignored.

INTRODUCTION OF THE NGOs ALTERNATIVE REPORT FOR CHILDREN'S RIGHTS

In accordance with the role conferred to non governmental organisations by the International Convention on Children's Rights concerning the control of the application of the Convention, the "Coordination des ONG pour les droits de l'enfant" and the "Kinderrechtencoalitie Vlaanderen" (from here on "the NGOs") wish to contribute their expertise to the five-yearly assessment carried out by the Belgian State.

This alternative report constitutes a section by section analysis of the Belgian report, and follows the "*general Directives concerning the format and contents of the initial reports*"[1], established by the Children's Rights Committee, in order that the Committee can compare the report by the Belgian government with the one by the NGOs for Children's Rights.

The objective of the alternative report is to aim to analyse on one hand how Belgian legislation conforms to the Convention on Children's Rights and on the other, how existing legislation is applied. This should give a clear picture of how the Convention is put into practice in the country. Governments tend to present essentially legal reports, which means that the NGOs play an essential role providing information about the practical application (or non application) of the Convention. Furthermore, this report also aims to confirm or to invalidate information provided by the government and to deliver statistics that can support the NGO's comments.

As regards to the methodology the Belgian State has used to elaborate its second report, the NGOs regret they were only associated to it at a late date and at a point when it was impossible to advise meaningfully on either the report content or on the way in which information was collected and compiled.

Nevertheless the NGOs are delighted that, unlike for the first report, the Government invited them to participate in two working meetings prior to the official registration of the report, even though these meetings took place late and so could not have the desired impact.

The NGOs consider it extremely encouraging and positive that since then they have finally been associated with the process of developing the official report. That the Government considered the NGO's comments as "objective and constructive, which has enabled the institution of real dialogue" constitutes an absolutely fundamental precedent.

With regard to the content of the official Belgian report, the NGOs lament the lack of systematic data collection, as well as the large disparity between chapters. They are however delighted with the various commitments aiming to compensate for these gaps.

As regards to the methodology used by the NGOs for their report, information was collected from the constituent associations, as well as from other members of the associative and university communities which are interested in given fields. They also relied on many recent reports produced by the NGOs or other relevant authority organisations[2].

It should however be noted that there continue to be certain gaps in the alternative report. These highlight the difficulty in collecting reliable information on certain topics, which means that some sections are better developed, to the detriment of others that are no less interesting or important. These gaps also emphasize the importance of considering the implementation of the Convention of Children's Rights as a continuous process, and thus it is essential that there should be permanent cooperation between the Belgian Federal and Communal Administrations and the NGOs.

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[1] These directives are originally destined for the member States, adopted by the CDE during its 22nd meeting (first session) on the 15th October 1991.

[2] See the bibliography at the end of the report, which contains the list of contacts, reports and various sources of information used.

The Data and information contained in the present report are up-to-date as of September 1st 2001.

The NGOs thus provide certain recommendations that aim to point out the gaps concerning Children's Rights in their country, and set out some suggestions to indicate those points for which Belgium could review its present legislation in order to conform with the Convention.

> *The NGO's recommendations appear in a framed box at the end of each chapter in the alternative report, and are summarized at the end of report.*

Finally, the NGOs wish to evoke here the **observations made by the Committee for Children's Rights following the presentation of the 1st Belgian report**. Indeed, as will be seen throughout this report, some of the recommendations set out in 1995 have not been put into effect.

The Committee satisfactorily highlighted the steps taken by the Belgian Government to promote and to protect Children's Rights. It was pleased to note that the Convention is directly applicable in Belgium and that its measures can be invoked in court.

It recommends that a permanent coordination mechanism for the implementation of the Convention be set up, in collaboration with the NGOs, and that data be collected to provide an overall assessment of the situation of children.

It worries about the situation of unaccompanied minors requesting asylum and the risk of increased fostering that children from underprivileged groups are exposed to.

It also worries about the withdrawal and imprisonment of minors included in the law on the Protection of Youth.

It encourages Belgium to make the principals and measures of the Convention widely known to both adults and to children and to introduce the Convention in school and professionals training programmes.

It finally insists on the necessity of publishing and distributing its initial report, the minutes of the Committee sessions and its final observations as extensively as possible.

These different recommendations must be a guiding principal for the NGOs report.

First part - GENERAL APPLICATION MEASURES

I. Measures taken to align Belgian legislation and politics with the Convention's measures

A. At the federal level

The NGOs regret that, despite the Committee for Children's Right's recommendations, the Belgian Government limited itself, as it indicates it in its report, to "*asking the National Commission to examine the Belgian interpretative declarations to the C.I.D.E.*", and that the Commission considers that these declarations should be maintained.

The NGOs recommend that Belgium puts an end to the interpretative declarations to the C.I.D.E.

The NGOs particularly lament the lack of a global national strategy favouring children. Isolated measures, which are reviewed during the report, have been taken in different areas concerning children, often in emergency situations to remedy one or another shortcoming of the Belgian system (sexual abuse, violence at school, etc.). However, at present, no global policy inspired by the desire to implement the Convention's measures exists. This is a direct consequence of too little attention being focused on the laws and structures needed to develop a coherent political vision at a federal level. The NGOs therefore think that urgent work needs to be carried out at this level.

The NGOs lament the fact that a permanent organisation to coordinate, assess, monitor and accompany policies regarding the protection of children is not set up. This is in disregard to one of the recommendations made by Committee for Children's Rights in 1995 following the examination of the first Belgian report[3].

Furthermore, the NGOs lament the obvious lack of qualitative and quantitative data concerning C.I.D.E. in Belgium. Both the existing legislation and the degree to which this legislation is effectively respected are at cause. The NGOs have observed a clear disparity between theory and the practice on various occasions. At the federal level, there is still no organisation responsible for collecting data. Here also Belgium disregards one of the recommendations made by the Committee for Children's Rights[4].

The NGOs also make a plea for a report on the effects of the new laws on children at a federal level. Each time a government bill concerning the interests of children is proposed, a report should be established to directly estimate the impact of the proposed measures on children in their environment. Is it not legitimate to ask the legislators to think about the consequences of their proposition? An obligation and nothing more is not enough to achieve the desired goals. As well as being prudent, the supervision and acquirement of the necessary experience, as well as the introduction of a study on the impact on children can increase consciousness about the children's condition, leading to a change of mentality that is considered necessary at the federal level.

Regarding international treaties that directly or indirectly concern the well being of children and the respect of their rights, the Belgian NGOs call upon the Belgian authorities to ratify without delay:

- The additional C.I.D.E. Protocol concerning the trade of children, child prostitution and child

[3] Art. 13 of the final measures of the Committee for Children's Rights: Belgium. See: Ministry of Justice, Presentation of the Reasons for the Belgian Report concerning the United Nations Treaty in the area of Children's Rights, Brussels, s.d., p. 170 e.v.

[4] Art. 14 of the final measures of the Committee for Children's Rights, op. cit.

pornography;

- Convention n° 182 of the International Organisation for Work concerning the most serious forms of child labour and exploitation (under ratification);
- The Protocol introduced by Costa Rica aiming to increase the number of internal experts on the Committee for Children's Rights from 10 to 18;
- The La Hague Convention of May 29th, 1993 concerning the protection of children and collaboration in the field of international adoption;
- The La Hague Convention of October 19th, 1996 in the fields of expertise, applicable rights, agreement, implementation and collaboration in the areas of parental responsibility and of protective measures for children;
- The additional C.I.D.E. Protocol concerning armed conflicts (under ratification).

The NGOs recommend that Belgium finally adopts a national plan of action for Children's Rights and that it fixes objectives in the field. The creation of a permanent organisation responsible for this plan is indispensable.
The NGOs suggest that the federal authorities adopt a law concerning the study of the impact on the child and to control governmental policies with respect to Children's Rights. As is the case in the Flemish Community, the NGOs recommend that this study of the impact on the child be obligatory at a federal level.
The NGOs recommend that a structure for data collection concerning the situation of children in Belgium be created, as has been recommended by the Committee for Children's Rights following the first Belgian report.
Finally, the NGOs call on the authorities to ratify a series of international treaties concerning child welfare without delay.

B. At the community level.

1. IN THE FLEMISH COMMUNITY:

The initiative by the Flemish Community, which adopted a decree on July 15th, 1997 that instituted the report on the impact on children and the control of governmental policy with respect to Children's Rights, should be brought to attention. In the area of expertise, which is gradually being broadened by the government, a Report on the Impact on Children (RIE) is now obligatory for every decree project that "clearly concerns the interests of children".

Obviously this measure receives our full support. The introduction of the RIE could undoubtedly be a practical method through which to promote the application of the C.I.D.E. Unfortunately we have seen that this regulation has been completely neglected during recent years. During the previous legislature, only two RIEs were carried out (one concerning tourism and the other concerning independent local radio station[5]). During the present legislature, to date no project has been introduced by a minister. Although the children's interests were clearly affected on several occasions, the different decrees have been adopted without the obligation of a RIE being respected.

[5] The Report on the Impact on Children of the 29th January 1999 concerns the bill for the modification of the decree of the 3rd March 1993 concerning grounds used for holiday camps and the report concerning the effects on children, that leads to the modification of certain measures of decrees concerning radio and television emissions, coordinated the 25th January 1995.

Recently, the government has tried to resolve this problem by taking various measures. First, a manual has been produced explaining how to go prepare a RIE. An argument often used in favour of rendering the obligation of a RIE more flexible, was precisely that there was a lack of clear guidelines on how to prepare such a report. Secondly, in April 2001 the Flemish government agreed in principle to a draft bill for a decree that would increase the obligation of a RIE in all the Flemish areas of expertise.

We can only applaud this evolution. The actual application of this obligation should however be closely monitored. Furthermore, we are still considering an agreement in principal to a draft bill; we must wait until the decree is adopted and its effects are really visible. Finally, it should be noted that a RIE is only introduced within the framework of a proposition made by the ministers. Propositions of Parliament decrees are not yet under the obligation of producing a RIE.

2. IN THE FRENCH COMMUNITY:

The initiative of the French Community, which has created an Observatory of Children, of Youth and to help Young People (see below), should be noted.

These tools should enable the overall evolution of the implementation of the C.I.D.E.

II. Mechanisms in place or those whose creation is foreseen on a national or local scale, in order to coordinate actions favouring childhood and to monitor the implementation of the Convention

A. At a federal level

The National Commission for Children's Rights and the Interministerial Conference for the Protection of Children's Rights have been created, but unfortunately have only been involved in limited actions. In fact, the National Commission has only met once to organise cooperation with the NGO and academic communities, despite the second report almost being finished. The NGOs regret this, especially since carrying out their respective tasks they could compensate for the present lack of an overall national strategy favouring children.

The NGOs were also concerned to note that the Interministerial Conference decided to reduce the National Commission's tasks, essentially limiting them to the preparation of the five-yearly reports to be submitted to Geneva. It also reduced the frequency of their meetings, before they even met for the first time.

Furthermore, although the report indicates that that the National Commission will begin to collaborate with the parastatal organisations, NGOs and expert groups, it must be pointed out that the project for a cooperation agreement between the State, the Flemish Community, the French Community, the German-speaking Community, the Walloon Region and the Brussels Region foresees the participation of seven NGO representatives. These will be among members of the National Commission for the Children's Rights, and will include three from the French and German-speaking regions, three from the Flemish region and one from the Brussels region. They will be designated by the "Coordination des ONG pour les droits de l'enfant" and by the "Kinderrechtencoalitie Vlaanderen".

The NGOs find that the role they have been given by the cooperation agreement is limiting. Thus, it foresees that those members with a consultative voice will be able to express their possible nonconformist opinions in the report on the approval that will be annexed to the five-yearly Belgian report. The Commission will be responsible for coordination at the time of writing. The NGOs wish to be associated and consulted during the reports preparation.

However, to this day the National Commission still does not exist. It would seem that budgetary reasons are being used in order to not make this Commission a reality. But, this mechanism is the precondition for the implementation of all coherent policies in the field of children and refers to one of the most important recommendations made by the Committee for Children's Rights following the presentation of the first Belgian report.

The Ministry of Justice has provided subsidies in order to allow the "Coordination des ONG pour les droits de l'enfant" and the "Kinderrechtencoalitie Vlaanderen" to employ somebody on a part-time basis. This has enabled them to, amongst other things, carry out the report writing task, which is one of their responsibilities under the Convention on Children's Rights.

The NGOs also want to applaud the creation of a "Children's Rights" task group within the Senate. This group met in order to prepare the extraordinary session of the United Nations dedicated to children (UNGASS). On this occasion the group prepared a report, submitted to the Senate on the 12th July 2001, and which contained various interesting recommendations. The NGOs wish to encourage this task group to pursue its action by becoming a permanent group working, considering, monitoring and making decisions on matters concerning children's rights.

A centre studying juvenile delinquency, and more particularly responsible for collecting statistics in this area was created in February 2001 by the Criminal Politics Service and brings together experts from the academic world and from the administration.

Furthermore, a mediation service for children should be created at the federal level. There is no doubt that – via the National Commission - a plan for an integral policy should be worked out, and that this policy should take directly into consideration the views, opinions, interests and perspectives of children. It should however be noted that a place for direct discussion with children is not being asked for. A third place for discussion, alongside the mediation services that already exist in the community, could lead to unnecessary confusion. The expertise of the existing mediation services is nevertheless limited to communal and regional matters. Thus, a mediation service at the federal level, which provided an independent, friendly place for children, could solve this problem. In the same way as the "Commissariat aux droits de l'enfant en Flandres" does (see below), this service should be separate from the controlling power and function in an extension of parliament.

Another method to attract attention to Children's Rights, and to build an integrated policy, is to designate a minister as being responsible for the coordination of Children's Rights at a federal level. In order to achieve this, a separate budget would have to be created for children's rights, at the same time as somebody was nominated as being responsible for children's rights in the administration. All too often the final political responsibility for Children's Rights is distributed between the Ministries of Internal Affairs, Foreign Affairs, Development and Cooperation and of Justice, leading to the dispersion or lack of general coherence, as has been already mentioned. The designation of a single responsible person could reverse this tendency.

The NGOs recommend that the National Commission becomes a real and permanent tool for the planning and developing a global national strategy in favour of children. The NGOs should be associated as is recommended by the Committee for Children's Rights following the 1st Belgian report. The NGOs also express the wish that the Senate's "Children's Rights" task group becomes permanent, without however replacing the National Commission.

At the federal level, the need for a mediation service for children is also felt, not as a place for direct discussions, but rather as a permanent person responsible for children's rights.

The dispersion of responsibility for children's rights throughout he federal politics can be avoided by the nomination of a minister for

the coordination of children's rights, and by the creation of a separate budget.

B. At the community level

1. IN THE FRENCH COMMUNITY

"L'Observatoire de l'enfance, de la jeunesse et de l'aide à la jeunesse" (The Observatory of Children, of Youth and to help Young People) is operating at present.

It was created in order to build a common tool for the ONE, education, the "Aide à la Jeunesse" (Youth Help), the youths themselves, the General Delegate to Children's Rights and for the cultural, sporting and health services.

In October 1999 the Observatory submitted a report concerning the policies for education and for care of young children in the French Community. This report presents the existing infrastructures in the French Community in the areas of reception and teaching of 0 to 6 years old children.

In November 1999 the Observatory prepared a brochure "La Convention des Nations Unies sur les droits de l'enfant… dix ans déjà" (The United Nations Convention on Children's Rights… Ten years already). This brochure presents the actual achievements of certain field workers who have brought attention to children's rights in the French Community. The origins of projects, their contents, the different practical details of their implementation and their strengths are presented.

In March 2000, the Observatory produced a map of the "Aide à la Jeunesse" sector and provided information, in a socio-demographic context, of the present situation of private services that are approved by the French Community and of the youths using these services. They also provided information about the requests made by those services that are in the process of being approved. The NGOs wonder about the independence and the working autonomy of this legal proceeding, though they hope it will be a driving force in the consideration and implementation of the Convention.

As far as the **General Delegate to Children's Rights** is concerned, the general public tends to consider it as being an institution where specific problems can be resolved Despite the General Delegate having presented in its reports the limitations of its actions and the fact that its vocation is to deal with more general problems, relying on specific cases if necessary, it is important that the message conveyed regarding this be more explicit.

Furthermore, the General Delegate to Children's Rights puts so much emphasis on children's rights in relation to the fight against the mistreatment and sexual abuse of children that it risks masking all other aspects of the Convention.

The NGOs question the chance and efficiency of organising a **general coordination for the fight against mistreatment** by judicial region, based on the legal proceedings, given that the decree from 1991 concerning help for youths set up a network of legal proceedings responsible for, in particular, coordinating the policy for helping youths ("Conseil communautaire de l'aide à la jeunesse" (Community Council for Helping Youths) and the "Conseils d'arrondissement de l'aide à la jeunesse" (Regional Council for Helping Youths)).

The NGOs recommend that he work carried out by the Community Council for the Help of Youths, by the Coordination for the fight against mistreatment and the Regional Councils for the Help of Youths be evaluated in order to improve the coherency of the whole system.

2. IN THE FLEMISH COMMUNITY

As quite rightly mentioned in the official report by the authorities, there have been several promising initiatives in Flanders during the considered period concerning the coordination of activities favouring children and supporting the monitoring of the Convention for Children's Rights. The nomination of a Minister for the Coordination of Children's Rights (1997); the creation of a Commission for Children's Rights (1998); the government's annual report to the Flemish Parliament and to the Commission for Children's Rights (made obligatory by the decree of 15th July 1997); the creation of a meeting point for discussions about children's rights in the Flemish administration and the report concerning the Convention in the country and the regions with which the Flemish Community has agreements for collaboration obviously receive the support of the Flemish NGOs. These initiatives illustrate the concern to lead a horizontal and coherent policy for children's rights. However, it is clear that the budget attributed to children's rights is too limited. The NGOs are delighted that the Minister of the Flemish Community has made provision for a subvention for the "Kinderrechtencoalitie Vlaanderen" (for a period from October 15th 2000 to October 15th 2001). Thus, a first person could be hired on a part-time basis. The NGOs obviously hope that this subvention will be renewed in the future.

With regard to the report on children's rights in Flanders, the NGOs note that it would be desirable that the annual report by the Flemish government and the annual report by the Commission for Children's Rights should be discussed together from an overall point of view. A common discussion would be able to, on the one hand, fight against the dispersion of responsibility and, on the other, initiate a debate on children's rights in the Flemish Parliament[6], which would increase the impact of the two reports.

III. Measures taken or to be taken in order to make both adults and children aware of the principles and measures of the Convention, by suitable and active means.

An effective implementation of the C.I.D.E. assumes that its measures are widely known. In the absence of a general policy for the dissemination and promotion of the main objectives of the Convention for Children's Rights and the lack of initiatives by the authorities in the field, several NGOs have created projects in order to make the C.I.D.E. better known. Little mention is made of these projects in the official report.

The NGOs regret to note that different interesting initiatives, coming from both various authorities and from NGOs, are not mentioned in the official report.

A few examples are given, without being an exhaustive list, of the initiatives that are being taken by the associative world. These include the distribution of the C.I.D.E. text by the Belgian Committee for UNICEF to schools, provincial and local administrations, ministers, members of parliament and magistrates. They also organise annual campaigns on a theme related to the rights of children, and the project "What do you think?" The francophone section of Amnesty International makes different educational documents available, including one specifically related to the Convention for Children's Rights. There are also the campaigns by Oxfam and the AGCD on child labour and the campaigns and publications by the "Kinderrechtswinkel". Various publications (notably " J'ai le droit ! Les droits de l'enfant en Belgique", published by Averbode and " Kinderrechten een taak voor iedereen!") also pursue the same objective.

The existing initiatives and related subsidies from the authorities are promising, but cannot replace a structured policy within the framework of education and information on children's rights. The NGOs request that the authorities pursue a policy in the country that

[6] At present, it is only stipulated that the report by the Commission for Children's Rights should be discussed during the plenary meeting of the Flemish government. The government's annual report is discussed in the commission

would involve everybody and that could continue in the future. Cooperation with the non-governmental organisations working in the fields of education and information would be wise.

The inclusion of education on children's rights in the school curriculum is important to enable a larger number of people aware about the measures of the treaty and their application in daily life.

In the Flemish Community, education on children's rights has been explicitly placed in the objectives of development and in the final terms of the various levels of education. With regard to basic education, it is considered necessary that the pupils are able to illustrate the importance of the basic human and children's rights and thus understand that rights and obligations are complementary[7]. In the final and objective terms of development for secondary education, children's rights have been introduced to the final terms of the course description for the second level, and to the development objectives in civic training for branch B for the first level[8].

Concretely this means that some knowledge on the C.I.D.E. is a minimum requirement that every child must reach. It is very positive that the authorities have created this framework, although it is not always very clearly described. The undertaking of this aspect in the classroom still depends very much on the teachers themselves.

Given that these are minimum requirements, there is plenty of margin for an actual pedagogic project for the different teaching networks. Thus it is important to distinguish between the situation in Community education and that in subsidized public education:

- The NGOs have noted that children's rights are largely covered in the curriculum of public education in the Flemish Community.
- In the pedagogic project for Community education, children's rights are clearly presented. Anyone who is actively teaching is encouraged to monitor whether children's rights are respected in their school. If children's rights are not explicitly mentioned in the school's curriculum, the teachers themselves must take the necessary initiatives[9].

The NGOs regret that in the French Community education about children's rights is not part of the school curriculum. Indeed, the basic training covers "human rights" in broader terms and not "children's rights" as such. Obviously this does not mean schools cannot include children's rights in their curriculum.

It is nevertheless clear that in education in both the Flemish and in the francophone communities, many things can still be improved. This still depends all too much on the personal interest of the given teacher to these matters. The concerned authorities must check that there is increased structure and clarity and that there is widespread access to children's rights by undertaking global actions that are accessible to all.

It would have been useful to again emphasize the role as a source of information and for raising awareness that the General Delegate plays in the French Community, as well as the role of the recent Commission for Children's Rights instituted in the Flemish Community (decree of 15th July 1997).

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[7] The book "Objectifs terminaux et buts de développement de l'enseignement de base" contains notes on orientation in the world, social sciences, political and juridical phenomena, and aims to achieve the following: 4.13 The pupils can illustrate the importance of the basic human and children's rights. They can see that they are complementary to these rights and obligations.

[8] For secondary education, the final objectives and the objectives for development for the second level include civic training, human rights: 3.2.1.1. The pupils should be able to explain the contents of the human rights, using examples taken from charters on human rights and in particular taken from the charter on children's rights. For the first level of branch B, the social dimension is also taken into account: 1.2. The pupils learn to intervene in favour of the respect of human and children's rights and against social injustice.

[9] In reality this means that subsidized education, except for in a few towns, follows one of these two plans.

The need to make the problem known on a large scale does not only concern the treaty as such, but also the various stages of the reporting process (authority reports, comments and recommendations by the Committee for Children's Rights). A State that is a member of the Convention must ensure extensive publicity about these documents.

The NGOs consider that the Belgian government does not take this obligation seriously enough. One step in the right direction is already the publication of a document on the second report by the Belgian authorities with the comments and recommendations made by the Committee for Children's Rights, and concerning the analysis of the first report by the Belgian authorities and a report from a cooperation meeting between the Belgian non-governmental organisations. This document is, in principal, freely available from the department of Justice, however the Belgian authorities have made no effort to let professionals and the general public know about it. The request by members of parliament to the non-governmental organisations for the second Belgian report clearly illustrates this matter. The social debate and the necessary dynamics in order to implement the C.I.D.E. in the future should result from the publication and distribution of these documents, and have thus not yet been launched.

The NGOs ask the Belgian authorities to ensure a large publication of the text of the authorities' report and of the reactions of the Committee for Children's Rights. The meticulous publication of these documents in a brochure and their dissemination on the web site are desirable. The brochure should be made systematically available for all members of parliament in the country and for other professional groups such as judges and teachers. Furthermore, an information campaign using the press should inform the general public on the availability of these documents.

The NGOs recommend that the Belgian Government implements mechanisms destined to make known to both adults and children, the measures and arrangements of the Convention, by suitable and active means.

The NGOs ask the authorities to make more effort in the area of the treatment of children's rights in education. The need of a clear framework and actions for awareness raising and information is felt.

The NGOs ask the Belgian authorities to ensure a large publication with the text of the authorities' report and the recommendations of the Committee for Children's Rights.

IV. International cooperation and foreign policy

A. International Cooperation

1. INTERNATIONAL COOPERATION CONCERNING CHILDREN'S RIGHTS OF IN THE AUTHORITIES' OFFICIAL REPORT.

When reading the second report by the Belgian authorities concerning the implementation of the C.I.D.E., it became apparent that the theme of international cooperation hadn't been covered. This is clearly a gap in the official report. The report on children's rights however insists explicitly and in various articles on the importance of this theme considering the worldwide application of the treaty's measures[10]. Furthermore, in its 'Guidelines for Periodic Reports' the Committee for Children's Rights leaves no doubts on the way in which the report on international collaboration concerning children's rights should be made.

The NGOs recommend that the Belgian authorities take into consideration this requirement in a clear way in the future, and when

[10] Article l 4 of the Treaty specifies that the states within the treaty take the necessary measures to ensure Children's Rights be respected, and that they can call on collaboration and international aid. On the other hand, articles 17, 23 and 28 call particular attention to the needs of developing countries.

they analyse the implementation of the C.I.D.E., that they consider both the internal and national aspects, but also the international obligations that include Belgium in their ratification.

2. THE INSTITUTIONAL SETTING OF BELGIAN INTERNATIONAL COOPERATION.

A. REFORM OF THE INSTITUTIONAL SETTING

The Belgian international cooperation underwent a profound reform following the various scandals of recent years. The central objective is the desire to concentrate Belgian cooperation in order to attain an efficient concentration. The Belgian Parliament voted a new law framework for international cooperation (law of May 25th 1999), a social rights company has been created and is responsible for carrying out bilateral development projects and the Ministry of Cooperation and Development was renamed the Ministry of Foreign Affairs, of International Cooperation and of Foreign Commerce.

This reform provided a unique opportunity to explicitly highlight the theme of children and rights of children and children's rights as political priorities, but was not taken. The NGOs can only lament this. Nevertheless, we have considered the argument that what is good for the populations in the North is also by definition best for the children of the South.

B. THE POLICY

In the Secretary of State for Cooperation and Development's political plan for 2000 to 2004 - " Qualité dans la solidarité: partenariat pour un développement durable" (Quality in solidarity: partnership for a lasting development) - children's rights are not explicitly mentioned. This does not mean they are not included in the political plan. During the development of the plan's starting points, children's rights were implicitly cited and made direct reference to the C.I.D.E.

The NGOs nevertheless recommend that in future political plans direct reference be made to the C.I.D.E. This Convention has been widely ratified, and gives rights to children in their present situation rather than limiting itself to foresee their future rights. Furthermore the NGOs wish that in future children's rights should also be a priority for Belgian law in the field of international cooperation.

The Belgian legislator has, in recent years, taken an interesting step with the law of May 22nd 2000. This law obliges the minister responsible for international cooperation to submit a report to Parliament once a year concerning the contribution of his policy to the respect of children's rights in the world in general and to the fight against child labour in particular.

Meanwhile, the Belgian political world is increasingly convinced that children's rights should be given greater importance as granted placements in favour of these rights appear to be particularly efficient for the socio-economic development and political emancipation of Southern populations.

The NGOs have noted with satisfaction that children's rights have become a political priority for Belgian international cooperation. The present Belgian Secretary of State to International Cooperation has shown this clearly in his plans for 2001.

The NGOs are delighted with the increased attention granted to children and to children's rights in Belgian politics concerning international cooperation, but question how these good intentions will be transformed into actual actions.

C. REGIONALIZATION OF THE DEPARTMENT OF COOPERATION FOR DEVELOPMENT

Within the framework of the regionalization of expertise, the Belgian federal authorities decided to divide the Department of "Cooperation for Development" between communes and regions in 2004. The NGOs hope that the long period of reform will be definitely over and that in the future all the Belgian Cooperation's attention will again be able to be dedicated to the needs

and interests of the Southern populations. In this perspective, we still have certain doubts about how these plans will be implemented in 2004.

3. BELGIAN COOPERATION IN THE FIELD

A. GENERALITIES

The Belgian authorities have chosen to support a limited number of partner countries. This wish to concentrate Belgian International Cooperation has meant that 25 so-called "concentration" countries have been identified in the South. The NGOs understand that the Cooperation of a small country such as Belgium must prefer concentration, to avoid the dispersal of its (limited) efforts, and in order to have some effect in the field.

The NGOs however lament that the criteria used to select these concentration countries did not take into consideration the well-being of children and the respect of children's rights, even though, as already mentioned, these are the levers of socio-economic and political development of all civilisations. For this reason the NGOs ask the Belgian Cooperation to explicitly take into account these criteria the next time they are identifying concentration countries and, in particular, to pay more attention to the following points: infantile death rate, education level and implementation of the C.I.D.E. With regard to this latter point, it is necessary to check to what measure a country respects the obligations of the treaty and how seriously they take the process of reporting to the Committee for Children's Rights.

> *The new law framework explicitly considers the children's rights and the well being of children as thematic priorities for International Cooperation. The NGOs nevertheless invite the Belgian authorities to grant particular attention to: public health, education, agricultural and food security, basic infrastructures, the prevention of conflicts, mankind, humanitarian aid, the fate of children and the respect of their rights when formulating basic themes.*

B. MULTILATERAL COOPERATION AND COLLABORATION WITH THE NGOS

The NGOs have observed with satisfaction that Belgian Cooperation has supported a number of new activities in the field of children and children's rights in recent years. The Belgian Cooperation thus provides most of the financial support for the Special Envoy of the General Secretary of the United Nations for children in armed conflicts. UNICEF, the United Nations' foundation for children received extraordinary funds for activities concerning the demobilisation of children-soldiers and for the organisation of a Special Session of the General Assembly of the United Nations for children (September 2001).

The Belgian actors of the Belgian Cooperation partnership - non-governmental organisations and multi-lateral organisations – also underwent concentration. In the multilateral area, 22 partner organisations are retained for the future. It is with satisfaction that the NGOs note that UNICEF, the United Nations' foundation for children, is remains a partner of the Belgian Cooperation. The Belgian government's contribution to UNICEF however remains limited (about 100 million francs per year), especially when compared to the Dutch government's contribution, for example, An increase in this amount should be considered.

The non-governmental partner organisations should be incited to more explicitly make the well being of children and the respect of children's rights a priority in their projects for Southern development as well as in their awareness raising activities in our country.

4. THE BUDGET

A. 0,7% OF THE GROSS NATIONAL PRODUCT

The Belgian Cooperation is still far from the norm of 0.7% of the GNP, as fixed by the United Nations' General Assembly at the end of the 1960's.

The NGOs note with pleasure that in 2000, for the first time the total budget was distributed. This however only represents 0.30% of the GNP.

The Belgian government has plans to increase Belgian Cooperation for Development and has, in fact, anticipated a total of further 16 billion francs for the period 2001-2003 for international cooperation. The NGOs will closely monitor the transformation of these promises into reality. The NGOs clearly insist on the need for a rapid catch up.

B. THE 20/20 INITIATIVE (THE SUMMIT FOR SOCIAL DEVELOPMENT IN COPENHAGEN)

The NGOs ask the Belgian government to put the "20/20 initiative" in to practice. This idea was launched in 1996 during the Summit for Social Development in Copenhagen. Donor countries should invest at least 20% of their aid budget in social projects (basic provisions that should benefit children). The programme countries must in turn spend 20% of their own budget on social affairs. This "20/20 concept" should be incorporated in the conventions made with the partner countries. Along the same lines, the Belgian government must also make a clear and transparent analysis of the percentage of its activities that benefit children and make these results public.

The NGOs recommend that the consideration of children's rights be a priority objective for Belgian Cooperation for Development and that the respect of these rights and the impact of cooperation on children are systematically used as criteria for choosing which programmes are supported.

The NGOs also recommend that the commitment to consecrate 0,7% of the GNP to cooperation and development be respected.

B. Belgian foreign policy

Over recent years Belgian foreign policy has granted a lot of attention to the problem of armed conflicts and the consequences of this for children. This point will be analysed in the eighth section, point I. B.

Various international treaties mentioned above (Point I. A.) that affect the well being of children and the respect of their rights must be ratified by the Belgian authorities as soon as possible.

The NGOs invite the authorities to place their "reservations" about the ratification of the C.I.D.E. in the international agenda. All but two countries have ratified the C.I.D.E. Many countries expressed different "reservations" at the time of ratification. Often, these concern essential articles of the treaty. Belgium should not miss the opportunity to incite these countries to drop their "reservations". The Belgian authorities had this opportunity during the second semester of 2001, when they had the presidency of the European Union. It was not only an opportunity to give their opinion about the non-European countries, but also a chance to give one about those European countries that have expressed "reservations" (for example: Great Britain). The "UN General Assembly General Session on Children" (UNGASS) was prepared during the EU Presidency. Again, this was a unique opportunity for Belgium to place the principle of "reservations" on the agenda.

The NGOs regret that children and children's rights do not take a major place in Belgian foreign policy. In the political texts in the area, children and children's rights are barely mentioned.

The positive point is that Belgium nominated a Special Representative during the UN Special Session for Children in September 2001 and made a significant financial contribution to the Special Session Organisation. It can be seen that Belgium took the Special Session

preparations seriously in the national report and in its active involvement in the Berlin Conference on the situation of children in Europe and in central Asia. These initiatives should be pursued.

The NGOs ask the Belgian authorities to foresee the measurement of the impact of its foreign policy on children and on the respect of children's rights. Thus, Belgium could develop a proactive foreign policy that is favourable to children.

The annual report given to the Flemish parliament by the Flemish government on the situation of children and the respect of children's rights in those countries with which Flanders has agreed on Cooperation is a very positive initiative.

The NGOs insist that the Belgian authorities place article 7 from the C.I.D.E. (registration of birth) on the agenda of international meetings. A birth certificate implies official recognition of the child by the authorities. The NGOs consider article 7 very important. When a child is not registered, legally it does not exist. Consequently, that child is not included in the statistics that the authorities use when considering which of the children's needs must be confronted in the country. It is clear that the incomplete registration of births has negative consequences at the macro-level. The consequences do not however stop there, and are also immense at the micro-level. In many countries, someone who does not have a birth certificate cannot go to school, be admitted into hospital, ... Furthermore a birth certificate provides protection to minors. Anyone who does not officially exist is easy prey for child prostitution, child trade and enlistment into the army. Even giving a political opinion is quite impossible.

V. Process for the establishment of the official report

- In its session of June 9th 1995, the Committee for Children's Rights suggested that Belgium envisage:
- *"(...) putting a permanent mechanism in place for the coordination, assessment and monitoring of policies related to the protection of children (...). In this respect (...) to create the necessary means to regular and close cooperation between the federal government and local authorities, while collaborating with the non governmental organisations that watch how children's rights are protected in the member State";*
- *(...) creating a permanent mechanism for data collection at a national level, in order to have a global assessment of the situation in the country and in order to provide an in-depth and multidisciplinary assessment of the progress made and difficulties encountered during the implementation of the Convention".*

The NGOs consider that there has been a lack of political will to really implement these recommendations. The present process of reporting in Belgium still, almost entirely, shows the same gaps as those that the NGOs highlighted at the time of the initial Belgian report[11].

> *The NGOs recommend that the authorities really implement the recommendations made by the Committee for Children's Rights concerning the setting up of a permanent mechanism of coordination, assessment and monitoring of the policies for the protection of children, and in particular that the mandate of the National Commission for Children's Rights be broadened and its existence be confirmed by a law.*

The methodology used by Belgium was as follows:

- At the end of 1996, more than a year after the Committee for Children's Rights adopted its

[11] *Observations made by the Belgian NGOs on the report concerning the application of the Convention on Children's Rights, December1994,* General application measures, points 1, 2, 3 and 6.

final observations, the Council of the Ministers creates the National Commission for Children's Rights. Some time later, the same Council of the Ministers creates the Inter-ministerial Conference for the protection of children's rights. This Inter-ministerial Conference entrusts the National Commission with the writing of the report, even before the Commission organises its first cooperation session.

- At the end of March 1998, by means of an open letter to the Ministers of Justice and Foreign Affairs, the NGOs must note that the National Commission is not always united and that a President has not yet been nominated. By mid July 1998, the Minister of Foreign Affairs officially answers to this letter, and tells the NGOs that in fact the permanent members of the National Commission have met repeatedly in order to prepare the report.
- These meetings by the National Commission in isolation effectively resulted in a project for the report, a copy of which was however only communicated to the NGOs and to university experts, after extensive questioning by the NGOs, during the month of June 1998, with an invitation to make any comments by September 1998.
- On the 15th September 1998, the NGOs learn that since 26th June 1998, the National Commission has decided that on 23rd October 1998 in order to debate this project for a report they will unite all the ministerial departments and cabinets concerned with the politics of children, as well as those associations working in the area. The Commission also decided that the Communities would organise cooperation on this topic prior to the meeting. This took place in the Flemish Community on September 17th 1998 and in the French Community on October 2nd 1998.
- Following these meetings, the National Commission again met in order to *"take into consideration the observations made by the university experts and by the NGOs*".

The methodology accepted shows sufficiently that, ever since the beginning of the process, there has been a lack of political will to associate experts and NGOs to the development of the report. Consulted at the end of the process, and presented with a text "to take or leave", the experts and NGOs could not really react to the report's content.

Nevertheless, the NGOs are delighted with the improvement that has taken place since the first report was submitted, and especially by the Belgian Government's commitment to remedy this lack of cooperation by reviewing both the respective roles of the National Commission for Children's Rights and the Inter-ministerial Conference and how they work.

The retained methodology is not without consequences for the report content:

- The report does not go beyond a description of the measures taken and arrangements adopted, without really assessing the status of their implementation in the field.
- The lack of systematic data collection throughout the report is lamentable.
- There is great disproportionality between the different chapters. Thus, although we value all the energy channelled to the problems of protecting children from all forms of violence and sexual exploitation, it has been noted that these problems occupy a large part of the report, which is especially regrettable given that other topics deserved more consideration (especially on the questions of health, education and standards of living).
- The federal entities that are the Regions obviously have not contributed to the development of the report, even though their expertise would justify substantial contributions on many points (policies for housing, disabled, etc.).

The NGOs recommend:
The setting up of a permanent mechanism for data collection, which, in the long-term, should enable the qualitative assessment of the policies made.

The development of a permanent evaluation process on the implementation status of the Convention, in connection with the NGOs, in order to develop a qualitative analysis of the measures and arrangements adopted and the development of a methodology for the preparation of the Belgian report.

Second part - DEFINITION OF THE CHILD

I. Definition

The Convention defines children in its 1st article as "every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier".

For lack of precise measures in the law on foreigners of December 15th 1980, the Foreign Office defines as a minor someone who has not reached the age of eighteen years and the General Commission for Refugees and Stateless People evaluates the state of minority according to the candidate's national law.

The NGOs regret that for the purpose of immigration policy, Belgium disregards this limit of eighteen years, by issuing orders for foreign minors to leave the territory according to article 118 of the royal decree of October 8th 1981 concerning the removal from the territory, the stay, the establishment and the removal the foreigners.

The NGOs recommend that the majority is uniformly fixed at the age of eighteen years, whatever the child's statutory right and that no exception be made to this principle (in particular in the contexts of immigration policies).

II. Minimum legal age for exercising certain rights and obligations

The determination of the legal minimum age for exercising certain rights and obligations is established on a case-by-case basis[12]. Although it is understandable that in some cases it is necessary to adapt the age according to the type of right or obligation considered, this nevertheless leads to great confusion in the matter, which could lead some people thinking they are not old enough to exercise a given right.

The NGOs recommend that the criteria of age are reconsidered and that there is an attempt to harmonise all the cases when it is possible and desirable.

A. Consultation of a lawyer without parental consent and consultation of a doctor without parental consent

A. CONSULTATION OF A LAWYER WITHOUT PARENTAL CONSENT

The development of permanent manned lawyers offices for children strongly depends upon the initiatives taken by bars and is thus very greatly between one region and another. In some areas there are well-equipped offices for youths with retraining and adequate opening hours. Minors can count on a lawyer's legal aid right from the first contact with the prosecution district or the youth judge and will be helped, in ideal conditions, by a counsellor who will continue to follow the case. In other areas, it is more difficult, in particular because of the decision taken by the local bars that all trainee lawyers should be responsible for of certain number of cases concerning children's rights during their training. This means that, not only

[12] For example: 12 years old is the age limit for justice hearings; one has to be 15 years old to oppose recognition; to be 14 years old to be to make an agreement in writing in the presence of a youth advisor; to be 15 years old to agree to ones adoption, etc.

are trainees from all specialities confided children's cases without either the necessary training or preparation, but also the claimants of these cases are no longer entrusted with them.

Furthermore, the generalised development of permanent manned offices for children is made more difficult by how badly paid these lawyers are. However, even if the amount of compensation paid to these voluntary lawyers' working to help youths improved, there is still the equal problem that they are paid with considerable delay.

As things stand, at present there is a great, and somewhat arbitrary "disparity in services". The youth can be designated to a "devoted fighter for children's rights", or equally to a trainee in fiscal law who has no notion of children's rights and no incentive to remedy this.

Furthermore, in some regions where the permanent manned offices continue to function, they are become overburdened, making serious and in depth work difficult. It is not unusual that the first time a minor has contact with their lawyer is on the day of the hearing, five minutes before this begins. If the minor wants to make contact with their lawyer to prepare their defence, they will sometimes have great difficulty in finding out who has been designated to help them (they may even have to follow an "obstacle course" to find out the defendants name)[13].

In the law of November 23rd 1998 concerning legal aid[14], it is foreseen that minors have the right to free legal aid in the first line (information and initial legal advise) and in the second line (aid in the proceedings). However, the fact that children and youths are even less familiar with the mysteries of justice than adults remains a stumbling block. A well-equipped permanent manned lawyer's office for youths thus guarantees real aid for minors.

In some judicial regions article 54 bis of the law for the protection of youths is ridiculed. This article states that if someone of less than 18 years old is a party in a lawsuit and does not have a lawyer, they will automatically be allocated one. Some magistrates obviously have no knowledge of this article.

Bearing in mind the importance of permanent manned lawyers offices for youths and considering the problems they must face, it is necessary to develop sound regulations in the field of legal aid for minors. The NGOs ask that this matter be tackled as a priority so that this system that has been successfully applied in a number of areas over several years can become a law. In this context, it is important to mention the Senate's bill of October 22nd 1999[15] in view of nominating lawyers for youths and minors. Unfortunately, the decision concerning this bill has been postponed until later. The NGOs hope that a new legislative initiative will be taken, either by the Chamber, the Senate or by the government, or that the existing bill will be reconsidered. They ask the public authorities to work without delay towards the right of well-organised legal aid for minors.

The NGOs recommend that a rapid solution be found for these malfunctions that have been presented since many years, but that have finally been brought to light by means of the improved quality of

[13] On this subject see: "Réponses au questionnaire du Comité belge pour l'Unicef concernant la privation de liberté d'enfants dans les établissements fermés en Belgique" by Anne GRAINDORGE, 1999, and "Etablissements fermés en Belgique" by Anne GRAINDORGE, 1999.

[14] Law concerning legal aid of 23rd November 1998, M. B., 22nd December 1998.

[15] Briefly, we propose that the lawyer can intervene in all juridical or administrative proceedings that concern or affect the child's interests and that the lawyer should be responsible for defending the child's interests (article 2) and this particularly in two specific areas: aid and representation of the child's interests in the case of family and relational problems and when the child is author or victim of an offence. In order to claim the title of a lawyer for minors, the lawyer must be able to prove they have in depth knowledge about the Convention concerning Children's Rights, that they are familiar with laws and decrees concerning children's rights, that they are able to talk to children by putting themselves at the child's level, that they can develop a relationship based on confidence with the child, that they can defend the child's rights and that they have up to date training in the field of children's rights (article 3). The costs of this legal aid must be supported by the Minister for Justice's budget (article 4).

defence provided by the "youth" lawyers, the monitoring of their cases and the training of these lawyers. The NGOs thus hope that within the framework of nominating youth lawyers, a legislative initiative be taken as quickly as possible or that the existing proposition be discussed or worked on.

B. CONSULTATION OF A DOCOR WITHOUT PARENTAL CONSENT

In practice, youths can presently consult a doctor without parental consent, but legally the question is not clear, meaning that such matters as the confidentiality of repayments by the mutuelles (Belgian health insurance scheme) are vague. The Minister of Public Health is currently working on legal regulations for patient's rights, in which attention is also granted to patients that are minors.

The NGOs recommend that this question be given more thought, based in particular on the practices of family planning clinics, which play an important role in this area, and that a legal framework be adopted.

B. Free deposition before the courts

Putting article 931 of the Juridical Code, which determines the minor's right to a hearing, into practice is problematic for a number of reasons:

This important gap is due to the conflict and lack of consistency between article 931 of the Judicial Code and article 56 bis of the Law for the Protection of Youths that makes the provision that the youth court is obliged to issue summons for a hearing to minors aged over 12 years. Similarly, and potentially affecting the same minor, there are other important points of conflict. Firstly, there is a difference concerning whether a right to summons should be introduced or not. In article 931 of the Judicial Code there is no provision for a right to summons, consequently children's hearings are generally considered as being optional. Article 56 bis, on the other hand, provides for this right (albeit only in a certain number of cases). Secondly, the Judicial Code makes no mention of age and the right to a hearing applies to all minors with the necessary "capacity for judgement", a criterion the judge has full discretionary power over (see below). The regulation of article 56 bis concerns minors over 12 years old[16].

The NGOs think that only a single rule is necessary, specifying that minors have the right to be heard in juridical proceedings that concern them, and this, from the age at which they are capable of having or of expressing an opinion.

The evaluation of this notion of judgement is left to the entire discretion of the responsible judge, who must assess the minor's capacity for judgement without having met them. In this way local legal precedents are set that can only be reformed by the appeal courts as the decision to refuse a hearing cannot be appealed.

The judges that are likely to be responsible for a request for a hearing made by a minor are not specially trained for such responsibilities. This poses the problem of whether they are capable to evaluate a minor's judgement, and also whether they are capable of interviewing the child or youth in such a way that they can really be heard.

The hearing is subjected to a transcript attached to the case. The parents are allowed to acquaint themselves with the transcript, but they cannot receive a copy. This transcript is necessary for the respect of the defendant's right attributed to each of the parents. It is however, an element that is likely to make some minors fear the reaction of those about whom they speak. It does not respect article 12 of the C.I.D.E. exactly, as this article foresees that the hearing will be carried out either directly, or via an intermediary representative or a suitable

[16] C. MELKEBEEK, "De Belgische minderjarige kan/mag/moet gehoord worden.", Tijdschrift voor de Rechten van het Kind, DCI, n° 3, 1995.

organisation chosen by the child. However, article 931 of the Judicial Code foresees that the judge will hear the child, or designates the person assigned to hear it.

In practice the child's hearing depends all too often on the good will or means of the judge concerned. The mentioned regulation therefore leads to insecurity about rights, is unjust and inefficient. Nevertheless it is never enough to mention a single measure in the law without providing the means for this to be applied in reality. Once again we find ourselves confronted with a clear illustration of the tension between the rules and practice. All this means that that there are serious differences in the right to a hearing, notwithstanding an identical federal regulation, between the francophone part and the Flemish-speaking part of the country, and regional differences within these linguistic territories (see also the direct action of article 12 of the C.I.D.E. below). We must even note that a judge for preliminary proceedings in Brussels once repeatedly refused to hear children[17].

The NGOs have frequently applied for subsidies to investigate these differences, but as yet remain unsuccessful.

In fact, article 931 of the Judicial Code is an incomplete interpretation of article 12 of the C.I.D.E. The legislation makes hearings for children possible. Children cannot however demand this right. The judges must not influence their decision to hear a child or not. If article 12 had a direct action, this would mean that children would receive the right to a hearing. Therefore, it is necessary to make a request for the direct application of this article. We also note here the differences in application between the various parts of the country.

It should be noted that it is essentially the magistrates from the francophone part of Belgium who do not want this article to have a direct effect, but who allow a minor to intervene freely in order to follow the proceedings in an area that concerns them[18]. Even the Court of Appeal in Ghent recognised the legitimacy of article 12 in the internal order of law in its ruling of April 13th 1992[19]. On the other hand, the Court of Appeal in Antwerp in its ruling of April 14th 1994 determined that the C.I.D.E. has no direct action in national law, and thus does not provide for direct intervention by children in cases against their parents[20].

The NGOs however hope that in this area Belgium will show that it is ready to implement the measures of the C.I.D.E. in its national legislation, so that children do not have fight for every millimetre of space before the judge. The Senate's government bill regarding the modification of the different measures concerning the minor's right to be heard by the judge could be a solution to the above-mentioned problems. The NGOs therefore ask that this bill be considered a priority.

The NGOs recommend the following practical or legal modifications:

- When a minor requests a hearing, it would be appropriate that the judge responsible should be obliged to personally meet the minor in order to assess their capacity for judgement.

- Many judges, even those that are not specialised in domestic affairs or those concerning youths, are likely to be called for when a minor requests a hearing. Training in meeting with minors would be a minimum precondition for a good application of the law.

- The Judicial Code does not state that all the minor's comments be recorded in the transcript of the hearing. It would be appropriate to allow the minor to request that some of their comments should not be recorded.

[17] Brussels, 28th August 1998, RG 1998/KR/400, 9th February 1999, "Journal des séparations" 1994/4, pp. 53-58

[18] Court of Appeal, 31st March 1998, KiDS, section 3-3, 10-67.

[19] J.D.J., nr. 117, seven. 1992

[20] KiDS part 3, 3.10.21.

- The NGOs request that the differences in practices in the different parts and regions of the country be investigated and that the necessary conclusions are drawn with regards to both the application of the legislation, and the increased awareness of those concerned.

- That article 931 of the Judicial Code be modified in order to bring it in line with article 12 of the C.I.D.E.

C. Deprivation of freedom - imprisonment[21]

D. Obligatory education

Certain groups regularly propose a reduction in the legal age for obligatory schooling from 18 to 16 years, in particular to provide a solution to various problems met by schools. The NGOs fear that such a measure, foreseen in response to the problems that some youths encounter in the present system, does not save the cost of an in depth debate about education. The schools should be adapted such that they remain welcoming for all youths, and should not come to exclude some.

Reducing the legal age must not lead to youths aged 16 years or over being deprived of the right to education, this means they must be allowed to enrol in the school of their choice.

The NGOs recommend that the legal age for obligatory schooling be maintained at 18 years.

E. The right to institute proceedings

The jurisprudence remains limiting in this respect, however it must be recognised that it is gradually evolving in favour of this right. A right to “be heard” is generally recognised for minors as long as they are old enough to make a judgement.

It would be appropriate that the Belgian report make clear reference to this jurisprudence as a positive example of the application of the principles foreseen in article 12 of the Convention.

Nevertheless, the right for minors to initiate proceedings is not unanimously recognised. Thus, they must rely on their legal representatives to act with respect to their rights. This poses problems when their parents will not act for their child or that the child’s dispute is with their parents.

The NGOs wish that the minor’s right to go to court be the theme of a public debate.

[21] See section IV of this report, concerning children in conflict with the law.

Third part - GENERAL PRINCIPLES

I. Non-discrimination

Many cases of discrimination are regrettable. They are considered by the NGOs in various sections of this report and concern in particular, minors in exile[22], handicapped children[23], schooling for children from poor families[24], the high risk of fostering children from poor families[25], etc.

II. The best interests of children

Although this general principle is currently invoked in all circumstances, the NGOs must note that in reality other concerns often overshadow it. Thus, the practice of detaining minors under the law for the protection of youths, which is unjustifiable when considering this principal, continues in view of public order and security considerations[26]. In the same way, concerning minors in exile, the immigration policy is taken more into consideration than the best interests of the child when analysing the minor's situation[27]. It is thus regrettable that children's best interests, as set out in article 3, are not always the primordial consideration.

III. The right to life, survival, and to development,

Article 6 of the C.I.D.E., the right to survival, is not covered in the authorities' report. Nevertheless, the transgression of this article in industrialised countries, such as Belgium, is a serious problem. Accidents, of all types, are the greatest cause of child mortality between 1 and 14 years old. In the group between 15 and 34 years old, suicide is the second cause for mortality. The NGOs believe that some of these mortalities could be avoided by modifications at a structural level, and by actually taking heed of children's interests.

A study concerning road safety and suicide follows.

1. Road Accidents

The authorities' official report hardly mentions (p.88) the theme of road safety and one authority only mentions this theme in the context of numerous initiatives taken by the Flemish Community. The NGOs consider that this theme should receive considerably more attention specifically in a report on children's rights. There is always much to say on the Belgian situation from both a positive and a negative point of view.

On one hand, there is the problem of victims of road accidents. These are often the weakest road-users, and many are children. It cannot be emphasized enough that children run an unacceptably elevated risk in traffic and cases of death ensue (or should ensue) on a (collective) responsibility. Nevertheless, we note that this problem is considered a necessary evil in industrialised countries, if not explicitly, at least implicitly. This is the price to pay for mobility (especially for adults). Belgium is among those countries with the highest death rate. "Data from the World Health Organisation shows that the risk of death following a road accident is still significantly higher in Belgium than in the neighbouring countries"[28]. The

[22] See section VIII, A of this report concerning children in emergency situations.

[23] See section VI, A of this report concerning handicapped children.

[24] See section VII, A of this report concerning education.

[25] See section V, 3, separation from their parents.

[26] See section VIII, B of this report concerning children in situations of conflict with the law.

[27] See section VIII, A of this report concerning children in emergency situations.

[28] H. JANZIG, "Traumatisme, la maladie ignorée en Belgique", De Standaard, 06/03/2000.

knowledge that the victims are mainly minors means that it is no exaggeration to conclude that in this matter children, from all social categories within the section of society with no (political) voice, are structurally disadvantaged compared to other groups.

However, a clear and positive evolution is in progress in Belgium: during recent years the government has granted a more sustained attention to road safety leading to a number of initiatives that are described below. Obviously, implementing a controlled coherent policy in the area of road safety has been made more difficult by the dispersal of expertise in this field. The federal authorities, regions, cities and towns all have decisive powers in this area. Furthermore, it should be noted that the present government is not responsible for all the present problems. Political acts on their own will not suffice, there needs to be a compete change in mentality, in behaviour on the road and a new vision of mobility.

A. AT THE FEDERAL LEVEL

The intentions and measures announced by the Minister of Mobility and Transport show the necessary interest for the position of the weakest road-users generally, and for child vulnerability in particular. Unfortunately, we must note that, until now, this interest has not lead to sufficient concrete achievements.

The approval by the Council of Ministers of an AR imposing a 30kn/h zone near to schools is already positive. This AR is momentarily awaiting the regional authorities' opinion before it can return to the State Council. The use of a suitable road sign will make the introduction of the 30km/h zone easy. Unfortunately, this new adaptation will not be able to be accompanied by infrastructure measures and the Regions will not be able to decide on the extent of the 30km/h zone (the size of the school environment has not been decided on) or at what time of the day the regulation will be applicable[29]. We fear that the final goal of the AR will never be reached. Nevertheless, the Belgian Institute for Road Safety's statistics show that more than 30 percent of accidents involving pedestrians and cyclists are with youths of less than 18 year olds as they enter or leave school, and put the emphasis on a recent report in "Test Achats" on the extraordinary situation in the neighbourhood of some schools[30].

Plans exist for the creation of a "street code" for the weakest road-users, which would be comparable to the present Highway Code[31]. The aim is to promote security for cyclists and pedestrians by adapting the Highway Code's philosophy and by regulating the traffic (it is important to try and achieve a rapid change from car traffic to the shared use of the public space). The existing measures concerning the weakest road-users will be regrouped and assessed so a series of new measures ensue. In this manner, the 30km/h zone would become generalised. The NGOs support this initiative, but again wonder how far some of these proposed measures will actually be achieved[32].

The Estates General on road safety will take place In November 2001. In order to try and reduce the number of victims of road accidents in neighbouring countries, a target date for 2010 will be fixed in a coordination meeting with the main parties involved (including the regions). The NGOs again fear that these good intentions will remain at the coordination and working group level, without this necessarily leading to useful results[33].

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[29] "Sécurité insuffisante aux portes des écoles – Test Achat veut une zone 30 près de toutes les écoles", De Standaard, 31/08/2001.

[30] Ibidem.

[31] The street code is based on the following initiatives: all those measures of the Highway Code whose features should lead to a better life in the traffic are assessed and grouped. This leads to a group of new measures which render the pedestrians and cyclists participation to traffic more secure and pleasant, the use of a helmet for cyclists is recommended, etc…. Extract from: "Plus de sécurité avec une politique adaptée. A coté du code de la route, arrive un "code de la rue" pour les piétons et les cyclistes.", De Standaard, 25/07/2000.

[32] "Isabelle Durant veut punir plus fort le comportement asocial des automobilistes", De Standaard, 24/07/2000.

[33] I. GHYS, "Moins d'accident et plus de morts. Si tous les enfants portaient la ceinture de sécurité, le nombre de victimes diminuerait de 13%", De Standaard, 18/08/2001.

The NGOs are satisfied with the series of AR projects that are currently being prepared and which concern the weakest road-users[34], but nevertheless hope that they will not stop at this short list of achievements.

The NGOs highlight the numerous and efficient prevention campaigns. They support the campaign promoting the use of safety belts by children in the rear of the car. However, one must not lose sight of the fact that the main cause of most accidents is excess speed. The failure to respect speed limits thus must also be tackled. An increase in "risks to be taken" both objectively and subjectively, by controls and strict convictions for exceeding the authorised speed limit are absolutely necessary. The NGOs expect more effort by the competent responsible persons in this area, i.e.: the Ministers of Justice and of Internal Affairs.

To conclude, the NGOs ask that attention be paid to the blind spot for trucks. This is a serious problem that must be deal with as quickly as possible. According to the Minister of Mobility and of Transport, this obligation can only be dealt with at a European level. The Minister has announced that it wants to organise a working group on this topic within the European Union[35].

B. THE REGIONS

A) THE DUTCH SPEAKING-REGION

The NGOs are very pleased that the Minister of Mobility, Public Works and Energy has seriously increased, up to 6 billion francs, the budget allocated to the construction and maintenance of cycle tracks this year[36].

It is also pleasing that the use of an anti blind spot mirror is going to be obligatory for trucks that work for or that are sub-contracted to the Flemish region. Some towns have also decided to equip their trucks with this equipment.

For journeys further a field (and in safety), children depend upon adults. A well-equipped and economic network of Public Transport would permit security and independence to be promoted. The NGOs thus ask the present government to pay greater attention to this matter and hope that the initiatives taken in order to reduce the costs will still be reinforced.

B) THE WALLOON REGION

As far as bicycle traffic is concerned, it is imperative that more cycle tracks be installed in order to allow for easy and safe circulation.

The need for a complete change in mentalities with regards to road behaviour is felt. Even though the authorities are not entirely responsible for this behaviour, they can play an important role.

The NGOs hope that the good intentions of the ministers responsible for road safety will lead to real and satisfactory achievements.

The NGOs ask that more attention be paid to the respect of traffic rules, and in particular excess speed be condemned.

The NGOs hope that anti blind spot equipment will become obligatory as quickly as possible.

In conclusion, the NGOs call on the authorities to pursue the initiatives taken in the area of the development of a cheaper and wider reaching public transport network.

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[34] This includes, amongst others, measures taken by the AR; the obligatory use of a helmet for 25km/h mopeds, prohibition to use cycle tracks for class B mopeds, more manoeuvres on the cycle tracks, prohibition to park at the beginning or end of a cycle track, when parking on the pavement leave a distance of 1m50 instead of 1m and allowing cyclists to use bus lanes.

[35] The blind spot is the space to the right hand side of the truck, which means that the driver cannot see other road-users, especially the weakest users when he turns right.

[36] "Six millions pour les pistes cyclables", De Standaard, 08/05/2001.

2. Suicide

The question of youth suicide should be the subject of greater concern by the authorities given the statistics on the matter, which are a real alarm bell.

In Belgium, suicide is the second cause of death in the 15 to 34 years age group, following road accidents. But attempted suicides (generally without repercussions) are at least 30 times more numerous[37].

On this subject, the various actions developed by the “Maison du Social” (Provincial aid and social action service) of Liege to supervise and to take into care suicidal teenagers must be mentioned. A symposium on the theme "Suicide, Adolescents and the school environment" was organised in September 2000 to commemorate the fifth anniversary of the creation of the “Patrick Dewaere” Centre, a welcome centre for youths having trouble with life. This symposium concluded with various recommendations on how to take suicidal youths into car and how to listen to them. School seems to be the natural place to initiate suicide prevention programmes by, among others, teacher training, health promotion introduced from the first years of schooling, improved information for pupils on potential risks, on the available aid and intervention by professional psychiatrist doctors as early and as simply as possible. This programme shows that the public powers must recognise that adolescent suicide is a major public health problem, and this is a starting point for action.

3. Right to development

For the discussion on the right to development, we refer to the other sections of this report. In particular there is the right to quality education, the right to be able to relax, the right to free time and to games, the right to physical and psychological development, the right to protection against violence and torture, etc… Each of these examples requires conditions that must be satisfied in order to create the necessary opportunities to achieve complete development.

IV. The respect of children's opinions

A. General Remarks

The right to expression and involvement is one of the mainstays of the C.I.D.E. It is the most innovative pillar as it grants children the status of fully-fledged individuals, capable of making sense of their existence and of playing an active role in society[38]. In recent years in Belgium these rights have been the object of increased attention, as the multiplication of initiatives[39] and regulatory measures[40] made in the field testify, as well as the proliferation of comments about the matter. However, the NGOs cannot affirm that the right to involvement is fully accepted at present.

In this respect, it must be highlighted that education gives children tools with which to construct their thoughts, and to communicate them. In view of the inequalities in the right to education (see part 7) there is also great inequality in the right to expression and involvement.

The observation of speeches made and behaviour in this area gives the impression that even if places where the child can express their opinion on interesting questions develop, we can not strictly speaking talk about participation as the opinions expressed in this way are not necessarily taken into consideration.

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[37] “Le risque suicidaire et les adolescents”, Maison du Social, Province de Liège.

[38] See “*L’important c’est de participer”*, publication by the Belgian Committee of Unicef, 1st part, pp. v-vi.

[39] To quote a few: multiplication of communal councils for children and youths, “Forum J”, etc.

[40] Article 931 of the Judicial Code, implementation of participation advise, by the “missions” decree, etc.

This reality is surely a result of the disparity of "motivations" leading to the setting up of these places for involvement[41]:

"Participation is inevitable"[42] one hears. This expression is particularly representative in the way participation can be envisaged: as something fatal, unavoidable, with which it is necessary to compose.

Such a step requires particular skills for listening, so that the voice the adult receives remains the one expressed and is not deformed by the adult's point of view, by the ideas the adult would potentially like the voice to express, etc[43].

"Is participation not listening better to children? In order to do that, it is necessary to know them, to take into consideration their speech structure, the children's culture and of youths. Participation raises the question of communication" (minutes of the workshop "participation de l'enfant" organised on the 20th November 1998 by the CODE).

Recognising the right for children to really participate, however little, in the organisation of their lives and in the objectives to continue with their development is a revolution that implies a change in mentality. This change in mentality is often inherent in the "motivations" for setting up participation structures, however the lack of change is still present in many structures[44], and is expressed through certain regulatory measures[45].

B. At the federal level

In 1999 UNICEF launched the "What do you think?" programme intended to promote the right to expression and to participation of children and youths thanks to subsidies from the Ministry of the Justice. More specifically, the project aimed to involve children and youths in the processes that oblige the States that are party to the Convention to present a report to the Committee for children's rights. This report reviews the opinions, advice, propositions and initiatives of children and youths concerning the respect of their rights in and by Belgium. The "What do you think?" project also aims to establish a social debate on the right to participation for children and youths and hopes to set up a permanent process of participation for children and youths at all levels: in the family, at school, in the town and in society in general.

Within the framework of the UN Special Session for children, effort was made to respect the right to participation and expression for children. The Ministry of Foreign Affairs and the Flemish and Francophone Communities asked UNICEF Belgium, within the framework of the WDYT project, to undertake the selection, supervision and monitoring of four children and youths who participated in the Special Session. UNICEF Belgium received the necessary subsidies to carry this out.

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[41] For this see "*L'important c'est de participer*", op. cit., "Partici*passion- Passion* pour la participation des enfants" which broadly analyses the "why" of child participation.

[42] Administration de la Jeunesse et de l'Education permanente, Direction Générale de la Culture et de la Communication, *La participation des jeunes, compte-rendu de l'atelier du Jeudi 18 juin 1998*, p. 1.

[43] This capacity is all the more necessary when the child has to be heard in a judiciary or in a administrative procedure that interests it. See above, "Definition of the Child" – "Free deposition before the courts" or below "Special Mesures for the protection of childhood" – "Children in emergency situations".

[44] See, for example, the working note prepared by the OMEP- Francophone Committee at the time of this report, which evaluate this difficulty within certain reception structures for small children in Belgium;

[45] Youths are not gullible, Emily Hoyos, President of the "Fédération des Etudiant(e)s francophones" when considering the participation of youths at school , specifies: "Irrespective of the level at which the student is participating, the FEF sees this as a double expectation: participation as a tool, aiming to carry out and achieve a precise project, both at a local and at a more global level; participation as an objective, with a citizen's attitude, which manifests the student's desire to be involved in what surrounds them directly and indirectly. These two visions (...) are inseparable. (...) In this way, the embryo of participation, such as provided by the "mission decree" voted by the Parliament of the Francophone Community unfortunately constitutes an example. Indeed, the participation of actors within a "council of participation" only seems to derive from the second objective, i.e.: the citizen's attitude: No deciding power is foreseen for this miserable council, nor, moreover, is there any hope for a real implementation of this project" in "*Compte-rendu de l'Atelier du Jeudi 18 juin 1998"*, op. cit., pp. 4-5.

C. At the community level.

A) IN THE FRENCH COMMUNITY

Participation is often considered as a means of educating youths about citizenship. Thus, the vade mecum of communal councils for children and youths account for the motivations of the different burgomasters or deputy burgomasters for the youth by saying that these youths express the same motivations. These are increasing the awareness of children and youths, which these same burgomasters or deputy burgomasters often classify as the "citizens of tomorrow", to political life in the form of town management, practice in discussions, negotiation, listening to others and the establishment of priorities and programming decisions[46].

Student meetings in schools are dependant on the good will of the directors, who are often particularly interested in their public image or in overcoming problems in communication, of violence[47].

The Participation Councils have been created by the Decree on education missions and organise the participation pupils, parents, teachers and external partners. They therefore include student representatives who are elected by the pupils. The Participation Council has to meet at least twice a year and is responsible for debating the institution's project, which reviews the school's educational project, and they must give their opinion on the school's annual activity report. The Council is therefore an advisory body and not a decision-making one. This body is dependant on the goodwill and personal commitment of its members[48].

Participation is particularly important at the time of modifications of legal and regulatory measures concerning children. For example, it is incomprehensible that the youths placed in I.P.P.J. cannot express their opinions on the project for the general rules of the I.P.P.J., or that non-accompanied foreign minors cannot give their opinion on the "specific status" that will be created.

B) IN THE FLEMISH COMMUNITY

1. EDUCATION [49]

On one hand, the NGOs are delighted with the positive evolution in the area of pupil participation in education in the Flemish Community in recent years. In places where until a few years ago, pupil participation was considered as a marginal phenomenon (until recently there was no guarantee to allow legal expression), we now see that in the world of education pupils' opinions are increasingly taken into consideration.

The following initiatives deserve particular attention:

On March 17th 1999, two important decrees were approved.

The first, the decree establishing pupil councils in secondary education, determines that every secondary school where one third of the pupils request a pupils' council, must have one, and that the school must support the running of this pupils' council if it is asked to[50].

Next to the stimulating appearance of this decree, it should be noted that it is the pupils that have to request a council. This is not the case for adult's bodies for expression. A negative

[46] Fondation Roi Baudouin, "Vade-mecum des conseils communaux d'enfants et de jeunes", 1997, p. 11.

[47] Source: Véronique Georis (JEC) et Laurence Marchal (ICC) in "*L'important, c'est de participer*", op. cit., "Le droit de la participation en pratique", p. 5.

[48] "Participer à l'école", Ligue des familles, 1997.

[49] For a discussion on children's rights in education, we refer you to part VII of the report.

[50] This decree came into force on 1st September 1999. In order to illustrate this positive evolution, we can describe what ensued. In June 1999, the "Vlaams Scholierskoepel" carried out a survey on the situation that existed before the present decree was adopted. It was seen that more than three quarters of the schools had a pupils' council. Pupils' councils are not a new phenomena as half these councils have existed for more than 5 years.

point of the decree is that it does not specify to what measure the school directors must take into consideration the contribution from the pupils' council and to what extent the directors must justify their final decisions to the pupils.

The second decree governs subsidising of the liaison body for Flemish schools (VSK) by the Flemish government. The VSK, an organisation for and run by Flemish pupils, is considered as a place for dialogue and liaison for Flemish pupils' councils. In this role, the VSK both stimulates and monitors the running of pupils' councils at the micro- and meso-level and represents pupils at a political level.

The two decrees are obviously an important step towards guaranteeing children's rights in education. They illustrate the convincing way that the public authorities grant more and more attention to pupil participation and to the positive effects of pupil participation on the school atmosphere.

At the same time, the NGOs totally support those initiatives that clearly grant attention to participation in education. Among others, we can think of the creation of a Support Point for Pupil Participation, the project that the "Fondation Roi Baudouin" mentioned in the official report by the public authorities ("Ton école est notre école" (Your school is our school)) and the surveys underway concerning participation in education.

Despite this evolution, many important and recurrent criticisms still remain:

Concerning the number of pupils' councils:

There are still too few pupils' councils. A survey carried out by the VSK showed that less than half of the middle schools have pupils' councils, as if these pupils were still too young to have and to express any opinion. Pupils' councils generally seem to be considered a privilege for the third level. These observations are deplored by the NGOs, as even the youngest pupils have the right to participation and expression within the school.

The expertise and running of the pupils' councils:

The fact that a school establishes a pupils' council does not mean there is necessarily real participation. Although there is a set of examples of good practices, there are many pupils' councils that have to overcome all sorts of problems, which in some cases give the impression that these councils only exist for appearances sake.

Firstly, many councils are only allowed to participate in a limited number of areas. Based on a survey by Elchardus, one can conclude, among other things, that there are large differences between the school directors and the pupils in their perception of how pupils should participate: the pupils believe that they have very poor chances of participating. Thus 80% of the pupils would like greater participation in the recreational area and in the practical organisation of the study environment. The VSK also noted in a survey that only 25% of schools allow pupils to participate by intermediary of the pupils' council in a minimum number of basic fields that require participation (decisions concerning the places for games, the buildings, meals, the service, the school rules and the exam timetable) [51].

Secondly, there are a certain number of typical problems that hinder the smooth running of the pupils' councils. They do not always have an adequate meeting room or budget, despite the decree on pupils' councils stipulating that the school's directors should provide the necessary support in infrastructure. The fact that this council can often not meet autonomously (for example, because the meetings are generally lead by the directors or by a non-pupil), and the poor involvement by the other pupils (Elcardus mentions that many pupils do not know how the pupils' council runs) are just some factors that can contribute to incomplete organisation.

Taking into account all these problems, it can be concluded that only a fifth of all secondary schools have a well running pupils' council.

[51] Elchardus et al (2001), "Participation des élèves dans l'enseignement secondaire, entre théorie et pratique".

The decree concerning participation in subsidised education and, more particularly, the decree concerning social education (the ARGO decree):

With these decrees, we wanted to break up the power of organising power, and this by involving the other education partners in the management of the school also. To our bitter disappointment, the most important partners, the pupils, were forgotten!

In the participation councils of subsidised education, there are the parents, the teachers, the organising power and the local community, but not the pupils. Some schools have included pupils in their participation councils, but there is presently no legal obligation to do so.

In the ARGO decree, pupil participation should be assured by article 10. This article says that the school council determines in which way the pupils are involved in the running of the school council. This article is not, in our opinion, sufficient enough to guarantee real participation of the pupils!

The NGOs support the principle of an anchorage in the decree for pupil representation in participation councils and in school councils.

Pupils' representatives have their place in the VLOR, but this year the status of their intervention was again called into question, which meant that so was the legitimacy of their presence in the VLOR.

The public authorities make too little effort to encourage the weakest pupils' groups to participate more (for example pupils from special education and foreign pupils). Pupils from special education have less participation councils than pupils of the same age in technical and general education, despite their being no difference between these two types of education[52]. The Support Point for Pupil Participation has now been created with the aim of modifying this situation.

It is not only the public authorities that are responsible for setting up a framework for participation. Schools and their directors must also provide the necessary effort. Examples exist of good practice. In other schools pupils' suggestions are, for no apparent reason, rejected with no chance for bilateral dialogue. One again we are very far from the dynamic education project that would be established by cooperation. Often, the pupils' council is established in order to carry out the director's initiatives, or to handle insoluble problems (for example smoking in the toilets, playgrounds, etc) at school.

All these points show that in practice very little attention is paid to the pupils' ideas and there is not always enough interest in the opinions they express. Pupils' opinions and suggestions are rarely integrated in lessons, decisions are not explained to pupils; the pupils are rarely consulted[53]. This conclusion places a different light on the positive evolution mentioned above. In reality, there still remains a lot to be done.

> *The NGOs recommend that legal guarantees should be given so that pupils can really participate at school. The examples of good practices of participation at school are, in fact, very important, in the same way as real pupil participation improves the school's image and position.*

2. BASIC EDUCATION

The initiatives relating to formal participation in basic education are at present rather limited. Nevertheless, here too we are beginning to realise the importance of participation, albeit in an embryonic stage, and a certain number of these schools play a clear avant-garde

[52] Idem.

role. This is not yet a question of structured methods or of a framework for participation established by a decree.

It is positive to note that at an informal level in classes, children are ever increasingly taken seriously. The defenders of an education based on experience and other alternative education and pedagogy systems, over the years have made a series of experiments where the contributions from children from primary and basic education are channelled. Bearing in mind the non-obligatory and less strict programme in nursery schools, notions such as "feeling comfortable" and "implication" can represent an interesting incidence angle for the promotion of implication with regards to the class.

The NGOs are conscious that setting up a participation structure at all levels is a process that will take time. A pondered implementation requires widespread consciousness raising and a (gradual change in mentalities. Furthermore, this implementation demands (practical) knowledge of the methods and adapted types of participation. Nevertheless, it must be reiterated that participation should not be a privilege for pupils of secondary and higher education. The children in basic education, who also spend their time in the classroom, have an opinion on these matters too. We can at least listen to their opinion and bear it in mind. The NGOs ask the Flemish government and the education networks to play a active role in this area. The NGOs support the action launched by the Commission for Children's Rights and other organisations this year, to grant more importance to the right to participation in basic education[54].

3. PARTICIPATION IN THE RECEPTION OF CHILDREN (OUTSIDE OF SCHOOL).

The general trend is to consider children as the main users of the reception infrastructure. In Flanders, many children use these reception infrastructures (that are independent from the school) for children aged between 3 and 12 years. Participation by the children remains unsatisfactory, as was pointed out in the OESO report for Flanders.

The NGOs insist on the necessity for a clear instigation by the public authorities in order to encourage children to participate in extra-curricular reception centres. With the governmental foundation "Enfant et Famille", we can make sure that in the future children will be considered fully-fledged partners in the reception centres and that their needs and aspirations can be taken better taken into account. The good existing practices in the field of child participation here can be taken as a starting point.

4. PARTICIPATION AT THE LEVEL OF CITIES AND TOWNS

During the past decade, the Flemish cities and towns have taken significant measures to encourage children and youths to participate in the decisions that concern their interests.

On one hand, this is a system governed by the Youth Councils of the Flemish Community and the involvement of this advice during the preparation of the political working plan for youths.

On the other hand, the personal initiatives taken by a number of deputy burgomaster colleagues must also be mentioned. In particular the "children's councils", which are excellent examples, that to this day have not been included in the obligatory legal framework. The cities of Antwerp and Ghent with respectively the active "youth paragraph" and the "playground policy" for children have shown a surprising will to implement the measures of the C.I.D.E.

5. OTHER AREAS

The participation of children to the media is also very weak (no radio programme is suitable and no, or limited, opportunities to record such programmes). This point will be discussed in detail in the fourth part of the present report, in Chapter IV. Access to information.

[54] The Commission for Children's Rights collaborates with a number of bodies which ensure that the right to participation is respected in basic schools. By a number of actions, we hope to obtain both the right to participation and explanations on how to achieve participation and to let the general public know about it. The NGOs fully support these actions.

The involvement of children in making decisions concerning the spatial organisation of actual places for children is discussed under the point “space for children”.

The rights to participation in the protection of youths are discussed in part five of the present report.

The NGOs recommend working towards a change in mentality as a priority by means of information and of ongoing training of those people who contribute to the implementation of the right to expression and to participation[55]*. The NGOs suggest that those initiatives that encourage real participation by children and youths in their daily life (family, school…) are presented, encouraged and supported*[56]*.*

The NGOs hope that the initiatives already taken to promote child involvement will be pursued. Furthermore, they recommend that the good existing practices be generalised and that a survey be carried out on which is the most suitable methodology.

[55] The training guide “L’important, c’est de participer” published by the Belgian Committee for Unicef and with the Francophone Community’s support is a good example.

[56] For example, the still rare meetings between parents and adolescents that are developing in certain areas.

Fourth part - FREEDOM AND CIVIL RIGHTS

I. Name and nationality

A problem existed for children that were born living, but that died before being declared at the registry office. The local administration and the Ministry of Justice invoked a decree from July 4th 1806 concerning the way in which the officer at the registry office had to fill out the birth certificate, observing that he had been presented with a lifeless child, and thus no **first name** could be assigned to the child.

The law of April 27th 1999, the introduction of article 80 bis of the Civil Code and the abolition of the decree from July 4th 1806 resolved this problem. The birth certificate of a deceased child can now mention its first names if this is requested.

Furthermore, Article 7 of the C.I.D.E. determines that a child has the right to know its parents (when this is possible). Children born by means of fertilisation techniques and abandoned children are likely to be touched by the violation of this right. Establishing whether this right is respected, and if so, to what extent these measures have a direct action has not yet been considered by the law. Nor do we know to what extent the refusal to reveal their biological origins will negatively influence these children.

A child's request to receive information about their father must be satisfied according to article 7 of the C.I.D.E. This "right to information" is a minimal right in the case where a visit is impossible.

The NGOs are delighted with the proposed law that was submitted to the Chamber of Representatives in June 2001 concerning the parent's free choice of the child's **surname**. According to this proposal, the parents can chose to assign their child either the father's surname, or the mother's or the two surnames attached in the order they chose. This choice is then valid for all children by the same couple born thereafter, so that all the siblings have the same surname. For the second generation, parents with a double surname can choose their child's surname among the four names, but can only transmit a maximum of two surnames. If the parents cannot chose or agree, the children will be given the two surnames in alphabetical order, and if the parents have double surnames, the first of each of their surnames will be used. This proposal responds to the various recommendations made by the European Council and is an approach that better respects the child's two parents and the intra-family relationships[57].

The law for acquiring Belgian nationality provides that parents of a foreign nationality and resident in Belgium can, in certain cases, ask for Belgian **nationality** for their child but this request must be made before the child is 12 years old. Afterwards, if the child wants to become Belgian, they have to wait until they reach the age of 18 (with the exception of the child's possibility to become Belgian if one of their parents acquires this nationality). Nothing justifies this "gap" between the ages of 12 and 18 years. In practice thus, in this respect Belgian legislation shows discrimination in the access to Belgian nationality, which is difficulty justifiable.

Furthermore, a youth who wishes to obtain Belgian nationality after reaching 18 will have difficulty, or be refused, if as a minor they have been subject to measures in the Youth Court. This is often a heavy consequence and weighs on the youth's future for a long time (not to mention that the youth may be banished from Belgian territory on the basis of acts committed as a minor; this is only possible if these youths have not been attributed Belgian nationality).

[57] "Au nom de la mère, du père ou des deux...", La Libre Belgique, 15th June 2001.

II. Preservation of identity

The NGOs worry about the difficulties that illegal parents face in order to declare their child born in Belgium. The administration demands various documents that they are unable to provide. Consequently, they also have great difficulty in obtaining any documents from the administration, to the point that some mothers in an illegal situation decide not to declare their child, which then does not exist legally.

Adoption is not a secret in Belgium. One cannot give birth under the name x in Belgium. This means that the mother's name will always be on the adopted child's birth certificate. The problem resides in the different practices of the local administrations, some refuse to communicate the contact information recorded on the birth certificate without justification. In this area there is a lack of support services for the original mothers' of the adopted children that are adolescents or have become adults, providing both contact information, and also the necessary psychological guidance. This should be organised and controlled[58].

III. Freedom of expression[59]

The NGOs question the policy implemented by the French Community in the area. On one hand, it seems to accredit the theory according to which traditional youth organisations are not representative of the youth in general. On the other hand, in its report it declares that a "Royal Decree of August 24th 1977 established, at the Minister of Culture's instigation, the "Conseil de la Jeunesse d'Expression française" (French speaking Youths' Council) that constitutes a privileged consultative body, and which assures the youths that they will be heard by the Government and by the public opinion on all matters they consider concern them, and each time decisions are taken about youths"[60].

The French Community provides no evaluation about how the youths really "will be heard by the Government and by the public opinion".

The NGOs back Daniel Menschaert when he states that "today, to an outsider the policy on youths appears like a "mille-feuille" cake. They will have great difficulty in distinguishing the main layer" [61]. He makes this comment after having explained what lead to such a situation. According to him, over recent years activities in the sector of youth intensified and diversified, taking in new areas (whereas beforehand missions in the youth sector were essentially to support youth organisations, by funding their running costs, their animation and training activities). This redeployment is in response to an increase in external requests by the public concerned, to the evolutions in governmental policies and to the appearance of new needs of the youths. This high-speed transition and the multiplication in the number fields of involvement have been to the detriment of coherent actions because legislation frameworks have not been conceived to include these new areas of activities. Furthermore, all these new policies are added to the old ones, without considering the pedagogy to be adopted[62]. D. Menschaert concludes this commentary by pleading for the adoption of a new decree that defines the fields of action of the youth sector and that fixes missions and priorities.

Freedom of expression is a fundamental problem. It can take multiple forms and is expressed by certain youths for example in a particular way of dressing, which some institutions, notably schools, seem to have trouble accepting.

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[58] Contribution by Isabelle Lammerant, Doctor of law, author of "L'adoption et les droits de l'homme en droit comparé", May 2001.

[59] This point should be considered in relation to the considerations presented above by the NGOs, 2nd part, IV concerning the respect of children's opinions.

[60] "*Projet de deuxième rapport de la Belgique relatif à la Convention des nations Unies sur les droits de l'enfant*", Version from the 7th August 1998, p. 35.

[61] D. MENSCHAERT, "Jeunes et associations : la rupture", Ed. Luc Pire, 1998, p. 82

[62] D. MENSCHAERT, *op. cit.*, pp. 81-82.

The NGOs recommend that suitable structures and legislations should be put in place in order to allow youths to express their opinions, and this at all levels.

IV. Access to information

Much information exists, but the young do not always seem to be able to access it[63].

Yet, education, whatever the form, gives children the tools that allow them to access information, particularly written matter, that enable them to better understand. The inequality existing in the right to education (see the 7th part) thus leads to great inequality in the right to information.

A. In the French Community.

1. ACCESS TO INFORMATION IN THE MEDIA

At present, it would seem that all the publications intended for children and youths in the written press are the result of initiatives taken by publishing houses or by the daily newspapers[64].

Until recently, the NGOs agreed with the assessments made in the open letter concerning television news co-signed by the C.J.E.F. and the Ligue des Familles, and which appeared in the press[65]: *"In a society that proclaims the importance of children, of education and notably of civic education, children are still excluded from the world of news, in particular on the television. The adult viewer is supposed to hold the keys to understanding, to the historic, social, economic context, etc. The child television viewer lacks these keys. Nothing is set up by the programme planners in the francophone region of our country to satisfy this need. (...) It is unimaginable that the programmes on R.T.B.F., of which one aim is education, take children and their need to understand within the context of current affairs so little into consideration. Unless they are considered as a negligible quantity as they are too young to vote*".

Since then, the NGOs are pleased to note that a television news programme for children "Les Niouzzes", has been created and is transmitted three times a day since 13th March 2000.

2. PROTECTION OF CHILDREN AGAINST INFORMATION AND MATERIAL THAT IS HARMFUL TO THEIR WELL-BEING

With regards to television, in the French Community we are still at the thinking stage[66]:

- The Code of Practice concerning violence signed in 1994 by the different television channels does not provide any sanctions, except by questioning either via parliamentary channels or as a public debate.
- The "Télévision sans frontières" directive defines minimal rules. Television programmes are classified by the broadcasting companies according to various categories (preferably with parental agreement, parental agreement necessary, forbidden to less than sixteen

[63] See what the youths that participated in the "Forum J" had to say about this matter in "*Tables rondes de la jeunesse"*, pp. 31 et s.

[64] There mainly exist the publications from the editors Averbode that are widely distributed and used in schools, the "*Journal des enfants"* and "*Actual Quarto* (Vers l'Avenir)", the "*Petit Ligueur*" found in the pages of the weekly "*Ligueur* hebdomadaire" from the "Ligue des familles", and "*Les Clés de l'actualité junior*" (Le Soir and the editors Milan).

[65] In *Le Soir* on 10th July 1998, open letter entitled "Pour un J.T. quotidien *spécial enfants"*.

[66] See in particular "La violence à la television", a study carried out by the Belgian Francophone Community in collaboration with RTBF and the Vif/l'Express, October 1997.

year olds, adults only).

- Except by the broadcasting companies, few measures are set up to protect the youngest children from violence, the mediocrity of some programmes and the choice of programmes (hours, replacement programmes…).
- The Conseil Supérieur de l'Audiovisuel (Broadcasting Monitoring Body) (C.S.A.) depends on the government and does not have any real power. Furthermore, the educational users and associations of the media are under represented.

> *The NGOs recommend that sanctions be provided that penalise those channels that do not respect their commitment and that the C.S.A. should have the power to enforce these sanctions.*

At the level of accessibility to films at the cinema, the Commission for the Control Films has control by defining two categories of films: E.A., open to everybody and E.N.A. open to those over sixteen years old. The legislation in force, that of September 1st 1920, which forbids minors of less than 16 years old to enter in cinema theatres[67], is no longer appropriate given the present level of evolution of customs and technology. In the past several projects and propositions for laws have been submitted at the federal level. As yet none have been successful. In the French Community, a working group is working on a reform project for the law of September 1st 1920. A survey carried out on members of the Commission for the Control of Films and on 800 youths concluded, in particular, that it is necessary to assure Belgian consistency in the classification of films by creating a Federal Commission and by introducing a new age category (12-16 years) that is better adapted to the present evolution in mentality[68].

At a time when many schools are or are going to be equipped with computing equipment, including Internet access, to our knowledge no regulation exists concerning videos games and Internet access.

The filter system "NEOX" set up by the General Delegate to Children's Rights should be mentioned. "NEOX" is a parental responsibility software that will be distributed free of charge via Internet, but that is currently at the test stage.

The associations have carried out significant educational work with the media.

> *The NGOs recommend that effort should be made in order to subsidize these associations, and that there should be a widespread education programme for the media. This does not mean the media do not have to behave responsibly. Such a policy should mean better involvement of the young could develop, insofar as they will be better able to express their opinions.*

3. ACCESS TO INFORMATION WITHIN THE ASSOCIATIVE WORLD

The NGOs denounce the generalized under funding of the ASBL that aim to provide information to the young. As an example, the "Infor Jeunes" centres which work to provide information in such varied areas as studying, training programmes, employment, unemployment, social benefits, housing, leisure activities, holidays, sexuality and the law, are confronted with recurrent funding problems. This means that youths do not have access to quality information. This funding problem was not met by the decree of July 1st 2000 that determines the conditions for recognizing and subsidizing youth centres, meeting and accommodation centres, youth information centres and federations. This decree thus organises the funding of such diverse organisations as "Infor Jeunes" and Youth Hostels

[67] This does not apply to cinemas that are showing films that have been authorised by the Commission for the Control of Films.

[68] "Les jeunes et le contrôle de l'image", survey carried out on the members of the Commission for the Control of films and on 800 youths, June 2001.

despite these functioning very differently and hence needing different means. This question is presently being discussed by a working group of the French Community.

The NGOs recommend that sufficient means be granted to those ASBL that provide information for minors so that they can correctly fulfil their objectives and so that they can guarantee quality information for the young.

B. In the Flemish Community

1. OFFER OF QUALITY AND POSITIVE IMPLEMENTATION BY THE MEDIA

A) RADIO AND TELEVISION

The NGOs defend a policy for the media that emphasises a more varied and better quality offer of programmes on the public network (VRT) for children. In this context, they are satisfied with the initiatives taken in this area over recent years[69].

With the creation and development of the KETNET television channel for children and youths, the VRT have succeeded fairly well in providing such an offer for children and youths. The news programme "Studio Ket" has been discontinued, and replaced with "Mes pensées" a discussion programme during which the young can debate various topics. Thus, the VRT has made an effort to introduce the notion of participation and the right to express one's opinion freely via television, an initiative that the NGOs find very positive.

As mentioned in the authorities' official report, VRT was among the first television channels to sign the Charter for Children's Television. The NGOs are delighted. The fact that VRT's new management convention contains a whole chapter on the notion of quality is also very promising. The KETNET channel was created with quality rather than the quantity of spectators in mind.

The NGOs support the plans for an in depth reform of television news programmes on VRT (by paying more attention to the younger television spectators during the 6 o'clock news) and the minister's will to help VRT with its digital action plans. A question that remains unanswered is when will the Ketnet site and its links to commercial sites be reviewed according to promises made for links only to "quality sites".

The NGOs is less satisfied with the choice of radio programmes. Only "Studio Bruxelles" broadcasts children's programmes, targeting school children, however, the choice for younger children is still considered too limited. The programme that was previously broadcast, and that was very successful "Van Kattenkwaad to erger" should be relaunched urgently. Every Wednesday afternoon, children could listen to this programme and actively participate in discussions concerning all sorts of themes relating to their sphere of life.

B) OTHER MEDIA

In the written press, children should also be able to find information at their level and be able to assimilate the world news.

In the authorities' official report, a set of initiatives was considered on the subject of information for children. Amongst others, a simulation of a visit to the library, the issuing of the "Klasse" newspaper and the creation of Youth Information Points (JIP) are mentioned. This list could be complemented with the services of the Opinion Centre for Youths (JAC), the Commission for Children's Rights and other associations for children's rights, etc… The NGOs that the ongoing existence of these initiatives will be guaranteed and that new possibilities will be successfully completed.

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69 Some initiatives are mentioned in the official report and will not be elaborated on here.

The new media and the communication and information technologies (ICT) have not yet received the attention they deserve. Not only should the use of these technologies be stimulated, but also child guidance must be developed. In education, children should learn how the Internet and ICT can be used to their benefit in a pleasant and positive manner.

2. PROTECTION

A) RADIO AND TELEVISION

The intense commercialisation by the media (motivated by the struggle for audience ratings and the income from advertisements) has a negative effect on the positive functioning of the mass media. Thus, it is necessary to set up a carefully thought out protection plan for children: (a) against advertisements and (b) against the negative influence of some television programmes. Subtly, a balance must be found "between protection and learning to deal with reality" [70].

Advertising

The maintenance of the five minutes rule (banning advertisements five minutes before and after a programme for children) has been applauded. The NGOs ask for a more efficient control of this rule and for sanctions for offenders of it, which did not exist in the past. According to rumours, these offenders could well be punished in the future. The NGOs hope that this will be the case[71].

A positive point is that the minister also proposed a resolution in the Flemish parliament in which initiatives are requested in order to support the European regulation – in particular maintaining the five minutes rule.

Harmful scenes and harmful television programmes.

In the Flemish legislation, since seven years, measures have been taken under the impetus of a European directive to protect minors from the harmful influence of certain television programmes. Until now, the respect of these measures was not controlled and thus the rules had little effect. With the creation of the "*Vlaams Kijk-en Luisterraad*" changes should be seen. Again, the NGOs hope that the offenders will be subjected to adequate and efficient sanctions[72].

Since September 1st 2000 an auditory and visual warning precedes those films and series episodes destined solely for viewers over 16 years of age. The logo is also used during the trailers and the announcements for these programmes. "Canal 2" only started this action on January 1st 2001. The Flemish broadcasters must therefore review the contents of their programmes, which is positive. It is not however very clear why the broadcasters chose to use an auditory warning as well as a visual one[73].

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[70] Ministry of the Flemish Community, 2000, p.52.

[71] With the creation of the "V1aams Commissie voor de Media" (Flemish Commission for Media) (VCM), Flemish legislation has been careful to respect the legislation on the media and also the ban on advertisements before and after children's programmes. Doubts exist on how this Commission functions. We fear that the initiative is not enough to ensure the legislation on the media is respected. To file a complaint with the Commission is difficult, and the Commission lacks the means and personnel to control the media. Thus doubts persist on special features and questionable rejections of complaints made by the VCM concerning the non-respect of the rules on advertising.

[72] The "*Vlaamse Kijk- en Luisterraad*" institute has been approved in the Flemish Parliament,. This body, which was recently created and which still has to prove its legitimacy, must watch that the measures are respected and should take sanctions against offenders. Like the Flemish Secretary for Media, the NGOs fear that the threshold that the television spectator has to overcome in order to file a complaint is too high.

[73] At the time of a discussion on this rule in the Flemish Parliament, an auditory sign was explicitly opted for (as a visual sign, such as the old white square, may have the effect of a forbidden fruit for a child). Especially if this sign is also placed on advertisements and trailers, as there is then a chance that children will be particularly attracted. Furthermore, in this way, the broadcasters can now maintain violent scenes, or explicitly erotic ones as they are legally in order thanks to the visual sign.

To conclude, it should be noted that a system of rules and complaints is not enough to protect children against harmful scenes on the television. It is also very important that parents are informed about the possible influences of certain television programmes and made to face their responsibilities vis-à-vis their children. In this area, the politics have remained without resources.

The NGOs consider that the combination of an information campaign on one hand, and the creation of a mediation service accessible to all on the other, is an important mission for the Flemish Minister of the Media.

d) Other media

By accompanying children as they make positive use of the Internet (see above), they can also be taught about the potential dangers. Without provoking unnecessary fear in children, the authorities should follow the campaign launched abroad and propose a certain number of concrete directives. Thus, children can react independently when they are presented with dangers or problems (for example: how to deal when one is approached by a "child seducer" via a chat room; what to do when ends up on a pornography site…).

V. Freedom of thought, of conscience and of religion

As was already mentioned in the previous NGOs' report, article 8 of the school pact states that it is the head of the family, the guardian or the person responsible for caring for the child who chooses the child's religion or moral education. Article 8 bis attributes this choice to the pupil themselves when they are over 18 years old.

The NGOs recommend that article 8 of the school pact be modified in order to bring it in line with article 14 of the C.I.D.E., which it presently violates.

The problem of using an Islamic headscarf at school is not mentioned in the Belgian State's report, despite this problem not yet being resolved (at present, in many schools, youths must remove their headscarves in order to enter the school).

VI. Freedom of association and of peaceful meeting

A minor endowed with a good sense of judgment can be a member of an ASBL. They can also be designated the administrator of an ASBL. Indeed, a minor, capable of judgement, can accept to be in office and exercise the duties of administrator according to the adult's doctrine since they do not incur any personal obligation when they represent the constituent to a contracting third party. Nevertheless, the managing duties of an administrator mean that responsibility has to be taken for certain controlled acts. And yet, as the minor can oppose their legal inability in the case of contractual breach, the legal security of the third party can be undermined. Thus, in conclusion, a minor can be nominated to an administrative duty, but this requires the specific authorisation of the justice of the peace so that they can use their capital[74].

VII. The protection of private life

The present climate of ever more infringements on the principal of the protection of private life in name of interests that are classified as superior (such as in the context of the fight against mistreatment, the control of family allowance payments, police investigations, e.g. the police request a list of children enrolled in a school or in a youth centre, etc…) is worrying.

[74] M. DAVAGLE, "Un mineur d'âge peut-il être désigné comme mandataire?", Droits en plus, n°39, March 2001, pp. 3-6.

The regulations applied concerning telephone communication within public institutions for the protection of youths are acts that infringe the respect of private life[75].

The way in which the protection of private life can be guaranteed for children who can only meet a relative exercising their right to a personal relationship in an institution such as "Espaces-rencontre" [76] should be questioned.

Very often, the protection of a minor's private life contradicts the legal measures concerning parental authority. The subtle border between the protection of the personal life and parental authority can provoke problems in matters such as the secrecy of mail, the right to anonymous help, visiting rights or the right to sexuality. At present, the visiting right is an adult's right, and not a child's right. This is the case, for example, when one parent is in detention: the minor needs the other parent's authorisation when they want to visit their parent in jail.

Even if a regulation is lacking here, the Flemish measures for personal assistance for youths have testified in recent years to an increasing awareness in the area of the right to private life for these minors. The youths themselves witness the frequent problems they have been faced with at the level of mail, the telephone, control of their rooms, of receiving friends and family, etc. For these reasons, the sector has itself taken the initiative to develop a global opinion on this topic that could be described in the measures. These include, among others, the "'Protocole Droits des Jeunes dans l'assistance Particulière de la Jeunesse" of the "Minorius" project, which has already been adopted (voluntarily) by numerous services. In cooperation with the various people concerned (including the youths), a certain number of instruments have been created that can be consulted by institutions to promote the respect of the C.I.D.E.

In response to the secondary effects of the European regulation, since 1997 privacy and anonymity are no longer guaranteed in the Flemish Community when telephone help services are used. Calls to a help service with a partial taxation number[77] must, from now on, appear on the itemised phone bill (Law of 19/12/1997)[78]. Despite the fact the Royal Decree of the 21/12/1999[79] enables this problem to be bypassed. Yet neither Belgacom, nor the public authorities have taken sufficient initiatives to block this Royal Decree in reality. Fortunately, for the future, the Flemish children's and youth telephone services have found an alternative solution: from 2002, the children's telephone services will most probably be reached free of charge vie the number 102[80].

The French Community Government adopted a Code of Deontology on May 15th 1997. This addresses all those services collaborating to the application of the decree concerning help for youths, and aims to provide help to youths in difficulty, to people with serious difficulties executing their parental obligations, to children whose health or security is in danger or whose education conditions are compromised and contributes to implementing help for these people. These services are required to maintain secret all information of a personal, medical, domestic, school, professional, social, economic, ethic, religious or philosophical nature (articles 7 and 12). A Deontology Commission has been created to give recommendations on the application of this Code. This commission, with its detailed and elaborate recommendations[81], allows the workers of this sector to evaluate their practices and thus

[75] See the study on these regulations carried out by J.-L. DENIS and Claire PICARD , *JDJ* n° 177, September 1998, pp. 21-25.

[76] These are neutral grounds where personal relationships can be organised between a child and a non-guardian relative.

[77] Numbers 078 XX XX XX, including the "Ligne sur la Drogue", "Téléphone AIDE", "Centre de Confiance maltraitance des enfants".

[78] Law of 19/12/97, article l 9 in the annexes: calling a number with partial taxation (078 – 15) must be mentioned on the bill.

[79] A.R. of 21/12/1999, art. 4: calls to a help line should not be mentioned.

[80] In the above-mentioned law and AR (law of 19/12/1997 and A.R. of 22/06/1998) it was already stated, "a telephone number for children should be free". Following the Dutroux affair, several necessity numbers were conserved: 102 for Flanders, 103 for the Francophone Community (Ecoute-Enfants), 104 for the German-speaking community. Cost of a call, the AR of 22/6/98 article 22 § mentions that calls to 102 should be free for the caller (youths and children) and for the receiver (=KJT).

[25] B.Van Keirsbilk, "Commission de déontologie de l'aide à la jeunesse Rapport 1998-2000", JDJ, n°201.

improve the quality of their interventions. The NGOs regret that these recommendations are not systematically made public[82].

VIII. The right to not be submitted to torture or pain or cruel, inhuman or degrading treatment

The respect of this right is analysed in various parts of this report, notably in the parts concerning children in emergency situations (refugee children and those touched by armed conflicts) [83] and children in situations of conflict with the law[84].

[26] The recommendations of 1997 will only be made public in the 1st activity report in 2001!

[27] See parts VIII, I, A and B of this report, concerning children in emergency situations.

[28] See parts VIII, II of this report, concerning children in situations of conflict with the law.

Fifth part: FAMILY ENVIRONMENT AND THE PROTECTION OF REPLACEMENT

I. Parental guidance

The modification of articles 373/374 of the Civil Code that provides for the exercise of joint parental authority should be commended. This modification respects each parent's right to make certain decisions and to present choices to their child whatever the subject, independently from the parent in whose care the child is and with whom the child lives if the parents are separated. In the case of disagreement by the parents, they can initiate judicial proceedings, and the judge will resolve the matter.

The NGOs are delighted with an innovation brought about by the law concerning family allowances. Indeed, the father can now be allocated the family allowance *if the child shares the same principal residence as him. If both parents request, the allowance can be transferred to a single bank account, to which they both have access. If the parents cannot agree about the assignment of the family allowance, they can ask the youth court to designate the beneficiary* (article 69, § 1st, paragraph 3 of the coordinated laws on family allowances[85]).

Few initiatives are taken to increase the awareness of children, youths, parents and professionals about children's rights within the family and the best way to implement them. It should be noted that in the Flemish part of the country there is a children's rights game "Bondgenoten" by B.G.J.G., intended to put children's rights in the family context.

II. Parental responsibilities

To be able to assume their educational responsibilities with their children, parents must have the means. These means should be guaranteed by a global policy that assures that all have access to the set of fundamental rights (see below: Sixth part: health and well-being).

1. At the federal level

An important and positive reform has been made concerning guardianship. Indeed, the measures of the Civil Code concerning guardianship were modified by the law of April 29th 2001, which brought major modifications to the regime[86]. On one hand, guardianship only enters into effect on the death of the last remaining parent, contrary to the former system whereby guardianship entered into effect as soon as one parent died, and created excessive suspicion of the surviving mother or father[87]. On the other hand, the family council is eliminated and expertise is now restored to the justice of the peace, who can authorise the guardian to accomplish certain acts concerning the minor's well being. In the case of death of a parent, the other parent has request authorisation from the justice of the peace to accomplish these acts.

Another innovation: in order to designate the guardian or to recognise the guardian designated in a will, for example, the justice of the peace must hear the minor if they are aged at least 12 years old. The justice of the peace must also hear the grandparents, brothers and sisters that have reached majority, and their uncles and aunts. The justice of the peace can finally also hear any other person whose opinion appears useful to him, for example, a psychologist who has been treating the child. As for how the guardianship works, the law has introduced new recommendations, and the guardian is obliged to follow the principals adopted

[85] Law of 25th January 1999 concerning social measures, M.B., 6th February 1999, p. 3553, art. 19.

[86] J.-P. MASSON, "La nouvelle législation sur la tutelle", August 2001.

[87] DE PAGE, "Traité", tII, 3ème édition, n°39 ter.

by the parents, notably with regard to questions of housing of the child, important questions concerning health, education, training, leisure activities and philosophical and religious guidance.

2. At the communal level

A. IN THE FRENCH COMMUNITY

It is regrettable to note that more than 7 years after the adoption of the decree of March 4th 1991 concerning help for youths in the French Community, its ideas are still not respected. The texts and speeches on their intentions given by both responsible politicians and by the professionals of help for youths strongly affirm the subsidiarity of the measure of removal from the family environment, the primacy of help in the familiar environment and the desire to help parents exercise their parental responsibilities by associating them to decisions that concern them[88]. Unfortunately, the assessment of reality contradicts these texts and speeches on intentions[89].

The implementation of this decree would logically lead to two changes: on one hand, a transfer of the budget granted to fostering programmes to those for prevention, and on the other hand, a reduction in the number of case of fostering.

Different practical details can be envisaged in order to carry out this transfer. Thus, for example the application of article 56 of the decree concerning the help for youths that foresees that the Ministry, as responsible for helping youths, reimburses the expenses incurred by the C.P.A.S. in order to carry out their legal obligation of social aid for youths in difficulty, at a percentage rate predetermined according to the criteria and norms fixed by the Executive. In 1991, the Minister-President of the French Community affirmed that "*thanks to this measure, numerous families in difficulty will be able to benefit from general social aid, and will no longer, as was previously done, be directed towards the sector specialised in the protection of youths*" [90]. The means planned in order to facilitate the transfer have however never been applied due to a lack of an execution order.

Another way to encourage a diversification in measures is to convert budgets planned for lodging to other types of intervention. In spite of the declarations on their intentions in the area, the conversion of budgets is taking time to become reality. A reform initiated in March 1999 is still being implemented. This reform provides for a reduction in cases of placement in institutions and an increase in guidance in the home environment.

> *The NGOs recommend that the French Community finally provide the means for their policy, and move on from speeches on their intentions to the adoption of concrete measures that favour the development of prevention and that work in the home environment. These concrete measures will undoubtedly imply changes for those people working in this sector, and it is important that the French Community anticipates this hesitation for change and guarantees that these professionals are adequately trained to carry out their new duties.*

[88] See L. ONKELINX, "Note d'orientation relative à la réforme du secteur de l'aide à la jeunesse", *JDJ*, February1997, n° 162, pp. 67-70. Also see the Belgian State report on this point...

[89] See "Etude-bilan de la mise en application du décret du 4 mars 1991 relatif à l'aide à la jeunesse" carried out by V. MACQ and G. RENAULT, under the direction of F. TULKENS, on behalf of the Francophone Community, extracts in *JDJ*, n° 163, March 1997; Also see the PhD thesis in criminology by I. RAVIER which was finalised within the context of a "Pôles d'Attraction Inter Universitaires-Etat Belge" Programme, Services of he Prime Minister –Federal Services of Scientific, Technical and Cultural Affairs, 1998. Also see "Pour la désinstitutionnalisation - Les AMO et la désinstitutionnalisation non-mandatée" by F. GIELE, L. LEVY, F. MAIRESSE and S. MULAS, *JDJ*, February1999.

[90] V. FEAUX, speech given at the time of the evaluation of the decree project concerning help for youths, in front of the Francophone Community Council on the 19th February 1991.

Political attention for help in education is very recent in Flanders. It can however draw on an increasing interest in different circles and on the specialisation acquired in various sectors, such as socio-cultural work, thanks to projects and specific initiatives. Furthermore, new important and interesting initiatives have been taken in recent years in the area of aid for training, such as the "téléphone de la Formation" (Training Telephone) in Beveren and the "magasin de la Formation" (Training Shop) in Ghent. This all leads to a positive outlook for children's rights in this area[91].

Nevertheless, for the time being a framework that would allow an offer of diverse and accessible aid to education in general to be built is missing. The NGOs think that such a framework is necessary in order to support a large group of parents in an efficient way, so that aid to education can play its important (preventive) role. Carrying out the requirements of article 18 of the C.I.D.E. would help the C.I.D.E. to be respected in its entirety. A centre for aid for education should be careful to harmonise the offer, to create a platform for the exchange of expertise and experiences, to foresee the monitoring of training.

The decree of January 19th 2001 that institutes activities concerning aid for education is already positive. This decree aims to promote the optimal development of children and youths by supporting those people who take initiatives to set up activities in the area of aid for education. With the decree of May 18th 2001, which regulates the way in which activities in the area of aid for education are funded, the government carried out the practical details of the decree. "Kind en Gezin" has taken the initiative to make this regulation known to those institutions caring for children, which is important.

III. Separation from their parents

A. Divorce

At the time of divorce the parents must pay particular attention to their children's well being. The already traumatic effect of a divorce can be further influenced by the following two factors:

On the one hand, children's well being depends directly on the attention paid to the specific position of the concerned children and the manner in which children's rights are assured (the parent's role and personal contact, the right to be heard, etc…).

However, on the other hand, there is the situation of conflict between parents as (ex) partners, which greatly influences the way in which children cope with this event. At any rate, in divorces with a high level of conflict, it is more likely that the child will feel torn between their parents and feel like they are not understood. This means the child paints a negative picture of

[91] Thus the Flemish authorities have subsidised a number of projects in the underprivileged areas, and since 1991 follow a policy of priority for education which pays attention to the relationship between parents and school and to the parental support aspect.

In recent years, support to education as such has acquired a place in the political proceedings of the Flemish government. At present, this is still only the support of one project or another. This is not yet a question of a real policy aiming to provide a coherent, efficient and affordable offer.

Maybe these changes will happen in the near future.

a) The Commission for Family Policy of the Flemish Council for the Family and Well-being, which is a council of the Flemish Government, has provided recommendations for the support of education, which in the mean time have been approved by the Council for the Family and Well-being and by the Minister of Well-being. These recommendations particularly stress the importance of involving youths and children in the la construction of the future of aid for education, as education is a labour of exchange between the child and their parents.

b) Recently in the service for the protection of children in "Kind en Gezin", the emphasis has been more strongly placed on the pedagogic component (next to medical care). "Kind en Gezin" wants to integrate the educational aspect in their routine.

c) Finally, educational support has received much attention during hearings with specialised youth workers who organised the competent council in the Flemish Parliament.

the couple and the role of a parent, and increases the risk of conflict about regulations, parental authority, alimony, etc.

All these elements increase the risk of traumatic consequences for the children. This danger is much less in peaceful divorces.

Bearing in mind the measures of the treaty, the authorities must take the necessary steps to limit the influencing factors to reduce damage. At this level Belgian policy is greatly insufficient. More detailed information about these two factors, and their connection to children's rights are explained below:

1) THE CONFLICT LEVEL OF THE DIVORCE

Given that a divorce with a high level of conflict is very difficult for children, a legislation for divorce is absolutely essential to try and reduce the negative effects of conflict. The NGOs ask the federal authorities and also the Communities, in their expertise and coordination, to work on a more humane legislation for divorce that would also include regulations on everything surrounding the divorce.

The NGOs defend the idea of banishing the principles of guilt from the legislation and replacing them with separation on the basis of "long-term discord".

They also plead for a regulation that separates conflict between partners from parental conflict, to avoid an escalation in the parental conflict.

Regulating the practice of conciliation procedure during the divorce and conciliation in family matters can also encourage a more humane regulation for divorce. The Children's Rights organisations are satisfied with the interest shown by the Flemish and Federal parliaments in recent years[92]. However, a certain amount of time is still needed before the conciliation of family matters will undergo a complete application. The necessary initiatives must still be taken in this area.

The adjournment by a justice of the peace to a parental conciliator has a more preventive action than when the adjournment is made by a youth judge. It is however necessary to let the justices of the peace know about the application of a conciliation bound to the proceedings in family matters. At present, this possibility is not well enough known.

The NGOs are satisfied with the approval of the law of April 13th 1995 concerning the joint exercise of parental authority[93]. A large number of the fundamental principles of the C.I.D.E. have been introduced to our legislation thanks to this law, which was justly mentioned several times in the authorities' official report. With regard to article 9 of the C.I.D.E., we consider the following application or the introduction in the Civil Code:

- Article 347 of the Civil Code (CC): the right of the parent who does not have parental authority to maintain personal contact with the child.
- Article 375 bis of the CC: the right of the grandparents and anyone else with emotional ties with the child, to have contact with the child.
- In the case of divorce, it is also necessary to define regulations concerning the alimony. This point will be discussed in chapter VI, article 27.

2) THE SPECIFIC POSITION OF CHILDREN

More attention about the specific position of children means that the regulations and practices in the area of the right to be heard must urgently be evaluated and adapted first. At any rate, Article 9 of the C.I.D.E. determines that at the time of divorce all those people concerned, including children, should be heard. The NGOs agree unanimously that the authorities do not try hard enough in this respect. As has already been mentioned in this report

[92] In the Flemish parliament a proposal concerning the intervention in family matters has been approved. The Flemish parliament have discussed two proposals for a decree.

[93] La loi du 13 avril 1995 concernant l'exécution conjointe de l'autorité parentale, M.B., 24.054.1995.

about other articles of the C.I.D.E., article 931 of the Judicial Code[94] which has already been taken up several times, and in particular the habits resulting from it and its respect, are unjust, inefficient and give raise to uncertainty in the law[95]. In divorce proceedings, whether or not the children are heard, depends all too often on the good will or means of the judge concerned. The right of expression is planned for, but insufficiently and is not applied in a consequent way. Furthermore, not all children know about this right.

The NGOs ask for the practices and effects of the children's right of expression in divorce proceedings to be investigated as well as the methods enabling children to be directly implied by the conciliation so that they are and feel included.

Furthermore, article 9 of the C.I.D.E. determines that children have the right to regular contact and a personal relationship with both parents. As has been mentioned above, this right is assured by the law of April 13th 1995.

Despite establishments such as "Espace-rencontre" being a means of facilitating contacts at times, it is however necessary to fear that in some cases they are too much of an interference in family life, especially if they become the only type of relationship possible between some parents and their children. Establishments of this type must be considered positively, but they must not that take the place of a normal parent-child relationship.

B. Detention of one of the parents

The NGOs also question the situation of children whose parents are in prison; experiments that are carried out in order to maintain the right to a personal relationship between the child and their imprisoned parent, in a non-traumatic setting, must be evaluated and become widespread in all jails.

The NGOs are delighted with the adoption of the ministerial circular n°1715 of July 5th 2000 concerning the preservation of prisoners' emotional ties with their relatives by the Ministry of the Justice. This circular aims to determine the minimal rules for application in all penitentiaries, thus permitting a quality relationship between the prisoner and their family and social circle to be assured, by making this relationship as close as possible to what it would have been on the outside.

IV. Domestic Reunification

The second Belgian report on children's rights only briefly considers this topic. It does not answer the two specific questions posed by the Committee for children's rights on this subject (points 14 and 15).

It is regrettable that the Foreign Office has not communicated any statistics about domestic regrouping.

During the past three years, several legislative modifications have taken place that addressed the right to domestic regrouping directly or indirectly. Furthermore, the Minister of the Interior has adopted numerous circulars that also affect this right. The NGOs deplore that the Government has systematically resorted to the technique of circulars to regulate the matter concerning foreigner's rights. This is a situation that complicates the possibilities of democratic control of governmental action by Parliament. These circulars can be distinguished according to their principal objective:

[94] "…le mineur qui possède les capacités de discernement nécessaires, peut être entendu par le juge dans toute affaire qui le concerne, à sa demande ou à la demande du juge…".

[95] De Smet, N. (1995).

- DOCUMENTS REQUIRED TO SUBMIT A REQUEST FOR DOMESTIC REGROUPING

Following the condemnation by the European Court of Justice (Arrêt Diatta[96]) of a request for settlement on the basis of domestic regrouping with a Belgian E.E.C. member, the government adopted the Royal decree of June 12th 1998 (published in the M.B. on August 21st 1998). This decree requires the foreigner to provide proof that they are related to the E.E.C. member or Belgian national with which they wish to settle.

Furthermore, the circulars of August 28th 1997 and of October 12th 1998 that followed specify the necessary documents required in order to be able to make a request for domestic regrouping.

Point 4 of the August 28th 1997 circular concerning, among other things, the documents that must be presented in order to receive a domestic regrouping visa on the basis of a marriage celebrated abroad, states that in principal a request for a domestic regrouping visa will be declared inadmissible if the foreigner does not have documents foreseen in article 2 of the law of 15th December 1980. In practice this means that the foreigner has no choice but to return to their country of origin to make their request for a domestic regrouping visa, which will lead to the separation of the couple or even the family. Besides, for many foreigners, returning to their country of origin is almost impossible or financially unaffordable.

The circular of October 12th 1998 concerning the request for residency or settlement in the Kingdom, on the basis of articles 10 and 40 of the law of 15/12/1980, aims to be more specific about this principle. Furthermore, it introduces a dispensation to this general rule when the request for settlement is made by a foreigner who is married to a Belgian national or an E.E.C. national and who has valid, but expired travel documents. In this case, the request is considered and during this time the foreigner cannot be expelled from the country.

This circular also provides for specific circumstances and now enables domestic regroupings of all nationalities (foreigner with a Belgian or E.E.C. national and a non-European foreigner) to request an extension of their time limit to leave the territory. This framework aims to deal with situations where returning to the country of origin is impossible or very complicated (due to, for example, pregnancy, war in the country of origin). The foreigner cannot leave the Belgian territory.

- DOMESTIC REGROUPING OF NON MARRIED COUPLES

The circular of September 30th 1997 concerns the granting of residency on the basis of cohabitation in a lasting relationship. This circular has the merit of providing the possibility of granting residency on the basis of a lasting relationship without marriage. However, discrimination still exists as regards to this right. Thus, the question of proving the cohabitation and the regular checks can provoke disproportionate interference in the private life of the people concerned. Furthermore, the financial obligations of the partner living in Belgium limit the principal of non-discrimination to only those couples with sufficient means. In addition, definitive and a real right on this basis will only be acquired after 3 ½ years, compared to the six months that are sufficient for a marriage with a Belgian or an E.E.C. national or one year following a marriage with a non European.

- THE REGULARISATION OF SPECIFIC SITUATIONS

The circular of December 15th 1998 concerns the application of article 9, al. 3 of the law of 15/12/80 and the regularisation of specific situations (substituting the circulars of 9/10/97 and of 10/10/97). It is about: 1) claimants of asylum who have had to wait for an unreasonable length of time for a decision, 2) people that for reasons beyond their control temporarily cannot follow an order to leave the territory, 3) seriously ill people, 4) people in preoccupying humanitarian circumstances.

It should be noted that concerning this regularisation, the family element is not taken into consideration clearly, except for the first of these categories "eligible" for regularisation

[96] CJCE, Aff. DIATTA 267/83/, Rec. 1985, p. 565.

mentioned above: the claimants of asylum who have had to wait for an unreasonable length of time for a decision (Title 2). If the asylum claimant has not received an enforceable decision within 5 years. For the families with children at school, this period is reduced to 4 years.

With regard to the requests for regularisation on the basis of humanitarian reasons, the circular specifies *that this is in fact the situation of people with a particular connection with Belgians or foreigners settled in Belgium or a combination of factors that as such do not justify the request for regularisation but together lead to an extremely complex and humanitarian problem*. (Title 4). An example is given of a woman in an illegal situation, but who is the mother of a child recognised by their Belgian father. However, the circular states that this is only an example. Requests will be studied case by case. Under no circumstances this is a general rule. In other words, the family unit does not intervene as a key and fundamental element in the granting of regularisation.

Such a circular clearly does not meet the concerns of numerous organisations, including that expressed by the Coordination for the right of foreigners to live in a family[97], i.e.: that the family element been taken into consideration in a systematic manner: automatic regularisation for a foreigner residing in Belgium since five years, and who has a family tie to a person living regularly in Belgium (father, mother, spouse, child or brother or sister).

In practice, the application of this measure raises numerous questions.

- Mechanical application of criteria to determine the State responsible for the treatment of a request for asylum, without considering of any specific family situation.

This formal attitude by the Foreign Office goes against the Law on foreigners as this law provides the possibility submit a request for asylum in spite of the criteria defined by the Dublin Convention (article 51/5)[98]. The Watch-body for refugees and people without legal documents has denounced several cases where members of a family united in Belgium after having passed through various other countries in the Schengen area are again separated because of the rules of the Dublin Convention, because they must submit their request in the State through which they entered[99].

Another example is the case of a 7-year-old child who arrived two years after their parents: as the minor had not been persecuted during their parents' absence, he was sent back after five days. The child did not succeed to prove ties with their parents with their birth certificate.

- Slowness and administrative complexity for the delivery of visa (impressive and ever increasing number of documents to be presented; unavoidable necessity to produce legalized documents; significant financial costs to provide these documents; high handling charge for students and the severely handicapped[100]).

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[97] European Coordination for the right for foreigners to live with their family

[98] See also several recent decrees of the State Council, breaking from the decision by the OE, returning the request to another Schengen State, in absence of sufficient motivation concerning the arguments raised by the foreigner based on the right to a private and family life: article 8 CEDH. Example: the State Council examined the request in suspension submitted in extreme urgency by a Rwandan whose request for asylum should have been seen by France under the Schengen agreements, but who requested that his case nevertheless be considered because his two refugee recognised daughters lived in Belgium.

The State Council suspended the decision of refusal of residency, considering that the execution of the order to leave the territory would have lead to the man's separation from his two daughters, one of whom was deaf and dumb.

The decree reminds the States that the application of the Schengen treaty does not mean they do not have to take into consideration other international obligations, in this case the CEDH and in particular article 8. It is also highlighted that the Committee for Children's Rights encourages the party State to mind that requests made in order to reunify families by refugees and by migrant workers be examined in a positive frame of mind, with humanity and diligence (point 19).

[99] I point 6, repeated in the observations p. 307 and 308 of the Senate's Report concerning the evaluation of the law of 15/12/1980 on the access to the territory, residency, settlement and expulsion of foreigners, (adopted the 23/06/1998).

[100] It should be noted that proof of sufficient means to live via the commitment of responsibility is not only an obstacle for those foreigners wishing to reside temporarily in Belgium, but also for all foreigners already living in Belgium and who would like a member of their family to visit them.

- Arbitrary decisions by the local administrations concerning legalisation and terms of responsibility;
- Procedure unclear due to a lack of information for the public (extreme difficulty to enter in contact by telephone with the Foreign Office or to receive an answer to mail, for example), abnormally lengthy and no preferential treatment of minors' cases;
- Files lost between diplomatic and consular stations and the Foreign Office, or missing information when they were communicated;
- Exact application of the law, lack of criteria and reasons when a visa is refused (there are instructions to some consular stations to no longer deliver visas…).
- The notion of law and order overrides respect to family life.

According to the law of the 15/12/1980, foreigners settled in the Kingdom can be expelled if their behaviour seriously jeopardizes "public order" or national security (articles 20 and 21). What happens to those people who have family here?

To deal with this, several circulars have adapted the harshness of the law (the first was by Minister Wathelet, and dates from 8th October 1990). According to this circular, the basic criteria for an expulsion are if the foreigner constitutes "a real and direct danger".

Although the number of expulsions of those with real attachments in Belgium has decreased since 1990, they have not stopped altogether. In other words, presently this juridically imprecise notion questions, not only the entry but also the residency of the foreigner, even if they established their family in Belgium, possibly during many years.

- DOMESTIC REGROUPING BEFORE THE CONSULTATIVE COMMISSION FOR FOREIGNERS[101]

Fifteen years after the vote for the Law of 15th December 1980, the President of the Consultative Commission for Foreigners expressed different criticisms on the subject of family regrouping to his institution. These criticisms are still relevant today.

In terms of perspectives and conclusions, the NGOs wish to express the following considerations.

The death of Sémira Adamu, a young Nigerian denied the right of asylum, that occurred when the police were carrying out her third expulsion order, led the Belgian government to issue declarations on the evaluation of the law concerning foreigners, and in particular from the report on the matter prepared by the Senate.

At this time the government claimed to base it policy for asylum and immigration on the respect of the fundamental rights of human beings. The declaration by the government on October 4th 1998 also assesses the desire to make minors requesting asylum a privileged target group, and finally to preserve the domestic unit.

Both at the Belgian level and at the European one, we note the following paradox: both official recognition of the right to family regrouping and protection of the family unit; and at the same time the creation of increasingly restraining requirements for the implementation of this right. This observation is evidently worrying in respect of children's rights. Does this mean that the respect of administrative formalities over-rides the supreme interest of a child living with their family? Furthermore, the texts always refer to public order, and we have seen how this notion could put in peril the respect of the right to live in a family.

Finally, a European directive on family regrouping is under discussion and should soon be released. The NGOs regret that Belgium did not take advantage of its European presidency of the European Union to make this file progress.

[101] According to the article by Ch. WAUTHIER, which appeared in R.D.E. N°90 dedictated to the symposium of the 17th and 18th October 1996, entitled "Le regroupement familial devant la Commission consultative des étrangers".

The NGOs recommend that in the future the Belgian authorities use a more coherent legislative policy than the one of circulars concerning foreigners' rights, in order to allow democratic control of the governmental action by Parliament.

The NGOs also recommend that the Foreign Office operates in a more transparent manner, that it is held responsible for motivating its decisions correctly and that real accessibility is possible.

Concerning regularisation, the NGOs recommend that the family element be taken into consideration, and this for all requests, in order to respect the right to live in a family.

The NGOs also recommend that Belgium reviews the method for issuing visas in order to avoid the delays and complexity due to bureaucracy, and that a refusal to issue a visa be motivated according to precise criteria and in conformity with human rights.

The NGOs finally recommend that Belgium should exert its full power so that the European directive on family reunification be promulgated and then ratified as soon as possible.

V. Collection of the child's alimony

As mentioned in chapter III of this report, the NGOs defend a more social regulation of the alimony at the time of the parents' separation. With regard to the creation of an alimony fund, various propositions presently exist in the joint Justice and Social Affairs Commission of the federal parliament and the politicians are working together with the competent minister towards a joint proposal.

The amount of the advance on alimony has increased, but the scale to get this advance on alimony from the C.P.A.S. remains low.

However, the practice whereby the C.P.A.S. intervenes is not ideal. Indeed, it only concerns a proportion of separated families since a survey is carried out on resources and anyone with an income over 421,012 Belgian Francs per year cannot submit a request. Furthermore, this practice generates confusion between the system of advances (against repayment) and the system of aid (public help). Mono-parent families then feel stigmatised. Thus, although this system solves a certain number of emergency situations, it does not provide a real solution to the problem of non-payment of alimony and it maintains a certain number of families in a precarious situation.

A good solution proposed by the "Vie Féminine"[102] movement would be the creation of a Fund to manage transactions between the ex-spouses related to the alimony. This Fund would be attached to the Ministry of Justice, given that this is related to a judicial decision and the right to alimony is a civil right (and not a social one). The Fund would be the legal mediator between the debtor and creditor of food, it would allow the creditor to regularly monitor the amount paid to them without having to initiate judicial proceedings against their ex-spouse. The Fund would be self-financed thanks to the interest paid on the amount deposited regularly (according to a survey, 60% of alimonies are paid regularly) and the debtor can also monitor the balance. This would above all avoid the financial insecurity of separated families, but also avoid an accumulation of relational conflicts between ex-spouses who retaliate with visiting and custody rights often making the children victims. This proposal is supported by the "Conseil de l'Egalité des Chances entre hommes et femmes" (Council for equal opportunities)[103].

The "Ligue des familles" makes a similar recommendation, however proposing that this fund only manages problematic transactions, both for pragmatic and budgetary reasons, but also so families can manage the alimony themselves, and to avoid interfering in their lives.

[102] Vie féminine, "Un fonds pour les créances alimentaire", Prise de position, January 2000.

[103] Recommendation n° 6 of 10/11/95 concerning the reform for the right to divorce.

This fund should be ideally being accessible without too many obstacles. The "Ligue des familles" however denounces the slowness of reaction by the public authorities. The first project dates from 1974! It seems that this project has not yet seen the day for essentially budgetary reasons.

> *The NGOs recommend that the politicians take into account the measures of the C.I.D.E. in their cooperation and that they make a decision in favour of the creation of an alimony fund to guarantee the payment of the child's alimony when this poses a problem*[104]*.*
>
> *They also plead that a standard procedure and method to calculate be used when the amount of the alimony for the children is determined (a certain number of objective parameters). At present, this amount fixed by judges and lawyers, is all too often with little realism.*

VI. Children deprived of their home environment

1. In the French Community

A **quantitative approach** provides information on the number of cases of fostering[105]. This approach provides an indication on the use of the measure removing the child from the family environment, and thus enables us to evaluate the intentions of keeping the child in a natural environment and the diversification of measures described in the different texts.

An analysis of the numbers provided by the administration of help for youths[106] concerning *minors´ placed in foster families at cost between 1993 and 1997* shows us that globally the number of children in foster families, which had remained constant between 1993 and 1995, seemed to increase in 1996 and 1997. The application of a new decree and the installation of new actors, councillors and directors, to develop a new policy for taking responsibility of youths and families in difficulty has not reduced the use of the measure of placing in foster care. Rather, one observes a displacement in which authorities decide on placement between 1994 and 1995: the situations are transferred from the youth court to the Councillors of help for youths. Nevertheless, 1998 seems to be the starting point of a change. Indeed, despite the overall number of measures still increasing, their nature has appreciably evolved. Placement in residential services remains the most used measure but the increase in the number of cases where responsibility was not taken by a residential service must be noted[107].

Besides, it would seem that globally the use of residential measures has decreased, although not in the same proportion for all types of placement. This distribution depends on the authority taking the decision, indeed placements under the order of the councillors (50.3% in 1999) decreased, compared to those that result from an order for help from the director for youth (71.2% in 1999).

The proportion of placements in foster families is greater when a councillor makes the decision: this proportion in fact increased in 1996 and 1997. Placements in IMP, funded by help for youth are limited and are disappearing: 94 in September 1996 and 3 in October 1997. On the other hand, placements in boarding schools are on the increase: 272 in September 1996 and 384 in October 1997.

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[104] In the budget for 2001, there is an amount provided to deal with the problem of non-payment of alimony.

[105] This quantitative approach was carried out by I. DELENS-RAVIER, "Le placement d'enfants : une mesure paradoxale? Evaluation en trois dimensions", PhD thesis, November1998 and "Les enfants privés de leur milieu familial", JDJ, June 2001.

[106] See data values in the General Direction for help for youths, "Rapport d'activités 1999", pp. 81 and onwards.

[107] I. DELENS-RAVIER, "Les enfants privés de leur milieu familial", JDJ, June 2001.

A few details should however be given about these observations. On the one hand, the Educational and Philanthropic Benefit Services (SPEP) is involved in the non-residential interventions, thus the progression of this measure can maybe be explained by an "extension" of the social net of proceedings against cases that had been classified as “no action”. Furthermore, a series of institutions shelter “placed” children, whereas in reality these children are with their family and monitored by a team from the housing service within the framework of a circular 87/3[108].

The number of placements in foster families nevertheless remains high. Given that the question of the project and supervision compared to a family tie is particularly critical for this type of placement, this observation warns us to question the position of the original family in the help process.

In conclusion, although the quantitative indicators previously used lead to a certain scepticism[109], the NGOs are delighted with the evolution that seems to be moving towards the diversification of measures, and which should increase from the moment the reform on the ways of taking responsibility in the help for youths will have taken full effect. This initiation will be able to be checked easily by means of the activity reports for the next years , which will be based on the same database.

The NGOs also find the reduction in the overall proportion of decisions to make placements positive. However, the measure of removing a child from the family environment is decreasingly taken in the context of negotiated help, and increasingly so in the case of imposed help. Finally, our optimism is dampened by the fact that this measure still remains the most extensively used one[110].

The assessment of **"real life experiences" of placements** carried out on the **parents of placed children** does not correspond to the content of the Belgian report. The latter states: "*Even in obligatory cases, the parents are associated to the decision. In any case, the measures of help must above all aim to support the parents to exercise their parental responsibilities rather than to unburden them by placing the child*".

However, one notes, when one questions the parents of placed children, that they live the intervention leading to a placement as a denial of their competence, a non-recognition of their role as parents. ALL parents questioned by I.RAVIER said they felt crushed, as though they had been “chewed up” by this measure[111]. They felt excluded from the decision-making process concerning their children when there was a case for placement.

This observation has been reiterated on the occasion of an interesting day of study organised on January 28th 2000 by the “Réseau Famille-placement” of “ATD Quart Monde” on the theme “family and placement: from obligation to dialogue”[112]. This network is of great interest as it works with and unites social workers that revolve in the world of help and youth protection and the families of placed children. The parents that have participated in the networks meetings view the placement as a failure, an injustice and a sanction. They feel disqualified in their role as parents and have difficulty in making their voice heard in relation to fundamental choices (school, health...) that concern their children. In practice, often the institution takes everything that comes under parental authority on board. This feeling is even stronger when the child is placed in a foster family.

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[108] This is a countable circular that considers whether children are present in institutions and thus have right to subsidies, or whether the children have returned home or are “left to be autonomous”, with educational accompaniment from the institution.

[109] I. RAVIER, “Les enfants placés en Communauté française : vers la diversification?” , *JDJ*, 02 /1996? N° 152 and I. DELENS-RAVIER, “Evaluation multidimensionnelle de la mesure de placement d’enfants”, Revue de droit pénal et de criminologie, April 2000, pp. 427-442.

[110] I. DELENS-RAVIER, “Les enfants privés de leur milieu familial”, op. Cit.

[111] For the content and analysis of these interviews, see I. DELENS-RAVIER, PhD thesis, 3ème part, Chapter IV.

[112] “Famille et placement : de la contrainte au dialogue - Actes de la journée d’étude du 28 janvier 2000 organisée par le Réseau Famille-placement d’ATD Quart Monde”, JDJ, n°197, September 2000

The NGOs recommend that help interventions logics be developed rather than control ones, by registering the intervention in a partnership dynamic between professional agents and people (families and youths) in difficulty. The organisation of seminars and training programmes to increase the awareness of social workers in their role and their duties when they are interacting with their "clients" can encourage this approach.

Few indications exist on how the children experienced the placement or on the way in which they were associated with decisions concerning the placement.

Nevertheless, the children's opinion was indirectly heard at the time of the aforementioned study from the parents of placed children, who had themselves also been placed as children. It is essentially when the children are young that they resent their parents for having allowed the placement. They consider they have been abandoned and disqualify their parents. They are placed in care. You are no longer a mother to them. They think their mother is a bitch. Me, I was placed in care and I consider my mother like a bitch (a mummy) [113]. Furthermore, the placement troubles the relationship between brothers and sisters and irreparably modifies the family structure.

"The associations are worried because the word "poverty" is less and less often used in speeches concerning the placement of children, in the formulation of the reasons for placement. The reality of poverty is thus wiped out. In fact, **poverty is still a direct and indirect cause for placement** as the study day organised by "ATD Quart Monde" again showed. Housing is the most visible direct cause. Health problems, the separation of families and difficulties in school for the child (absenteeism, difficulties following classes…) are again often triggers for placement in underprivileged surroundings"[114].

In the eyes of many it would seem that poverty accelerates the process of placement[115].

Professionals of help for youths also note that that there are always, and more and more in some regions such as Hainaut, child placements because of the inadequacy of housing (insalubrity, smallness, eviction). The situation does not seem to have improved since the General Report on Poverty that had already insisted on the "very close connection between the mediocrity of the housing and the risk of placement of the children. Apparently, the proceedings for placement note the poor quality of housing most easily"[116].

Low income is another determining factor for the placement of children according to a director of help for youths, on the basis of a survey that he carries out each year[117]. For example; for 1997, out of 140 families, only 19 households had work; 19 families did not have any income and all the others lived on substitute incomes.

The parents suffer from the fact that so much money is spent on the placement of their children, as if they, themselves had this amount, the placement would have been avoided[118].

The NGOs recommend that more adequate policies of support to the poorest families be put in place, that answer the real needs of these families. This is the real implementation of article 27 §§ 1 to 3 of

[113] "Famille et placement : de la contrainte au dialogue", op. cit., p. 16.

[114] "La famille et le placement des enfants pour cause de pauvreté", Partner Associations of the General Report of Poverty in the francophone region, Lutte Solidarité Travail and Mouvement ATD Quart Monde, January 1998.

[115] " Famille et placement : de la contrainte au dialogue", op. cit., p. 14.

[116] *Rapport Général sur la Pauvreté*, p. 30.

[117] "Famille et placement : de la contrainte au dialogue", op. cit., p. 14.

[118] Contribution by the Partner Associations to the General Report on Poverty concerning the modernisation of the Social Security, *RBSS*, n° 3, September 1996, p. 519

the C.I.D.E. concerning the right to a decent standard of living that will guarantee the child's right to live in its family environment. This implies moving on from the framework of help for youths to bring solutions in the area of housing, health, and education, etc. [119]

The reality is still far from the philosophy whereby placement is a temporary measure whose primary objective is to return the child to their family. The implementation of placement measures all too often remains centred exclusively on the young child without positively considering the real or symbolic role that the parents play, and that enables the child to exist. The child's interest is all too often invoked in order to separate them from their family, whereas it is above all in their interests to live with their family and to resolve the problems within. It is necessary to work with the family and not for the family[120].

The essential conclusion of this research is that a situation when contact is broken off between a placed child and their parents is the result of a process of neglect in which the facts characterising intervention play an essential role. The observation of domestic rupture seems to essentially be a consequence of the measure[121].

"*In practice, we often observe that after the evaluation stage, the child becomes more remote, the natural family is no longer contacted (except for once a year as a formality) if they do not take steps. This results in the child being abandoned, which could have been avoided if the child had been accompanied at key moments such as the beginning of the placement*"[122].

"*The French Community does not seem to provide the necessary means for its objectives: Different services intervene locally (the placement service manages contacts, the S.A.J. or S.P.J. evaluate…) but who leads in depth and regular reflection with the original parents by concentrating on the needs of their children? It would seem that generally no professional is contracted specifically for that*"[123].

The NGOs recommend that, whatever the type of housing, the return to their family be a priority about which not only the interests are stated, but also for which intervention logics be implemented. These must guarantee effectiveness, in particular by accompanying the child at the time of placement and with an association with the parents in all the important decisions concerning their child.

2. In the Flemish Community

Until present, the placement of minors in Flanders was controlled by decrees concerning Special Aid to Youths, coordinated on April 4th 1990. According to these decrees, a minor with an educational problem, in fact a situation in which the child is undermined in terms of physical integrity, emotional, moral, intellectual or social satisfaction, by specific circumstances, conflict in a relationship or by the conditions in which they live, they can be temporally placed in a suitable establishment (initiatives that provide and organise temporary aid for youths and children). These placements occur after reflection, the least interventionist measures are always searched for, with due respect for the conservation or support of the family environment. According to a basic principle of the decree, help to minors in a problematic educational situation is the business of the children and families to which they

[119] See below, 6th part: health and well being, IV – The quality of life.

[120] P. FONTAINE, "Famille et placement - Acteurs et perspectives", JDJ, n°197, September 2000, p 28

[121] I. RAVIER, "Le lien familial à l'épreuve du placement", Research Repot, Faculté de Droit Namur, 1995

[122] ASBL *La Porte Ouverte* (association regroupant des familles d'accueil), "Amélioration de la prise en charge des enfants en famille d'accueil à moyen terme – Propositions", September 1997, p. 9.

[123] ASBL *La Porte Ouverte*, "Respect des droits de l'enfant confié à une famille d'accueil à moyen terme en Communauté française de Belgique, constat et propositions", December 1997, p. 2.

belong. This fact means action with the family is necessary, as well as with the minors who are the target of the placement measure, and they must be returned to their family as quickly as possible (article 23 § 2 G.D.).

The length of the placement in an institution is, fortunately, determined in advance, which guarantees the minor their rights.

In the Special Aid to Youth centres, the committee and the conciliatory commission hear the minor. From 14 years old onwards, they can refuse the offer of help. Their file can be transmitted to the conciliatory commission who can also send the case the Prosecutor and the judge for youths, if they consider that the minor is in danger, they can impose a placement.

It is clear that regulation of the position of the law in the Special Aid to Youths and the intervention of trustworthy persons for the minor, who, in collaboration with the youth, can submit a request for aid, still needs to be worked on. Unfortunately, we must observe that too many youths do not know that they can address the committee or the conciliation Commission.

With a new regulation for the future, the Flemish Community has worked since the beginning of 2000 on an "integral aid for youths". This is a kind of individual aid, which is based on the needs and requirements of the applicant, which takes into consideration the different aspects of the request for aid, and assures continuity. Help must be anchored in the daily life of the youth and should be considered as a network of relationships.

VII. Adoption[124]

At the level of federal legislation (the Civil Code), adoption is a contract ratified by the court. This contractual approach dating from the Napoleonic code must absolutely be modernized because on one hand, it includes various technical problems and more importantly, on the other hand, the contract concerns a person. The adoption should be a judgment pronounced by the judge for youths, based on either the agreement of those concerned, or on a reason justifying the reason the parents' consent is not needed. This text has not been modified at all, except for the deletion of the declaration of abandonment and family collection (law of May 7th 1999). A global reflection is needed on the child's interests, on the domestic accompaniment of the families, in particular when the children are placed in care, on the host family status. Placements in the extended family would certainly be appropriate.

At the level of international legislation, the La Haye Convention on cooperation concerning international adoption has been signed by Belgium but remains to be ratified. Thus, and contrary to the regulations of other countries, Belgian adoption regulations still have two possible paths. One is an extension of the Central Authority and the other is completely independent, this latter being considered as free adoption.

The French, Flemish and German-speaking communities have regulations on the adoption organisations, which protect both the original parents, the adoptive parents, and the adopted child, and are trying apply the La Haye Convention on international adoption. They also have central Authorities concerning international adoption. They are however criticised, especially in Flanders (see below).

As yet no specific regulations exist for Brussels concerning the accreditation of adoption organisations that claim to be bilingual. This means there is a complete absence of control on these services.

The absence of legal connections between the regulations of the Communities and the Civil Code can also be criticised and the consequence is that people who do not respect the communal regulations can get an adoption by law.

[124] See on this subject, I. LAMMERANT, "L'adoption et les droits de l'homme en droit compare", Bruylant, Bruxelles, 2001.

A task group composed of federal, Community and academic experts who met from 1997 to 1999 in order to modernise adoption and to ratify the La Haye Convention has prepared a draft project for the law. The Minister of Justice Verwilghen has modified this draft project and it would seem that certain guarantees of protection for children and families (original and adoptive ones) have been weakened. Political coordination between the federal and Community governments are underway.

A fundamental stake concerning adoption is to approach it "the right way up". A family must be found for the child, the basic philosophy of the La Haye Convention and of the draft project of law by the working group, and not a child be found for a family. This assumes public interventions and the possibility to refuse some adoptive parents.

The authorities must grant attention to the problems of attachment and roots. With regard to this last point, many adopted children feel the need to research their origins. They must be able to count on data concerning their identity (for example information about their parents) and on their origin. This requirement is in agreement with article 7 of the C.I.D.E.

In the **Flemish Community**, the division of expertise concerning adoption creates complications: the Flemish government did not wait for a modification in the federal law on adoption (and the ratification of the treaty), in 1997it took the initiative to establish a policy for adoption that is in agreement with the La Haye Convention. In this policy, an agreement of principle is introduced, but will be only obligatory when the federal law has been adopted. In other words, the Flemish procedure cannot be obligatory. The decision to adopt, the modification of the child's civil status are federal matters. There is thus a need for federal actions and the regulations need to be as much as possible adapted. Help concerning adoption (the preparation, the guidance, the conciliation and the monitoring) are again the responsibility of the Flemish authority in the area of the aid to people.

In the meantime, this new Flemish regulation has also been questioned. This report has been written at a time when there are debates in the Flemish media on the procedures of international adoption. The NGOs did not wish to express an opinion to this topic. Whatever, it must be clear that the principle of "the right to adoption" or "the right to a child", whether they exist or not, and on no account overshadow the rights and interests of the child. A child cannot be considered as an object of expectations for the parents. At all costs adoption cannot be "sold" as compensation for not having a child.

On the other hand, an explanation about the procedure in the Flemish area clearly showed that all those concerned complain about the state of affairs. The fact that the Flemish Central Authority "Kind en Gezin" has to carry out diverse essential but incompatible tasks during the procedure of assignment gives rise to resentment. Even Kind en Gezin deemed that this situation was not ideal. Besides, the cost and the length of the procedure and the lack of uniformity and professionalism in the five Flemish adoption services has been revealed.

Bearing in mind these gaps and given the problems posed by a two speed policy in Belgium (see above) everyone seems to agree that the regulation in the area of adoption must be adapted. A modification of the law at a federal level (and the ratification of the treaty of La Haye) is needed, as well as a modification at the Flemish level.

The NGOs also deplore the fact that these modifications are taking so long. The modifications are not being made in a coherent manner and there is lack of consistency: the federal legislation and the regulation in the communities must be more similar. We are temporarily awaiting a modification of the decree that has already been foreseen for a long time.

The NGOs recommend that the civil code be modified, that legislation be promulgated in the Region of Brussels-Capital, and that the La Haye Convention be ratified. This would allow children's rights to be better protected better and would avoid children being withdrawn from their environment, international abductions, …

VIII. Unlawful displacements and removals

1. Ratification of the La Haye Convention concerning kidnapping by one of the two parents.

Since May 1st 1999, the La Haye Convention has been in application in Belgium. One can only be delighted about this.

Nevertheless, the NGOs are worried for the following reasons:

- The speed of treatment and the complex nature of the cases require specialised magistrates. One can only wonder whether in a small country such as Belgium it would not be more appropriate to designate a competent court to treat these cases, rather than confiding this expertise to 27 different courts of preliminary proceedings.
- The Police services in the field are often not well informed about the La Haye Convention, and still advise people who come to make a complaint about a parental kidnapping to get a judgment[125]. It therefore seems necessary to initiate a large information campaign for these services so that precious time is not wasted without reason.
- The Convention foresees collaboration mechanisms between the States with the intervention of the central authorities. Obviously results can only be registered where collaboration exists between all sectors in the field (central authority, magistrates, police force and specialised NGOs), where a common strategy is predetermined and where there is an exchange of information in an honest and permanent manner. In practice, things often happen quite differently.
- The Convention must, in principle, control the return of the kidnapped child to the parent with custody. The efficiency of the convention is questioned given the lack of rigour and severity in the application of the text, and the abusive use of some articles to justify the refusal to return the child to the parent with custody. Thus, article 13 bis allows the judiciary authority to not allow the kidnapped child to be returned if it estimates that this return would pose a serious psychological problem or would put the child in danger[126]. This article thus allows all derogations.

2. Law concerning the judicial protection of minors of 16/11/2000

Article 30 foresees that the maximum penalty of one year is increased to five years when the parent abductor keeps the child hidden for more than five days or detains it abroad illegally. The chances of getting an international mandate for their return and getting the extradition of the abductor parent in a judicial proceeding are greatly increased.

3. Consultative Commission on the bilateral agreements between Belgium, Morocco and between Belgium and Tunisia.

The fact that Belgium concluded these agreements to arrive to an amicable solution in cases of parental kidnapping is certainly positive! But as these commissions do not have obligatory force, the actual results remain very rare. The NGOs support the present cessation of the last Belgian-Moroccan commission by the Belgian delegation because of the lack of will shown by the other party to make the least concession. This firm attitude by the Belgian government finally lead to seven children being brought back to Belgium a few months later.

[125] Nowhere does the La Haye Convention demand this, on the contrary, it creates the possibility to react immediately when a parent takes a child abroad and keeps them there.

[126] M. Vandemeulebroecke, "Un outil contre les rapts internationaux", Le Soir, 17 January 2001.

4. Individual passport for minors.

Since September 1999, a child of less than 12 years old also needs a passport to be able to travel. Even though this is a step forward in the struggle against (parental) kidnapping of children, work is still needed on the establishment of uniform instructions specifying that a passport cannot be delivered without the two parents' agreement or in accordance with an existing Belgian judgment.

IX. Abandon or neglect, including physical and psychological readjustment and social rehabilitation

Since the summer 1996, the **curtain of silence** that existed in Belgium on issues concerning mistreatment **was lifted**. That one speaks of similar situations to avoid their repetition is incontestably positive.

However, we must unfortunately note that today the numerous revelations about the mistreatment of children are generally made in an **unhealthy environment**, based on denunciation where the child's interest does not always appear to be of primordial concern.

Thus, one notes that in more and more cases of divorce, accusations of mistreatment are made; the same occurs in schools. The media are also not to be outdone, as regularly there are echoes about such and such an affair of morals in a school or parish.

The **political reactions do not seem to be going in the right direction**. Their translation into legislations reveal a will to satisfy a rather disorientated public opinion, unfortunately, all too often to the detriment of the respect of certain fundamental human rights.

The *decree concerning mistreatment*[127] adopted by the French Community is illustrative of this policy. Furthermore, this decree has met various problems both at the level of efficiency and at the level of the actual legality of some measures.

Article 2 of the decree can undermine the right to the respect of private and family life of families, because of the obligation to inform the relevant authorities in case of mistreatment (recommendation of the section of the State Council's legislation submitted on February 5th 1997).

Above all, imprecision on what is meant by "mistreatment" runs the risk of provoking more problems than it solves.

Indeed, what can an intervener do, when they know about a case of morals concerning a child, in order for their action to be most efficient, they will be tempted to transmit, de facto, the case to the higher authorities. This is a legitimate reaction, as their action is hindered by the lack of precision as to the definition of mistreatment and by the fear of the penal sanction foreseen in the decree, sanction that can intervene for the smallest breach. By completely disregarding the notion that already exists, of non-aid to someone in danger (article 422 bis of the Penal Code), the decree operates a dangerous coupling between penal sanctions and a notion that is not even defined. Faced what may only be a simple parental admonition, what will the intervener's attitude then be? This situation could undermine the desired efficiency of the decree, by leading to a systematic referral to the competent authority, and thus leading to the inconvenience of the referral and the overburdening of the authority. Besides, the interveners risk denying their responsibility to avoid being implicated later about their intervention for the young, to the detriment of the children that the French Community wants to protect. Finally, intervention often risks to lead to the separation of the child from its home, which could be felt as an even less tolerable mistreatment by the child.

[127] Decree of 16th March 1998 concerning aid for children victims of mistreatment, M.B., 23/4/98.

Article 16 of the decree provides for the possibility to confide a child to an accredited housing service without hearing them or their parents solely because one suspects mistreatment. The application of this article risks to undermine articles 9.2 and 12 of the Convention, which foresee that all concerned parties and the child, if they are capable of judgement, should be heard. The parents are therefore in a position of weakness as they do not know that they can oppose this measure.

We can conclude that, in many respects, this decree does not constitute a political answer appropriate to the phenomenon of the mistreatment of children. It is even, in itself, mistreating. Today in Belgium a lot of things are said or done in the name of children's rights, without the child's interests really being what is taken into consideration. Note that more than three years after its emergency adoption, the main measures of this decree are not yet in application due to the lack of an order. This proves that the legislator's objective was not to provide the tools to fight mistreatment but to pretend to the population that politics is "acting".

The law of November 28th 2000 concerning the penal protection of minors, which aims to modernise the criminal law with regard to the penal protection of minors, to make it more coherent and to reinforce penal protection of minors, is a second example of this policy.

Indeed, various modifications go against the fundamental principles: the prescription period has been lengthened in an unreasonable manner, professional secrecy is barely respected, greater firmness is foreseen when the acts are committed in the family environment even though today it is suggested that jurisdiction should overrule in these situations, a specific incrimination is created for practices of sexual mutilation, which risks to make these clandestine acts. Finally, the NGOs are concerned to note that at the same time no real prevention policy is put in place within the child's fundamental environment by educational, social, psycho-medical or cultural measures[128].

Several professionals hesitate concerning types of regulatory measures adopted in the area of mistreatment[129] and to the types of information and awareness raising campaigns produced recently[130]. They worry about the security orientation taken, as well as the risk of creating a fear of sexuality in the children and youths, that goes completely against the work carried out by these professional since numerous years.

The NGOs recommend that the directions taken in this sector follow the spirit proposed in the Manifesto to ask the sexual question again[131]*.*

They also recommend that the propositions formulated by the National Commission against the sexual exploitation of children, "Les enfants nous interpellent" (report of 23rd October 1997), be implemented in the spirit with which they were formulated in the report.

X. Periodic review of the placement

It is unfortunate that several years after the need for a periodic review of the placement has been recorded in the texts, both at federal and at communal level, the Belgian authorities cannot provide an assessment of the implementation of these measures and the impact that they have had on the duration of the placement.

Although there seems to have been an evolution in the duration of the placements in so far as these are getting shorter, it is worrying that there is an apparent increase in the number of placements. Indeed, the level of occupancy of beds in the French Community does not

[128] S. BERBUTO et C. PEVEE, "La loi du 28 novembre 2000 relative à la protection pénale des mineurs", JDJ, April 2001.

[129] See in particular the lobbying work carried out at the time of the adoption of the decree on mistreatment by the teams "SOS-Enfants" or the "Ligue des Droits de l'Homme".

[130] AIMER A L'ULB (Sld.), "Manifeste pour poser la question sexuelle", JDJ n°181, 1999, pp. 30- 32.

[131] Ibidem.

decrease. Furthermore, the placements are shorter, so there is probably an increase of the number of placements that cannot be justified only by the increase in the number of cases taken on board, given the stated objectives of the decree to help youths[132].

Furthermore the NGOs are concerned that that all too often the annual review of the placement that the law foresees is only a formality that camouflages the transition to a long-term placement. *The judgment pronounced following this annual legal hearing often considers an "evaluation" of only three lines, specifying the child's integration in their host family or institution[133].* In the same way, the annual review decided by the Community proceedings (councillor or director) does not yet constitute an opportunity to re-evaluate the motives for the placement in depth, the reasons for it to be maintained and the evolution of means put an end to it.

The reasons for the placement and the conditions to put an end to it should be specified to the parents in the judgment that orders the placement, at the time of the placement. This rarely seems to be the case. This would allow the parents to both understand the measure that is being imposed on them and under what conditions their child can return home. Understanding the reasons for the placement is also important for the child, who often lives the placement as an abandon.

It appears that the strict conditions to return to the family imposed on the parents are lived like both a humiliation and interfere in the private family life. This is particularly so for parents who ask for help or in the case of voluntary placement. Sometimes some conditions are even impossible to achieve. For example, the imposition of larger housing for the children's return; but, the parents do not have the right to a larger social accommodation given that the household does not include other members of family at that precise moment.

The NGOs recommend that Belgium evaluate the implementation of the measures concerning the periodic review of placement, as well as the implications this review has on the duration of the placement. The reasons for the placement and for it to end should be clearly specified in the judgment ordering the placement. A re-evaluation of the whole policy for placements is needed.

[132] See "Etude-bilan de la mise en application du décret du 4 mars 1991 relatif à l'aide à la jeunesse" carried out by V. MACQ and G. RENAULT, under the supervision of F. TULKENS, on behalf of the French Community, extracts in JDJ, n° 163, March 1997, p. 101

[133] "Famille et placement : de la contrainte au dialogue", op. cit., p. 20.

Sixth part: HEALTH AND WELL-BEING

I. Handicapped children

The NGOs insist on the fact that the rights of handicapped children would be assured, much more than is presently the case, if the public authorities let themselves be guided by the following two principles when they establish their policies.

On one hand, handicapped children have the right to lead as normal a life as possible. As for all other children, all the rights of the C.I.D.E. must also be guaranteed for them. Handicapped children have the right to grow up with their parents, to a normal education, to be informed, to participate in decisions concerning them, to have leisure and relaxation activities. These rights concern all children irrespective of the nature or gravity of their handicap (mental, physical, sensory or a combination of several handicaps). The NGOs clearly oppose the segregation and separation that still exists today.

On the other hand, handicapped children should have an obligatory right to support, treatment or particular guidance if they need it. This special attention and protection would enable the first principle to move from an ideal to common practice.

> *The NGOs recommend that the federal and communal authorities establish a policy for the insertion based on a common vision. They plead for a policy that encourages and stimulates integration in society. The efforts of recent years are applauded but remain insufficient.*

Based on the contributions by various active organisations researching the well being of handicapped children[134], the NGOs wish to highlight the following points:

1. At the federal level

A. FUNDING

The parents of handicapped children[135] highlight the negative effects of the criteria for the allocation of an increased family allowance. This increased allowance is attributed when the level of handicap exceeds the threshold of 66%. This assessment can be reviewed at all times by the doctor. Thus, handicapped children that, thanks to the raised rate have been able to benefit from an adequate support permitting them to make progress in the struggle against their handicap, see the raised allowances being withdrawn because they no longer reach the threshold of 66%. This new decision has a direct effect on the child: the parents no longer have the means to fund this adequate support; there is then stagnation, or even a decline in the child's progress.

The Minister of Social Affairs wants to counter this disenabling effect (the fact that the parents lose the right to an increased family allowance in spite of their efforts), improve the favourable effect on their children and abandon the system of "all or nothing" (above 66% of handicap, you get an increased allowance and all sorts of other rights, below: nothing). He has also asked the administration to develop a new evaluation system that is not based only on the medical opinion, but that also considers the parents' efforts and the impact of the handicap on the child's chances of participation.

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[134] Contributions by Ouders van Dove Kinderen (ODOK), 15 November 2000; by Katholike Vereniging Gehandicapten, 9 January 2001; Federatie van Vlaamse Doven en slechthorneden; Vlaamse vereniging voor hulp aan verstandelijkge handicapten (VVHVG)

[135] A.N.A.H.M., A.P.E.P.A. asbl, etc.

At present, a proposal by the administration is being considered and proposes a model for assessment that draws on three elements: the child's inability, the impact on their activities, participation and the burden for the family. This new mode of assessment should allow more handicapped children to benefit from increased family allowances and parents should not be penalised because they are helping their child as well as they can and provide them with the best care possible to promote their autonomy. Normally, the Government and Parliament will consider the new concept during 2002.

The NGOs support this planned reform.

Furthermore, the repayment of incidental charges incurred by a handicap (for example: purchases and adaptations in the area of mobility and living conditions), follows a very strict nomenclature that does not yet take the real needs into consideration[136].

When the young disabled aged from 18 to 21 are taken into care an institution that is not subsidised by a public power, or when they live autonomously, without benefiting from the help of a care centre, they continue to benefit from this family allowance, whereas their expenditure is similar that of an adult[137].

The authorities should take measures to ensure that a certain number of children, only because of their handicap, are refused the right to hospitalisation insurance. This takes place too often. When such insurances are allocated, no differentiation is made: children with certain handicaps, such as for example, children suffering from Downs syndrome, are almost automatically refused the right to such an insurance, either by simple refusal, or because it is impossible to pay the insurance.

Concerning the budget for personal assistance, mentioned in the authorities' official report, it should be noted that this budget has been broadened to include more people, however, it is still not accessible to a large number of families.

B. OTHER CAUSES OF FRICTION

At present, no preventive or curative policy exists for sexual abuses perpetrated by professionals in the care institutions where they work. According to the association "Vlaamse Vereniging voor Hulp aan Verstandelijk" [138], the sexual abuse of these children by people in power unfortunately is not a rare occurrence. The development of a policy on the subject is, in our opinion, a priority, in order to counter offences on the integrity of children in a position of fragility and dependence.

The possible changes in human values due to scientific development in the area of genetics, for example, are also a cause of considerable concern. Here we reject the tendency to not give certain treatments to children with a mental handicap or the practice of euthanasia on newborn mentally handicapped children. Those mothers who carry a high-risk child have the right to valid information and support from professionals, and especially from experienced specialists in all areas of the handicap.

In order to guarantee the children all the rights in the area of legislation and aid, both the children and their parents must have access to adequate information on the financial regulations, social advantages and the available services and institutions. To this day, these elements have been dealt with in an unsatisfactory manner, and without coordination.

Children with a mental handicap must have the right to expression from a certain age.

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[136] For example, every X years one receives repayment for a wheelchair. If this wheelchair is damaged before this time elapses because of an active life style, the family must pay for part of the replacement, according to their possibilities. A similar problem is the purchase of a single pair of orthopaedic shoes or inner soles per year.

[137] Contribution by Michel Davagle, 1st August 2001.

[138] Vlaamse vereniging voor hulp aan verstandelijk gehandicapten (VVHVG), Het Plateforme van Vlaamse ouder- en familieverenigingen, en de Federatie van Oudervereningen en gebruikersraden in instellingen voor Personnen met een Handicap vzw (FOVIG), 15th December 2000.

To conclude, society remains difficultly accessible for disabled children and youths. The NGOs point to the lack of attention paid to the physical and mental obstacles that handicapped children encounter in their path every day. Access to leisure activities is often difficult without the necessary means and specifically adapted guidance foreseen for them.

With regards to physical obstacles, we think of, as examples, the problems associated with the use of public transport or at the cinema, the lack of indications in Braille or people that master sign language at ticket offices and the lack of people that take into account the specific needs of handicapped children. (For the media: see Communities) Public establishments are also often inaccessible or difficultly accessible to physically handicapped children and youths. The narrowness or poor maintenance of some pavements makes walking laborious, or even impossible, which means the handicapped youth can only get around by car or when accompanied[139].

Mental accessibility is also hindered by the fact that people still do not want to be confronted by a handicap in public[140]. Interests other than those of the child are given priority here. Thus, all too often mentally handicapped children are refused entry to restaurants, swimming pools, discotheques, etc. An anti-discrimination law that condemns this differentiation exists. Sometimes, different opening hours are proposed, a measure that contradicts the notion of an inclusive society.

B. At the communal and regional level.

1. IN THE FRENCH COMMUNITY

A) EDUCATION

While the social integration of the handicapped child starts with their active participation at school, the present legislation does not favour the presence of a mentally handicapped child in normal primary education, whereas this possibility exists for deaf or blind children. This observation is revealed by the "Platform for school integration for handicapped children in the French Community" which denounces the impossibility for handicapped children to access an adapted education system in the normal system, and the lack of public assistance provided in order to respond to their specific needs[141].

Furthermore, for the seriously handicapped youths, the right to benefit from school education must be reaffirmed. Indeed, one notes a decrease of more than 700 handicapped youths at school in recent years, despite the creation of special education to answer this need[142]. The day care centres for handicapped people should not take responsibility of youths during school hours, unless the youths are exempt from school for clearly defined motives.

B) CARE

The placement in a residential service for youngsters must remain an exceptional measure that should only be applied if the solutions fail or do not prove to be a satisfactory answer to the handicapped child or youth's needs. Hundreds of disabled youths are guided by an adviser or youth judge towards approved residential services that care for handicapped people, as their difficult behaviour means they often dysfunction in their family environment, which seriously lacks any support. Although this mechanism means that another public process financially supports part of Aid for Youths' policy, it leads to a movement towards "Institutionalisation" whereas the decree of Aid for Youths affirms to pursue contrary objectives[143].

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[139] Contribution by Michel Davagle, op. cit.

[140] We give as an example: refusal of access during the "peak season" or on New Years eve.

[141] "Pour une école ordinaire adaptée", La libre Belgique, 7 June 2001.

[142] Contribution by Michel Davagle, op. cit.

[143] Ibid.

Furthermore, in practice, the institutions that care for handicapped children are confronted with various problems: a general lack of means, insufficient supervision, insufficient subsidies for the organisation of holidays (often subsidised by humanitarian associations) or of ludic activities (request for volunteers) and for the creation of an adequate education[144]. They also reveal the quasi-non-existence of means for handicapped people to access most forms of social life.

2. IN THE FLEMISH COMMUNITY

A) EDUCATION

In the setting of inclusive education, unfortunately too few measures are taken again. In principle, the children and parents can chose between special and normal education, however, choosing the latter means one is greatly financially disadvantaged, which in reality limits the possibility of choosing. Parents who choose special education receive special support, the supplementary costs of the care and extra attention are financially taken care of, for the second option much less support is provided.

In the setting of the GON (integrated education), a certain number of handicapped children are cared for. However, this accompaniment is too limited (despite the minister of education announcing support for the GON), and is not adapted for every handicap. The GON is certainly important but fundamentally different from what the NGOs request: inclusive education. The GON tries to adapt the pupil to the education, whereas inclusive education signifies that one takes the child, even if they are handicapped, and the education adapts to the pupil, providing them with the maximum opportunity for development.

An in depth reform of the present education system is necessary. The specialisation of people active in special education must be used at the time of the implementation of inclusive education in the general education system.

Children with a handicap do not have any general right to accompaniment, care or treatment at present. For them to benefit often depends on occasional circumstances, such as the fact that there is a free space in a determined region. The way in which regional waiting lists, which could change things a bit, work is obsolete. Handicapped people sometimes spend years on such a waiting list.

Children with multiple handicaps that cannot go to school must pay something to e admitted to a day care centre, where they are substitutes. The care of these children should also be carried out following pedagogic principals and even is under the expertise of the minister of education himself. However, it can be revealed that this group of children lives deprived of education (which should in principal be free), an education to which every child has the right according to the UN Convention concerning children's rights.

B) MEDIA

The NGOs ask expressly for more television programmes with subtitles or in sign language, or with sin language interpreters. Unlike in other countries, in Flanders no programmes exist in sign language or with a sign language interpreter and only a small proportion of the programmes are subtitled.

C) EDUCATIONAL SUPPORT

At present, the right to assistance for education and the family does not exist for handicapped children's families. For a certain number of children that remain at home permanently, this support is inaccessible. It is true that measures must still be taken by means of the services of accompaniment at home for this type of support in the home environment. If such an approach or support is unavailable or inaccessible, some families are obliged to admit their handicapped child to a semi-residential establishment so that they are offered the best chances for development. Nevertheless, integration in the family, the neighbourhood, and in the

[144] Contribution by the "Commission Enfants d'Amnesty International", June 2001.

local community offers the child a better opportunity to be a complete child, a fully-fledged citizen. The parents must be guaranteed that they can choose to raise their handicapped child at home, thanks to a sufficiently adapted support system, such as temporary care, the possibilities of housing, accompaniment and access to leisure activities.

The Flemish social security system will be active in 2002 and has planned an indemnity for parents of handicapped children who take medical social action.

The NGOs also note that if this indemnity is associated to the allocation of increased family allowance for a handicapped child, it means that a large number of parents of handicapped children will come out of the system (because of the "all or nothing" system already described).

The NGOs recommend that handicapped children benefit from family allowances whatever the level of their handicap, so they can have access to an adequate framework, allowing them to develp.

The NGOs recommend that the Communities adopt new measures encouraging the care and insertion of handicapped children in normal schools and reaffirm their right to benefit from school education. The NGOs recommend that "extra-curricular" structures be developed and favoured and that short-term care facilities be created to provide temporary help or to allow a break for the parents. Measures should also be taken and means provided so that the specialised care facilities can overcome the various difficulties with which handicapped children are confronted and thus permit their good development.

The NGOs finally recommend that access to a social life and to leisure activities be developed by checking the accessibility of these establishments and public areas, and by creating services organising leisure activities adapted to handicapped children.

The NGOs ask the authorities for a firm regulation in the area of support for care and aid, especially via accompaniment at home and the support of social action.

To conclude, the NGOs propose that the necessary methods be adopted to grant supplementary medical social actions, so that the parents of a handicapped child are supported in their medical social action.

II. Health and the medical services

To analyse this point, the NGOs have been able to collect interesting yet fragmentary information, enabling an isolated indication of the problems and progress made, this will not in any case constitute a general assessment of the situation of children's health in Belgium, due to the lack of sufficient available and coordinated data at the scale of the country and/or regions and communities.

A. Access to health care

1. INSURABILITY

- Since the 1/7/1997, a series of measures have been taken to restore all those with low incomes that had been excluded from the social security system (about 100,000 people) by relaxing the conditions for access to social security[145], which constituted a major

[145] Progress Report: implementation of the R.G.P. – "Cellule Pauvreté du Centre pour l'égalité des chances et la lutte contre le racisme" – May 1998.

demand by the General Report on Poverty[146] (conditions to be met to benefit: be enrolled on the census of the Belgian population – candidates for political refugee status and clandestine immigrants are not therefore included):

- Elimination of the condition of residency of 6 months and the waiting period of 6 months, as well as the entry premium necessary to acquire or recover access to invalid health insurance;
- Reduction of the number of regimes to 2: general and independent.

2. ACCESS TO CARE

A) FINANCIAL ACCESSIBILITY

In the same way, some financial measures aim to improve the accessibility to care:

- A new system called "majority intervention", which constitutes an extension to the VIPO status (widows, invalids, pensioners, orphans), whereby some categories of social insured parties benefit from a minimum contribution to medical visits, paramedical services or in the case of hospitalisation, in certain income categories: beneficiaries of the minimum benefit ("minimex") and equivalents, beneficiaries of a handicap allowance, handicapped children who benefit from the raised family allowance (about 300.000 people are concerned);
- Lowering of the minimum contribution fee in case of long-term hospitalisation for long-term unemployed people and their dependants.

However, corroborating information from different associative or political sources notes the refusal to take responsibility for insolvent patients, particularly children:

- An interpellation of the Minister of Social Affairs[147] mentions the attitude of some hospitals that refuse patients access to a consultation or to medical treatment if they are insolvent or without insurance and raise the question about the responsibility for the care of illegal refugees as well as the emergency of the care.
- On this topic, the Consultative Committee of Biotechnology of Belgium[148] affirms while mentioning the Convention concerning children's rights: "*that it is fundamentally immoral to refuse medical care to those people that need it. Neither the patient's insolvency, nor their illegal status on Belgian territory are reasons to justify such a refusal*". But it regrets that "*social help provided to illegal foreigners on Belgian territory is limited by the organic law C.P.A.S. (AR of 12/12/1996, and article 57 of the law of 8/7/1976) to only urgent medical care...*", and estimates "*that even an explicitly broader interpretation of the concept of emergency is insufficient to answer the ethical requirements of unconditional access to medical care…*"
- A medical centre in Antwerp supports this fact by denouncing the stamping "embargo" on the files of people who are insolvent or in an illegal or irregular situation[149].
- Similarly, at the time of the workshop-debates of the 20/11/1998, several examples were given: of refusals to take care of children because their parents were not up to date with their "mutuelle" or were in debt[150]; of children refugees or with problems with their "mutuelle" which the hospital asked for; requesting a medical certificate claiming

[146] General Report on Poverty, Fondation Roi Baudouin , ATD Quart Monde, Union des villes et communes, 1995.

[147] Public meeting of the Commission of the Interior, General Affairs and of Civil Servants, 31/3/98 and interpellation by Mme Mairesse.

[148] "Comité Consultatif de Bioéthique", report of 13/7/98.

[149] "Action contre l'embargo et l'exclusion", 11/98 ; "Pas d'argent, pas d'aide ?" , Humo, 20/1/98/ De Standard, 17/12/98.

[150] Front commun des sans-abri , neighbourhood activities, Auderghem.

emergency status before taking care of them[151]…

- "Médecins sans Frontières" (MSF) also deplores the situation of illegal people without official papers or health insurance that end up being refused from hospitals, even for serious problems[152].

Furthermore, a study carried out by the "Forum de lutte contre la pauvreté de Bruxelles et du Brabant wallon (BW)"[153] notes that on average 10% of Belgians delay a visit to their general practitioner because of the cost, this figure is close to 17% in the provinces of BW and Hainaut. In Flanders, 10% delay a visit to a specialist for the same reason, 20% in the Walloon Region, 25% in the provinces of Hainaut and BW.

Finally, it should be pointed out that the Belgian State does not financially support cases of serious illnesses such as leukaemia, or other diseases that lead to great expense, but that are essential for the child's survival and that are the entire responsibility of the parents. As an example, children with cystic fibrosis require medical treatment that costs about 15,000 Belgian francs per month, with is nor reimbursed[154].

An important initiative is the introduction by the Minister of Social Affairs; of the maximal Health Care invoice.

This system goes further than the existing system of social and fiscal exemption and means that a family dependent on the family income should never pay more than a determined limit. It is also very important that the minister not only fixed a limit for the family but also a maximum amount per child, that is 26,000 Belgian francs so that families with children suffering from a chronic illness with very elevated medical expenses only pay a limited financial counterpart.

The NGOs are delighted about the "child" dimension of this new system.

b) Cultural Accessibility

According to the R.G.P. [155], "*many factors are the cause for the inefficient use of the healthcare system... a low level of education; lack of knowledge about anatomy, health, illness; poor command of the language; conditions of life and burden of daily problems; feeling of dependence or inferiority with regard to the medical profession...*"

The problem exists for both foreigners requesting asylum and for resident families in difficulty.

c) Statistics

The "Mutualité Chrétienne St Michel" notes that "*the currently available information... does not provide a coherent view of the state of health of the Belgian population. The main gaps in our information are the following: the data only present one aspect of health at a time; the degree of comparison between the data is limited. Each time we are addressing a different target-group; data collection is carried out using different instruments, methods, and recording systems…*"[156].

The Consultative Committee of Biotechnology requests that a white paper be written "*on the quantitative and epidemiological, cultural and structural aspects of access to care*" [157].

The NGOs recommend that accessibility to healthcare be standardised and that coherent statistical studies be elaborated

[151] Ligue des Familles, Liège region.

[152] Feuille de conjoncture n° 21 - ATD Quart Monde July 96

[153] Feuille de conjoncture n° 21 - ATD Quart Monde July 96

[154] Contribution de la Commission Enfants d'Amnesty International, June 2001.

[155] R.G.P. - Fondation Roi Baudouin , ATD Quart Monde, Union des villes et communes - 1995 p. 132

[156] Dossier Mutualité Chrétienne St Michel - "Santé et inégalités sociales" 1996 p. 84/85

[157] Comité Consultatif de Bioéthique – report of 13/7/98

concerning the state of health of the Belgian population and in particular of the children.

B. State of the right to good health

1. INDICATORS OF GOOD HEALTH

Data on the whole of Belgium. The information that the NGOs could collect concern studies that are too old[158] or are fragmentary to be meaningful, in our opinion.

Some data are available for Brussels, which show a decrease in infant mortality, a larger proportion of children weighing less than 2.500 g in underprivileged families and a good vaccine cover.

Furthermore, a university study on the health of youths[159] observes:

- A deterioration of some indicators (consumption of tobacco, of cannabis).
- An improvement with regard to dental hygiene, knowledge about vaccine status, nutrition.
- The persistence of inequalities: girl-boy and especially concerning the type of education (general-technical or professional).

2. HEALTH AND POVERTY

The absence of data concerning the analysis of correlations between the state of health of people and their socio-economic characteristics, noted particularly by the "Mutualité Chrétienne St Michel", does not allow us to establish whether there is a close connection between poverty and the health of children on a nationwide scale. However, evidence and partial studies provide some facts for analysis[160]:

- The "Observatoire de la Santé de la Région de Bruxelles-capitale" (The Observatory for Health for the Brussels-Capital Region)[161] makes an inventory of the problems and pathologies related to the conditions of life in poverty: dermatological infections, pulmonary, digestive or intestinal, dental or sleeping problems, eyesight problems, mental health, domestic and traffic accidents;
- A survey carried out on families earning the minimum benefit at the C.P.A.S. [162] in St. Gilles (Brussels), noticed that the children had on average problems with 4.7 of the following vital functions: circulatory, locomotive, visual, auditory, respiratory, digestive, mental, nervous, reproductive[163];
- The Queen Fabiola hospital in Brussels notes a clear increase in the admissions of children that are sick for reasons of precariousness[164];
- At the Citadel hospital in Liege[165], 95% of the emergencies are small emergencies: "*People come here because they do not have the money to pay for a normal consultation*" and more and more consultations are made by telephone, for financial fear, or because of transport problems;
- A survey in the province of Antwerp showed that the lower the family's income, the more people had chronic affections and long-term limited vital functions (such as poor eyesight

[158] Report be the Mutualité Chrétienne St Michel : Santé et inégalités sociales, 1997, p. 18/40.

[159] "Vers la santé des jeunes de l'an 2000", study ULB/PROMES, 1997, p. 18 à 29.

[160] Rapport de la Mutualité Chrétienne St Michel : Santé et inégalités sociales, 1997, p. 69 à 74.

[161] "L'Observatoire", Social action and medico-social review, n° 11/12, 1997.

[162] "Centre Public d'Action Sociale".(Public Centre fof Social Action)

[163] R.G.P., Fondation Roi Baudouin , ATD Quart Monde, Union des villes et communes, 1995, p. 124.

[164] Feuille de conjoncture n°21, ATD Quart Monde, July 1996.

[165] Observations recorded during the meeting-debate of 20/11/98 : Ligue des familles, Liege region.

or audition) and the more they had difficulty lifting loads or going up the stairs and generally felt less well[166];

- In general, people living in poverty run greater risks with regard to health. Their health generally deteriorates 12 years earlier than the normal. There are all sorts of signs of a poorer average health: a lower weight at birth, a smaller size as an adult, toughness of the conditions of life, unhealthy diet, lack of physical activities, etc[167].

3. HOSPITALISATION

A project for a law[168] asking for the creation in Belgium of a Charter inspired by the European Charter for hospitalised children, adopted by the European Parliament in May 1988, makes an appraisal of hospitalisation of children.

According to the authors of this proposal, most hospitals possess sufficient facilities adapted to children's needs, but it is at the level of information and communication concerning the availability of these possibilities for both children and their parents, that the situation could be improved. The charter would permit the proclamation of rights recognised at the international level, the obligation for the hospitals to inform the public abut the actual means of exercising these rights, and the inclusion of organised ludic activities in a structural manner in the norms for the recognition of the paediatric services.

In the area of the child psychiatry, a decision is in waiting concerning projects for the creation of beds for children in psychiatric wards in Brussels, following the interpellation by the Ministry of Social Affairs on the lack of "type K"[169] beds in the region.

4. POLICIES FOR PREVENTION

1. MATERNAL NURSING

Even though this problem is less acute in Belgium than in developing countries, the "Réseau Allaitement Maternel" (Network of Maternal Nursing)[170] insists on the interest of this practice in relation to future life and to the child's development, and notes regional disparities, an inadequate legislative framework for protecting mothers that nurse and the training of health professionals limited.

This network recommends increasing the budgets for information and training, to improve the legislation for work in the area.

A study by the ONE[171] notes a clear improvement in the food of the very young. Indeed, in 1970 only 40% of mothers nursed their child at birth. Currently, more than 70% of them start with natural nursing.

In the AR of the 29/04/1999, a federal recommendation for maternal nursing was created to promote maternal nursing in Belgium and to grant quality labels to hospitals favouring children (worldwide campaign by UNICEF and the World Health Organisation). Until present, this federal recommendation was not operational. This recommendation has been implemented in the mean time, but since the authorities have not provided any financial assistance, the NGOs wonder about how effective it will be.

In Flanders, a campaign is underway to promote maternal nursing (stimulated by "Kind en Gezin"). Furthermore, in the National Council for Work, negotiations are in progress to introduce the right to nursing pauses. The NGOs support this initiative and insist so that

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[167] Idem.

[168] Project for law concerning the Charter for hospitalised children, Mme An Hermans, March 1998, p.3.

[169] "Interpellation d'A. dubus à Madame De Galan, ministre des affaires sociales", int. N°2100.

[170] Contribution received during the meeting-debate of 20/11/98, Réseau Allaitement Maternel.

[171] Medico-Social database of the ONE, Report 2000, p.33.

measures, such as these pauses be accepted so that mothers can really exercise their rights. This assumes that the individual diet of each child at least should be taken into consideration.

2. VACCINE COVER

Different studies, once again fragmentary, enable the question to be reviewed:

- With regard to infants, the public health survey[172] carried out in 1997 notes that it is difficult to evaluate the vaccine cover as there is no systematic registration of vaccinations carried out by paediatricians or general practitioners in their surgery or in hospitals: nevertheless 6% of mothers state that their child (aged at least 3 months and less than 5 years) is not vaccinated. A survey by the O.N.E. [173] shows very good rates of vaccinations for poliomyelitis (96.5%) and for diphtheria-tetanus-whooping cough (94.8%) of the children frequenting their services. Another survey carried out during consultations at the O.N.E. [174] also notes inequalities in relation to the basic vaccinations at the age of 2: in a group of children from the most underprivileged environment, 9% of the children were not vaccinated against polio, 25% against diphtheria and tetanus.
- For children of school age, a study carried out in the school medical inspection centres (I.M.S.) show that children from underprivileged environments, those in professional education and youths giving up at school present the greatest risk of non-vaccination[175].

3. HEALTH EDUCATION AT SCHOOL

In the French Community.

Health Education should exist in all schools and concentrate on given themes: nutritional education and road safety for youngest; illicit drugs and AIDS being reserved for the older pupils[176].

Various booklets have been produced by the Education Service for Health of the Red Cross and are intended for teachers, pupils, educators, school health workers and parents: books to discover with 5 to 8 year old children: ("Aujourd'hui, nous allons à la visite médicale" (Today we have our school medical), "Une journée avec Félicité Bonne Santé" (A day with Felicity Good Health)), thematic documents ("Une idée pour une action" (An idea for an action) concerning accidents in general at school, "Dossier pédagogique Dents 2000" (Pedagogic file – Teeth 2000), "L'estime de soi, recherche de repères théoriques" (self esteem – looking for theoretical reference points), ...) and finally general documents ("Les représentants de santé des jeunes" (Representatives of youth health), "1,2... Droits Santé !" (1,2… Health rights!), "L'école en projet, repères pour implanter un projet-santé en milieu scolaire" (The school as a project, reference points for creating a health project in the school environment), "L'école "ensantée"" (the "healthy" school)...) . All these documents are free and are both pedagogic and often humoristic (« L'école « ensantée ») tools intended to improve the state of health and well being of children at school.

4. RISK BEHAVIOUR

Tobacco, alcohol, cannabis and food[177]: like in most European countries, the situation in Belgium is worrying and no improvement has been observed during the study period (1986 - 1994), the situation is the same for drug use. This observation pleads for an increase in preventive programmes for health promotion, both targeting the young, their families and their environment.

[172] "Enquête de santé par interview" Thiers,Van Oyen, Tafforeau – 1997, § 4.3.7.3.

[173] Medico-Social database of the ONE, op. Cit., p. 35.

[174] "Prévention et inégalités sociales de santé chez l'enfant et l'adolescent", M. De Spiegellaere, 1998.

[175] "Vers la santé des jeunes de l'an 2000", study ULB/PROMES, 1997, p. 12 à 17.

[176] Idem.

[177] "Vers la santé des jeunes de l'an 2000", study by ULB/PROMES, 1997, p. 18 à 29.

Information about AIDS: according to a study carried out in 1994, 20 to 25% of 13 to 18 years olds have false beliefs concerning the transmission of AIDS[178], whereas in the survey on health carried out in 1997[179], the proportion rises to 41% for the population over 15 years old. This study shows that only 54% of Walloons and 50% of people from Brussels recognised four inefficient protective means as being incorrect, which is troubling and shows the utility and necessity to pursue prevention campaigns. The young would then apparently be better informed than the adults. It should also be noted that 69% of the population over 15 years old have discriminatory attitudes vis-à-vis HIV-positive people and/or AIDS sufferers, and state the desire for identification or of segregation of contaminated people.

Drug consumption and its regulation will be analysed in point III, B of the eighth part concerning the use of narcotics.

The NGOs recommend that campaigns for prevention and health promotion be increased.

5. MENTAL HEALTH

A study was carried out in 1997 in the three education systems and the two linguistic zones in Brussels Region. Out of all the youngsters questioned, 28% of the girls presented depressive feelings compared to 17% of boys. The proportion of boys remains steady throughout all ages, whereas for the girls, the proportion rose from 21.3% for the group of 14 year olds to 33.6% for girls of 17-18 years old. Depressive feelings are most common in non-Belgians, and especially in young girls of North African or Turkish origin (36.2% compared to 23.5%). Attempted suicide is related to depressive feelings, and it is worrying to note that at 15 or 16 years old, 40% have already thought about committing suicide[180]! Girls have suicidal thoughts more often and declare having attempted to commit suicide once or more often.

The NGOs recommend that the actions aiming to improve the mental health and well being of the young be developed and that services for psychological help and extra-hospitable accompaniment are set up.

6. CONTRACEPTION AND PREGNANCY

Teenagers have relatively easy access to contraception in Brussels: the agglomeration is well provided with family planning clinics and activities are provided in schools. The feminine press and magazines for youngsters also cover the subject.

In this context, teenage pregnancy is less due to a lack of information and more a personal issue: taking contraception assumes the choice to be sexually active, however a lot of teenagers are not ready for this. Often, they first look for contraception after already having some sexual relationship[181]. The poor accessibility to contraception can also be for cultural reasons. For example, Moroccan girls are very conscious of the forbidden nature of sex outside of marriage: for them therefore, taking contraception is even more of a defiance.

It should be noted that many teenage pregnancies lead to abortion. Thus, 39.5% of abortions are carried out on women aged less than 20 years old. A Commission responsible to evaluating the application of legal measures concerning abortions published statistics on the number of abortions: the total number has remained steady since 1996; on the other hand, the number and percentage of teenage abortions increased steadily (12.4% in 1993 to 15.8% in 1999).

[178] Idem.

[179] "Enquête de santé par interview" Thiers,Van Oyen, Tafforeau, 1997, §.4.1.1.

[180] Health-meter file Suicide, www.ulb.ac.be/esp/promes/sano2, html.

[181] "Grossesse et désir de grossesse à l'adolescence", Bruxelles Santé, n° 22, June 2001, Brussels, pp. 8-17.

Given this upsurge, the minister of Public Health took a measure in order to prevent unwanted pregnancies. Since June 2001, the " emergency pill", better known as the "morning after pill" is available in chemists without a prescription. The chemists will provide an information brochure[182]. In the French Community, the “morning after pill" is distributed free of charge in the family planning clinics. The NGOs wish to recall that the delivery of this medication should be accompanied by advice and information concerning contraception, notably so that this method is not used as a substitute for a permanent contraceptive method.

If teenage pregnancy is worrying, it is less so in medical terms (except when the pregnancy is declared late or is kept hidden until childbirth) than in psychosocial terms[183]. Quality accompaniment, social and emotional monitoring and adequate medical surveillance will enable the young mother to give birth to a healthy child and in good conditions. Once the child is born, a network must be set up to support the young mother, to encourage the development of a parent-child relationship, to support the informal network (family, friends, neighbours) around her or to act as an intermediary if this is necessary, to ensure the well being of the mother and child and their good development.

The NGOs recommend that the availability of information concerning contraception be increased and that an adequate social and medical framework be put in place around the young mothers.

C. By way of conclusion, the NGOs wish to make the following remarks:

- Contrary to the preconceived ideas that only homeless people have problems accessing healthcare, in our country a family and child poverty persist in this area,
- The reforms in the illness-invalidity insurance implemented are a progress, but it only by evaluating them that we will be able to judge their efficiency in terms of reducing of the social inequalities of healthcare, as even today many children are not covered, both refugees and clandestine children, as well as autochthonous families who have not yet re-established their rights,
- The minimum threshold for access to healthcare requested in the General Report on Poverty is far from being achieved, the C.P.A.S. keeps a large margin for manoeuvring when attributing their aid, which probably explains the still frequent use of emergency services, and contributes to the lack of continuity in healthcare.

The NGOs recommend that access to healthcare be made equal for all, irrespective of social class.

III. Social security and child care services and establishments

A. Social security[184]

The Partner Associations of the General Report on Poverty contributed to the debate on the modernisation of the social security system in June 1996. In this contribution, they formulate a set of propositions concerning the family allowances, some of which were replied to.

The organic law of the Public Centres for Social Help (C.P.A.S.) provides, in its first article, that “all people have the right to social help. This aid aims to allow each person to lead a life in conformity with human dignity”. It is obvious that minors are included in the expression

[182] “La pilule du lendemain en vente libre”, Le Soir, 1st June 2001.

[183] “Grossesse et désir de grossesse à l’adolescence”, Op. cit, p. 15.

[184] For this part see the contribution by Cécile Mangin, Service du droit des jeunes, July 2001.

“all people", and that they have the right to social help to allow them to live worthily, in accordance with measures of the Convention for Children’s Rights.

This right to social help means the minor has the right to appeal against a negative (or unsatisfactory) decision made by the C.P.A.S. Indeed, *anybody can appeal to the Court of work against a decision concerning individual help made by C.P.A.S. or any other organisations that the Council has entrusted with competence, and concerning them* (article 71, 1st paragraph). The precedent is common, and the question of the minor's legal inability is very rarely raised before the Courts of work.

Social help can take on various forms; it can be *palliative or curative, or even preventive. This help can be material, social, medical, medico-social or psychological* (article 57 § 1st, al. 2. & 3.).

So that the help given best answers the needs of the concerned person, *intervention by the centre is, if necessary, preceded of a social investigation, leading to a precise diagnosis on the existence and extent of the need for help and the proposal of the most suitable means to deal with the problem* (article 60 § 1). *Material help is granted in the most suitable form* (article 60 § 2, al 1st).

The right to the minimum benefit is provided for pregnant minors (A.R. of December 20th 1998 expanding the area of application of the law of August 7th 1974).

Nevertheless, it should be pointed out that some children cannot benefit from the help granted by the C.P.A.S.: foreign minors who are illegally on Belgian territory. This point will be considered in more detail with point I. A. of the eighth part, concerning special protective measures for children.

In practice, all too often the C.P.A.S. still refuse to grant social help to minors, as most of these centres consider it is not their responsibility to provide help for children, even if they are in difficulty. Sometimes the social assistant that receives the request for help blocks the request, and even refuses to register it for an eventual consideration by the Council for Social Help.

Questions of territorial competence are added to the problem: when a minor moves from their legal home, to live in another district, the C.P.A.S. in the district where they actually live and the C.P.A.S. of the district where they are registered tend to "keep passing the buck", each considering that the other is territorially competent.

At other times again, the social assistant who receives the request for social help (or the advice from the social help) considers that because the person making the request is a minor, it is obligatorily the Help for Youths Service that must intervene. However, the decree for the help of youths provides that the intervention by a councillor is supplementary to intervention by the primary services (which includes the C.P.A.S.). It is often wrongly that the C.P.A.S. "returns" the youth to the SAJ. The latter will often send the youth back to the C.P.A.S. (sometimes with an accompanying letter indicating that they are not going to intervene, and that it is indeed the responsibility of the C.P.A.S. to help the youth). The minors then find themselves in an institutional "game of ping-pong", whereas they need help destined to allow them to live in conformity with human dignity and this help is needed as quickly as possible.

Finally, it should also be noted that the help the C.P.A.S can provide to a family in difficulty is much more flexible, less stigmatising and often with less important consequences than the intervention provided by the Help for Youths sector. This latter leads all to often to the child being taken into care and placed because of the lack of valid alternative solutions. However, as we have already seen, social help can be ministered in various forms: the C.P.A.S. can equally well consider providing material help (notably but not exclusively financial, isolated or regular), concrete aid (for example, domestic help), educational, legal or social help… This help can be preventive and/or curative. The C.P.A.S. can also, if absolutely necessary, help the family by momentarily taking responsibility and placing one or several of the children. These placements generally are much shorter than the placements decided on by

the Help for Youths, because the C.P.A.S. are aware of the financial implications of such a measure and will end it as soon as it is no longer justifiable.

The NGOs recommend that encouraging measures be developed and implemented favouring the taking of responsibility of youths and families by the C.P.A.S. rather than by the Help for Youths Services. These encouraging measures should come from both the French Community, which can repay all or part of the help granted by the C.P.A.S. to minors, and from the federal state that can provide more advantageous repayment rates to the C.P.A.S. in this case.

B. Child care services and establishments

1. IN THE FRENCH COMMUNITY

The French Community adopted a quality code for care on May 31st 1999. This code for care applies to children aged 0 to 12 years and states various requirements for care structures other than the school the family. The “Ligue des familles” prepared a file presenting these new requirements and actively works for their implementation. In this setting, they remind us that “caring for a child is never passive, it is an educational task that depends entirely on the image we have of the child and of the adult they will become" and provide some guidelines for this purpose. Thus, quality care must answer the child's needs (in security, well-being and learning), recognise the child like an independent being (i.e.: with a body, heart and head), to give them a place in and by nature, culture and society, to be able to count on competent people and finally to include the parents in their educational work[185]. It remains to be seen what application this new code of quality for care will be given.

2. IN THE FLEMISH COMMUNITY

Quality care for the child must be considered as a right for all children, if sufficient conditions are met in three aspects: the quality of the care, the price and the offer.

With regards to the quality of the care, Flanders has made a lot of progress of late. The charter of quality for school care for foreigners fixes some requirements concerning education, accompaniment, parental participation, infrastructure, security and health. Furthermore, the “decree for quality for well-being institutions” has led to a new proposal for regulation in the childcare sector, both for day care centres as well as for care outside school hours. When the minimum requirements for quality in the sector were prepared to which all institutions must comply, the C.I.D.E. received a lot of attention. As well as the obvious and measurable standards, the involvement of parents and children has been guaranteed. The institutions can use their own creativeness to achieve these standards, and the methods are described in a quality manual. (For a more in depth discussion on the right to participation in childcare, see part III of the present report). Children’s rights in childcare therefore seem to be insufficiently guaranteed. The NGOs ask that sufficient attention be paid to the "stamina" of the child: a difficulty objective norm with which the interests of the individual child are specified, and not the requirements that the job market imposes on the parents. This must be put in the balance when determining the time a child will spend in care[186].

Childcare is not however an option that all families can afford to pay. The Flemish authorities have the responsibility to provide sufficient means so that childcare becomes an accessible basic need for all families. Also, the contribution by the parents could be related to income and the number of dependent children.

To conclude, the NGOs ask for an expansion in the offer of childcare. On one hand, the free choice for a given type of care must be assured by filling in “regional gaps”, places where

[185] “Accueillir des enfants à la Ligue des Familles”, Ligue des Familles, January 2001, pp. 10 et 11.

[186] BGJG, “Droits de enfants: un bilan”, 1999.

no type of care is provided. On the other hand, particular attention must be paid to specific needs. It is above all these categories of users that have the greatest difficulty finding a place in childcare, and are often even refused. By filling in these “categorical gaps“ the solution could be found.

The NGOs recommend that the authorities urgently implement the creation of an greater offer of good quality childcare. This offer must answer the needs of parents without exceeding the child’s stamina, with rates that consider the family’s means (incomes and number of dependent children) [187].

IV. The standard of living

The question of the standard of living of children naturally depends on the standard of living of their parents.

Furthermore, a family's means is not only determined by the income, but also by the number of people that must live on this income.

Children cost money and the authorities have the mission of being watchful that the decrease in the standard of living that occurs when families have children is compensated for by interventions.

A. Assessments

1. THE INCOMES AND EXPENSES OF FAMILIES WITH DEPENDANT CHILDREN

In general, the single person or couple without children manage better than a couple with children[188]. The more numerous the family, the lower the standard of living[189].

The General Report on Poverty recalled, if it was necessary, that in Belgium families exist that do not have the means to raise their children as they wish and as they have the right to: "*These families have very low incomes, which are irregular and often insufficient to make ends meet. We hardly ever find households with double incomes. Most families live on a replacement income. Some must even manage with only the family allowances...*"

In a note in January 1998, the “Lutte Solidarité Travail” and the “Mouvement ATD Quart Monde” reminded us that even today "*every day parents find it difficult, or impossible to allow their children to emancipate themselves in a free manner because of the omnipresent weight of poverty*"[190].

How many families do not sufficient resources to assure the harmonious development of their children? Is their number increasing or decreasing? How much money is necessary to live in accordance with human dignity?

The answer to these questions refers to the question about the definition of the poverty threshold, to the question of fixing a vital minimum or the cost of child, all very imprecise notions.

And how much money is necessary to it to live in accordance with human dignity? This question also refers to the question of the cost of a child.

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[187] BGJG, “Dossier accueil enfant”, 2001.

[188] Conclusions drawn from the numeric data that appears in the Social Portrait of Wallonia, “Niveau de vie, pauvreté et inégalité”, Fondation Roi Baudouin, 1995.

[189] B.Cantillon, “Famille et sécurité d’existence”, February1994 and study by Bond Van Grote and Jonge gezinnen (Ligue des familles) in collaboration with the National Institute of Statistics, 1998.

[190] Extract from “La famille et le placement des enfants pour cause de pauvreté”, Associations Partenaires du Rapport Général sur la pauvreté du côté francophone, LST et ATD Quart Monde, January1998. Note prepared as a starting point for the dialogue with the French Community.

According to the calculations made by the Flemish “Ligue des Familles”, based on the Roland Renard equivalents scale, the minimum cost of a child is evaluated as about 10,500 Belgian Francs per month.

These costs increase considerably with age and vary between about 8,000 Belgian Francs (BEF) per month for a child of less than one year old and 15,000 BEF for a child of 18 years.

From these figures it can be seen that the present values of the family allowance are insufficient and far from covering the minimum expenses. Even by considering the reduction in tax for dependent child, the expenses are not covered and people with (several) children have a lower standard of living than childless people or people with less children and a similar income[191].

Another source of data concerns the figures of the CSB (Centre for Social Politics) at the University of Antwerp:

- In 1996 the necessary total budget for a mono-parent family with two children is estimated as 36,175 BEF without rent, 40,280 BEF with rent in the social sector and in 47,833 BEF with rent in the private sector.
- For a couple with two children, the necessary budget is considered as 44,273 BEF 47,610 BEF and 56,397 BEF respectively.

The comparison between these budgets and the minimum income shows that the minimum wage is slightly lower than the necessary minimum budget for a mono-parent family with two children, the lowest unemployment benefit is far below this budget. The situation is much more serious for couples with children, for which both the minimum wage and the minimum allowances are appreciably lower than the budget. The minimum benefit is below the budget for both types of family, but again more so for couples with children.

The rent represents an important part of small budgets. The association “Recht-Op”, in collaboration with “Samenwerkingsverband Turnhout” calculated that a couple with two dependant children requires 71,350 BEF (1768.72 Euros) per month in order to survive and 92,150 BEF (2284.33 Euros) per month to live in concordance with human dignity[192].

It would be possible, on the basis of these facts, to calculate the number of children whose parents do not have the necessary means to assure the standard of living to which they have the right. However, it is still necessary to have reliable numbers for the number of people earning the minimum wage, with unemployment benefits or the minimum benefit… and be able to isolate the number of people with dependant children.

Does the political will to know these situations exist? In their report “Sortir de l’inactivité forcée” (Getting out of the imposed inactivity) the “Mouvement ATD Quart Monde” and “Lutte Solidarité Travail” (June 1998) doubt it: "*All over Europe, for years, there has been a tendency for the powers that be to conceal the increasing importance of unemployment: the ways of calculation often change, and the jobless workers are dispersed in statistical categories where they are no longer counted as unemployed people. In Belgium, only the compensated full time unemployed people, registered as looking for work, are counted: they were 451,000 at the end of 1997. A large number of compensated unemployed people are not included in the ONEM numbers. By adding all the different categories, one arrives at a total of about a million people compensated by the ONEM or people looking for work in the regional job offices*" [193].

[191] "Enfants : une perspective onéreuse", GGJG, Politique de la Famille en Flandres, 1996.

[192] Centre pour l’égalité des chances et la lutte contre le racisme, “Premier rapport bisannuel du service de lutte contre la pauvreté, la précarité et l’exclusion sociale”, June 2001, p. 111.

[193] Mouvement ATD Quart Monde and Lutte Solidarité Travail, “Sortir de l’inactivité forcée” – Files and documents from the Quart Monde Magazine, Ed. Quart Monde, September 1998, p. 9, 11, 12.

"*At the bottom of the social ladder, poor people are not even dispersed in the categories of people registered as unemployed or not, beneficiaries of the minimum benefit, invalids, disabled or others, which gives them access to certain rights. They are not even in any statistical category anymore, not even in the surveys on poverty. In his review on the implementation of the General Report on Poverty, the Secretary of State for Social Integration notes that it is thanks to an efficient social security system that only 6% of the population suffers from poverty in Belgium. This figure is often quoted in debates on poverty. The tendency that he reveals is probably just, but scientific rigor obliges us to specify that the samples of surveys on which he bases his declaration do not take into account the homeless and people in collective housing, nor all those in an illegal situation...*" [194].

Data available from the ONAFTS (Office national pour les allocations familiales pour les travailleurs salaries (National Office for Family Allocations and Wage-earning Workers)) indicates an increase in the number of poor families (increase in the number of beneficiaries of unemployment supplements, notably of long length and excluded unemployed people, beneficiaries of guaranteed family benefits).

Indeed, the number of children receiving the base rate decreased compared to 1996, while the **???Missing word in original???** have increased greatly (+13.199 units, or + 6.70%).

The families concerned by this residuary regime, planned for those people who are not able to pay their contributions, are often the most underprivileged[195].

The NGOs plead for an increase in the lowest replacement social benefits, as well as a modulation according to the family's size.

They support the Minister of Social Integration in his intention to raise the vital minimum by 10% by 2004. Here too a modulation according to the number of dependent children is also suggested (an increase in the allowance per dependent child).

Various studies (see CBGS and BGJG) show that many of the C.P.A.S. should give a supplementary contribution to families with children who live on the vital minimum.

This is clear proof that the vital minimum is too low and takes to little consideration of the composition of the family.

It should also be highlighted the worrying case of children in an illegal situation, on Belgian territory, but unable to benefit from the family allowance or social help.

It should be remembered that the inequalities concerning health always prejudice the weakest income groups[196].

2. HOUSING

The non-access to appropriate housing has considerable consequences in relation to the family integrity, access to health, access to education, etc.

The European Observatory for the National Family Policies uses the state of the housing as an indicator of poverty, which it measures by according to the state of the roofing (tiles) and of the walls (humidity).

- 7.3% of children under 16 years old in Belgium live in a house with a leaking roof.
- 17.3% of children under 16 years old live in house with damp walls[197].

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[194] Mouvement ATD Quart Monde and Lutte Solidarité Travail, idem, p. 11. See also "Centre pour l'égalité des chances et la lutte contre le racisme", op. Cit., pp. 70-71.

[195] Annual report of l'ONAFTS, 1997, p. 46.

[196] De GROEVE, D., DUCHESNE, "Différences en matière de santé et de consommation de soins médicaux liées aux revenus", *Revue belge de sécurité sociale*, 1991, n°1.

[197] Source : Observatoire européen des politiques familiales nationales, quoted in the annex of the Annual Report 1997 of Kind en

The over-occupation increases with the size of the family: families with three children have problems due to the inadequacy of their housing but have on average higher financial capacities than larger families. According a size norm whereby each family member should have a room, 20% of housing is over-occupied. A more restraining norm, that foresees a common room on top, greatly increases the level of over-occupation to 74% of housing[198].

The ASBL "Consigne 23" welcomes over 200 homeless people per year in Brussels, among which 10% are women with a dependent child. The partner associations of the General Report on Poverty also regularly testify to the fact that families with children are in the street, obliged to look for shelter.

More and more households live permanently in campsites (the number of families with children is not known).

Generally, but without being able to assess the impact this has on children with precision, at the time of the Estates General for the Equality of Chances at the end of 1997 the group "Logement Réuni" highlighted the "*impact of financial difficulties met by a large number of inhabitants, who cannot gain access to the private rental market of housing that depends on the socio-economic and professional class. Without a job it is more difficult, or even impossible, to get adequate housing*"[199].

In 2000, the situation does not seem to have improved[200], particularly in Brussels where the situation is especially critical where "prices increase and the quality of housing declines"[201]. The Committee for economic, social and cultural rights, responsible for the examination of the second periodic report by Belgium on the application of the international pact for the economic, social and cultural rights, in 2000 denounced the shortage of public housing in Belgium and appeared worried by "the fact that large, mono-parent or low income families are penalized with regard to access to this social housing".

Finally, it should be highlighted that, as it will be seen below, housing is directly linked to poverty, and the most often quoted, both by parents and by intervening parties, reason of placement...

3. SCHOOL[202]

The family organisations and associations, where poor families assemble, often quote school expenses as posing enormous problems to families, despite the principle of the obligatory education being free. These associations insist on the consequences of these difficulties on the child's education (embarrassment, absenteeism…)[203].

It can be seen that more and more schools must cope with the non-payment of the "Minerval".

- The "Ligue des Familles" in their position on free obligatory education, reports that in a survey carried out in 1990-91: the school expenses weigh three times more in the budget of a poor family than in the one of a wealthy family, even if the wealthy family spends more. In 2001 the "Ligue des Familles" repeats this statement: one family in three estimates they spend too much and admit having difficulties paying. The "Ligue des Familles" highlight the great variation in the amount spent the parents: this goes from 500 BEF to 20,000 BEF! The "Ligue des Familles" also highlighted that "difficulties for payment are more frequent in

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Gezin, p 40.

[198] "Les inégalités sociales en Belgique", under the direction of Marie-Laurence DE KEERSMAECKER, petite bibliothèque de la citoyenneté, 1997.

[199] Annual Report of CECLR, 1997, p 158

[200] "Premier rapport bisannuel du service de lutte contre la pauvreté, la précarité et l'exclusion sociale", op. Cit., pp 112-113.

[201] Platform "Droit au logement pour tous", 2001.

[202] This point should be read in parallel with the Seventh part of this report, point A concerning Education.

[203] Associations present at the workshop of 20th November 1998 have once again put this problem forward. For further information on this subject, see 7th part on Education, Leisure and Cultural activities.

mono-parent families, those where the father is unemployed and those with the lowest incomes "[204].

- The STIB (Brussels public transport company) has recently instituted the possibility of paying for the school bus pass in instalments because it noted that more and more people had difficulty in paying all at once. This company also instituted a reduced-price bus pass for those with the lowest incomes.
- The Flemish "Ligue des Familles" consider the value of study grants should be increased given the increase in school expenses.

Failure at school is another indicator of poverty. A chapter in the General Report on Poverty is entitled "Le parcours scolaire des plus démunis ou de la confirmation de l'exclusion" (The route through school of the most underprivileged or the confirmation of exclusion). Numerous studies provide figures supporting this.

In conclusion, the question of poverty in a rich country such as Belgium remains extremely worrying[205] despite the public powers' increased awareness and the isolated improvements made in some areas[206]. The associations that fight against poverty have a lapidary formula to describe the situation: "the minimum means of subsistence is high enough not to die but insufficient to live with dignity!"

This is incontestably one of biggest concerns for the NGOs given the great and numerous consequences that affect the situation of children.

B. Family policies

Family policies must not be considered only in one or another political area but rather as a dimension in every political area within which measures must be taken that touch the families directly or indirectly.

Naturally, financial interventions for families concern the sectors of education, and of housing.

1. FAMILY ALLOWANCES

This is the main tool of financial help from the state to families. All the family allowance taken together represents more or less 178 billion BEF, or 2% of the GNP, while tax allowances represents 45 billion BEF, more or less 0.5% of the GNP[207].

The NGOs consider that the concession of the family allowances should be recognised as a child's right, irrespective of parents' status.

The child's existence should be enough to provide the right to a family allowance. This is not yet the case.

The amount of the family allowances has decreased somewhat since January 1st 1997 as the age supplement for the first child is postponed from 16 to 18 years[208] and the age supplement for the first child has been divided in two.

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[204] D. Mouraux, "*Enseignement gratuit :combien payez-vous ?", Le Ligueur, 25 April 2001.*

[205] On this subject, see the Report by the "Centre de recherche Innocenti" of UNICEF, "La pauvreté des enfants parmi les nations riches", June 2000.

[206] It must be noted that unfortunately certain measures aim at making the poor families feel guilty and responsible about their situation rather than really fighting poverty.

[207] Partner Associations of the General Report on Poverty concerning the modernisation of the social security, RBSS n°3, September 1996, p 518.

[208] By carrying out article 3 &1,4° of the law of 26/7/96 aiming to achieve budgetary conditions of the participation of Belgium to the economic and monetary Union.

This reduction affects those families for which the family allowance constitutes an essential part of their budget most toughly. "We cannot do without the family allowance" [209].

The restoration of these benefits and a further increase in the family allowance is strongly recommended.

However, the recent modifications in the grouping of beneficiary children are advantageous for families: groups of different types of beneficiaries in the same household, groups of beneficiary children in the regime of guaranteed domestic benefits, groups of placed children[210].

The General Report on Poverty raises the question of family allowance for children in placement. Indeed, the "original" family needs part of this sum to maintain contact with the child, essential for the child's harmonious development[211].

A new measure has been taken in the regime of the guaranteed domestic benefits by granting a special flat-rate allowance to the "original" family in cases where the child is placement in an institution under the responsibility of the public authority. This measure will only enter in force when the amount of this allowance has been fixed, in an execution decree.

The problem of allowances for children placed in a foster family remains unsolved, both in the general regime and the residuary one, even though it is even harder to maintain contact than when the child is in an institution. The minister of Social Affairs plans to organise a dialogue with the communities in order to examine the proposal for a division on the basis of 2/3-1/3, but no initiative has been taken as yet[212].

The ONAFTS grant considerable attention to the simplification of regulations and to their practical applicability: "...*The population is subject to in depth and varied statistical analyses. These analyses aim to constantly measure the adequacy of the means made available to make ends meet...*" [213].

Currently, the interruptions in their payment that many poor families were suffering, and for whom the family allowance represents an important part of their budget, are almost inexistent. Measures taken such as quarterly payments, the regularisation between family allowances offices and the elimination of formalities for children that do not go to school regularly, seem to be giving good results.

> *The NGOs recommend the improvements being made in family allowance sector be pursued and that all discrimination between categories of children are banished. They propose that the suggestion of the "Ligue des Familles" be implemented by recognising the concession of a family allowance as a right for every child.*

2. FISCAL MEASURES

Exemptions for dependent children are granted as reductions in the basic tax liability (immunisation of the income). They are progressive according to the child's rank. A reduction in the property deduction is also possible (even for tenants).

Households whose incomes are not taxable because of their low value therefore do not benefit, or only in part from this measure. A family policy based on tax allowances is of no help for the poorest families, those that do not have the necessary means to assume their responsibility in relation to the participation in the implementation of the children's rights to an

[209] See the contribution to the debate on the modernisation of the social security by the Partner Associations for the General Report on Poverty, RBSS, June1996.

[210] See Annual Report by ONAFTS, 1997, pp. 31-32.

[211] This point is to be read in parallel with the Fifth part of this report, and more specifically with the point concerning children deprived of their family environment.

[212] Progress report on the execution of the General Report on Poverty, May 1998.

[213] Annual Report of ONAFTS, 1997.

adequate standard of living. Indeed, this reduction system does not lead to repayments if the parents' income is low (negative tax).

The General Report on Poverty mentions some figures: "... *in 1984, it was estimated that 14% of the population (or 1,384,356 people) were in the group of people with an income under the taxable limit. Among these, how many families have children? Who cares? No one apparently, as they are not the subject of any specific survey...*" [214].

The tax reform that has been approved in the meantime insists on "the need to reduce the burden of taxation on income, in particular for low salaries" (Federal Policy Declaration October 17th 2000). This line of action is put into practice with the introduction of a repayable tax credit, which targets low incomes of 20,000 BEF (495.78 Euros) per year, but also, by the elimination of the highest tax rates (52.2 and 55%).

According to a study carried out by the "Centrum voor Sociaal Beleid", this reform will unfortunately not contribute significantly to the reduction in poverty (a decrease of 0.4% in the poverty rate). The whole reform, all measures together, will be of more benefit to households with multiple incomes than to households with a single income, as well as higher incomes. Finally there is a slight decrease in the redistribution function of the tax on physical people: inequality between incomes will increase by 0.9% (Cantillon, Kestens and Verbist, 2000: 12-14) [215].

Furthermore, the federal tax reform also includes an increase in the minimum non-taxable income for single people with dependent children (that are often a fragile group), which is positive.

Besides, it has been decided that maintenance costs for children of an amount of 90,000 BEF gross per year or 83,504 BEF net (or 6,959 BEF net per month) would not be considered as income for the child.

This measure taken with the insistence of the Flemish "Ligue des Familles" is important for the children of mono-parent families with a holiday job. The problem is that because of the amount earned from the holiday job, and the family allowance, the children exceed the limit allowed to remain dependant. For this reason, the parent often has to pay a supplementary tax.

The NGOs are delighted with the measures taken in this area.

The NGOs recommend that the taxation legislation be reconsidered according to its effects on family policies and children's rights as they are mentioned in the C.I.D.E. and that each fiscal measure be subjected toan analysis of the impact on the above mentioned rights.

3. OTHER ELEMENTS OF FAMILY POLICY

A) EDUCATION

The recent decree in the French Community on the mission of basic schools creates a time lag between pupils' timetable and that of the teachers and therefore leads to the supplementary costs of childminders for the parents.

The decree on the positive discriminations reaffirms the principle of free education but limits this affirmation to the ban of receiving a "minerval". Therefore parents still have to pay for: the access to the swimming pool and other cultural and sport activities, photocopies, the class newspaper…[216] Clearly this measure has a much larger impact for families with the lowest incomes and thus impedes the good progress of these children at school.

[214] General Report on Poverty, p. 29.

[215] "Premier rapport bisannuel du service de lutte contre la pauvreté, la précarité et l'exclusion sociale", op. Cit., p 182.

[216] See the position of the Ligue des familles on free obligatory education.

The NGOs recommend that the application of the decree on the missions of basic education be subject to an assessment or, reviewed taking into account the negative effects that it can cause to children and families.

Furthermore, the NGOs recommend that the constitutional principle guaranteeing that obligatory education be free is respected and that total freeness be guaranteed again.

B) HOUSING

The number of children is taken in consideration during the calculation of resources for the assignment of social housing, as well as in the calculation of the basic rent. The difference in rent between the social and private sectors is considerable. However, there are still long waiting lines despite the increased investment in this sector. In what position are families with children?

It also seems that generally there is a greater lack of housing with several rooms, these are the houses requested by families with a low income and several children.

It is rare that children in care are considered in the process of assignment of social housing, or when the size of the social housing is defined, or even when the cost of housing is assumed by the C.P.A.S., even when the official reason for the placement is that the family has too small or unsanitary a house.

A recent measure pays the ADIL (Housing Benefits in the Walloon Region) to those people who leave an oversized social house. This should enable more families with children to have access to social housing.

The NGOs recommend that the right to housing, included in the constitution, become a reality and that measures be taken to guarantee that the difficulties to access housing, essentially for families with low incomes, be solved.

4. OTHER POLICIES

Other policies that have been modified since the General Report on Poverty was submitted affect, among other things, families, although we are not in a position today to evaluate their impact on the standard of living of these families.

As a reminder, we shall quote the law concerning the collective settling of debts, the possibility to combine the minimum benefit and a salary in certain conditions, the quality norms imposed on single-family housing in the Walloon region…

In the area of healthcare, the expansion of the VIPO preferential status, henceforth known as the increased intervention, and facilitated access to healthcare insurance should decrease the cost of healthcare for families. Both the Partner Associations for the General Report on Poverty and the unions deplore the fact that this raised intervention does not concern unemployed people, except in some cases of hospitalisation, whereas some unemployed people such as fathers of large families do not a higher income than someone receiving the minimum benefit. Besides, since June 1st 1999, full time unemployed people and their dependants are now able to benefit from the increased intervention[217]. Finally, the government wants to gradually implement a system of "maximum rates" whereby personal contributions for people with obligatory health insurance do not exceed a threshold value, calculated based on taxable income, and for which the repayment of expenses over this threshold be rapid[218].

Generally the NGOs recommend that an impact analysis be carried out on the consequences of all new regulations on the situation

[217] Law of 3rd May 1999 ; AR of 26th May 1999.

[218] "Premier rapport bisannuel du service de lutte contre la pauvreté, la précarité et l'exclusion sociale", op. Cit., p 141.

of children and families, and guaranteeing the implementation of the C.I.D.E.

C. Between assessments and policies: which is more appropriate?

The compiled elements of the assessments reveal an impoverishment of families and an increase in the number of families with an insufficient income. The European Observatory for National Family Policies also speaks of increasing levels of domestic poverty.

Family allowances, despite continuous improvements in the way in which they work, and which constitute a central element to family policy, are not sufficient on their own to compensate for the necessary cost of raising a child.

The taxation measures tend to avoid the loss of income due to the presence of children. Despite the system of progressive taxation, these measures do not resolve the problem of the inadequacy of some families' incomes. Besides, the present reform has a limited redistribution function.

As well as these two policies, certain measures attempt to compensate somewhat for difficult situations for families, by trying to decrease their expenses and thus increase their available income but other measures further aggravate the situation.

An increase in incomes that are too low has been demanded by the unions, the "Ligue des Familles", the "ATD Quart Monde", the Partner Associations of the General Report on Poverty and by the "Mutuelle" companies... in September 1998 and more recently during the demonstration of May 20th 2001.

It should be remembered that in this setting money has prestige and status: *It is very different to earn a salary for the good reason that feels pride in having earnt it. This is therefore contrary to an unemployment benefit. As for the minimum benefit or social aid, I feel like I am being given charity, which lowers a person's self-esteem*[219]*.*

In the same way, careful thought should be given to the "positive actions" that have been implemented, such as State help for parents who do not have the means to assure their children have the standard of living to which they have a right, notably the problem that the indirect advantages guaranteed to the beneficiaries of certain types of aid such as the minimum benefit mean that some people may not have an incentive to get out of poverty.

The NGOs recommend that the problem of poverty be the subject for an overall social policy within which families are considered as fully-fledged partners.

The NGOs recommend that the Government works in cooperation with the associations that are fighting against poverty and that they implement the concluding recommendations of the various reports concerning poverty.

The NGOs recommend that the government evaluate the effects of all new measures that have an impact on the financial situation of the family and take all specific measures aiming to facilitate access to public housing and improve the quality of this housing, that they guarantee really free education and increase all the minimum social benefits.

They also insist on the modulation of indemnities in favour of the family.

[219] General Report on Poverty, n° 164.

Seventh part - EDUCATION, LEISURE AND CULTURAL ACTIVITIES

I. Education, including training and professional orientation

A. The right to education on the basis of equal opportunities

A. IN THE FLEMISH COMMUNITY

1. FREE EDUCATION

Briefly, article 28 of the C.I.D.E. asks the States to move towards free obligatory education, which includes both primary and secondary education[220]. Unfortunately, it must be noted that in Flanders this free education has not been achieved. The principle of equal opportunities is thus reassessed.

Concretely, these problems can be understood by considering the following regulation:

Access to education is controlled in Belgium by article 24 of the **Constitution**. This article provides among others things that access to education be free until the end of obligatory schooling. This does not mean that the obligatory education is entirely free. The explanatory statement of article 24 specifies that by free access it is meant that the school cannot require that an enrolment "minerval" be paid. Beyond this enrolment, the school can therefore ask the parents for other financial contributions. One must be always conscious that as well as these contributions to the school, other expenses exist that are directly related to the education. These include the purchase of lesson notes and equipment, travel expenses, etc.

In the Flemish Community, parental contribution to the school will be regulated as from September 2002 by the **decree for education XIII** that was recently approved (also known as the mosaic decree) [221]. Referring to the constitution and to the international treaties, the decree determines that money cannot be required for activities that are necessary to obtain the final diploma[222]. According to the explanatory statement, a contribution can be required for "activities that make the lesson livelier". Immediate examples that come to mind are trips to the theatre cinema or concerts, school journeys and after school activities.

Before considering the problems for each level of education separately, it is must be made clear that article 24 of the Constitution and the mosaic decree, both of which apply to obligatory education, whether it be basic or secondary education, in no way guarantee free education. Parents must (1) cope with the contributions to the school and (2) cope with the other expenses related to following an education. The NGOs deplore this very strongly and wish to raise the following points:

- With regard to article 24 of the **Constitution**: according to Flemish children's rights organisations, "free access" must not be understood as only "free enrolment". "Access" has a broader meaning, and includes everything that is needed to follow an education.

[220] According to 28 of the C.I.D.E., the authorities must ensure that basic education be free for each child. For secondary education, the article provides that this education must be accessible for everyone, and that adequate measures should be introduced such as financial assistance if necessary.

[221] This decree has already been approved. The implementation orders have not yet been defined, and will only be done so during the coming months. Consequently, the decree is not yet in application for the school year 2001-2002, and will only be in force at the beginning of 2002-2003, in September 2002.

[222] The final terms are the minimum objectives imposed by the authorities and that each child must reach for each type of education.

- With regard to the **mosaic decree**:
  - The notion "to make more lively" is very vague and easily interpretable. Danger exists that some schools may include a lot of activities in this category. Besides, the NGOs wonder if education itself should not be lively and appealing? In reality, supplementary funds will be requested for features for which education should be able to cope - if it is to be of high quality.
  - A positive point is that, on one hand, thanks to the provided participation bodies parents can have their say about the contributions and, on the other hand, the contributions must be explicitly registered in the school regulations. This last measure could still lead to manipulations: a real danger exists that schools may be tempted to increase their costs, which can lead to the ousting of less well off parents (parents are always informed in advance about the costs, and can chose to enrol their child in an "expensive" or "less expensive" school).
  - It is a shame that no report on the impact on the child has been carried out for the mosaic decree, although this should have been obligatory because children's interests are directly concerned here. A report on the impact would maybe have been able to avoid the negative consequences of this decree.

2. THE COSTS OF EDUCATION BY EDUCATION LEVEL

a. Basic education

Alongside article 24 of the Constitution (see above) that considers the costs of basic education, the federal legislation of the school pact of 1959 is still in application. It must be specified here that in basic education school manuals and other school needs are provided free of charge. The law does not contradict the Constitution according to which the basic measures concerning free access should be considered as a minimal norm.

As already mentioned above, the parental contribution in the Flemish Community will be adjusted in the future by the decree on education XIII. Until then, the cost of basic education is controlled by the decree on basic education of February 25th 1997 in which it was also determined (1) that access to education should be free (2) and that no participation could be required for anything essential to the basic education. With regard to the basic education, little will change with the introduction of the regulation of the decree on education XIII during the school year 2002-2003: the two concepts of "everything that is essential for the basic education" and "activities that are necessary to attain the final result" mean the same thing. This all leads to the impression from a legal point of view, that free basic education is not sufficiently guaranteed at present or in a near future.

Effectively, in practice basic education proves to be far from free. Parents must always cope with contributions to the school and with other expenses related to their child's school curriculum. The results of a recent survey carried out by HIVA and RUG in the area of school expenses in primary education, clearly illustrate our comments. On average, it costs 14,458 BEF[223] (HIVA) per pupil to enable children to follow basic school education. Although most parents are willing to pay these expenses, this contribution is considerable burden for the families with low incomes, especially if they have several children in school. These expenses are fortunately not too dependent on income, which means that there is little margin for savings: one cannot pass below a determined budget, even if the parents' budget is already very limited[224].

[223] The figures, from surveys carried out by HIVA, concern the school year 1998-1999.The costs are higher still according to the year and vary between about 13,526 (for the first year of basic education) up to an average of 18,963 for the last years of basic education. Compared to the results of a survey carried out 10 years ago, for the school year 1988-1989, the school costs for 1998-1999 are in real terms 68 % higher. Despite this figure needing to be considered relatively, it is nevertheless a "real" increase.

[224] I. NICAISE, et al. , "Etude des coûts dans l'enseignement de base", KU Leuven, HIVA, 2001.

The NGOs expressly recommend that basic education be free. The ever-increasing costs are contrary to all the series of international treaties. In this optic, the NGOs strongly regret that the principles of the C.I.D.E. are not integrated in the next mosaic decree.

b. Nursery school

Regulations concerning nursery education, which is not obligatory, and so does not come under article 24 of the Constitution, but which most children attend, more or less suffer the same problems. Here also, the decree for basic education and the legislation for the school pact are still in application and will then be replaced by the decree on education XIII. Payment cannot be required for activities that are contribute to their "planned development objectives" [225], but can be for activities related to these objectives. Nursery education is therefore clearly not free: The HIVA survey speaks of an average cost of 7,974 BEF[226].

c. Secondary education

Contrary to basic education, the "free access" that the constitution guarantees has not been specified by decree in the present regulations concerning the costs of study in secondary education (until September 1st 2002). How this access is to be understood then is not unequivocally described, but the vague descriptions of the concept can also be interpreted here as a ban on requiring an inscription fee, even if the secondary education is not free. The supplementary expenses can be high, even more than in the basic education.

The results of survey of the same type, carried out by HIVA and by RUG concerning the costs of study in secondary education supports our comments[227]. The cost of study per pupil during the school year 1999-2000 added up to about to about 34,162 BEF, and varied between 4,959 BEF to 149,177 BEF. Compared to the results of a survey from about thirty years ago, the cost of study has increased by 55%, taking into account inflation, whereas study grants remain at a minimum of 3,700 BEF and a maximum of 12,400 BEF.

Between the years of study, the networks and different types of education, impressive differences exist. Again, there is an increase according to the different years of study ranging from an average of 30,118 BEF in first year to 44,472 BEF in final year of secondary education. Here again, this amount does not depend on income. In addition, it can be seen that the subsidised free education is clearly more expensive than general education or the subsidised official education. In each type of education, big differences exist according to the school options chosen, but in general, secondary general education is the least expensive type (34,501 BEF per year), followed by professional secondary education (37,217 BEF) and technical secondary education (37,475 BEF) and finally the most expensive is artistic secondary education (45,329 BEF). Knowing that the average income of families with a child in general education is higher than the average of families with a child in professional education, whereas the average cost of general secondary education is lower, we get a "Mattheus effect" (see below).

As for how the parents perceive these expenses, it can be seen in the comparison with data on basic education, that parents often find these expenses too high. In families with a lower income, it is proven that these expenses influence the qualitative participation in education. It is likely that the cost of higher education also influences the choices of studies in secondary education, such that a certain number of children do not follow the education that best corresponds to their capacities. This is in disagreement with the principle of equal opportunities.

As from the school year 2001-2002, the new decree on education XIII will be applied in secondary education. Unlike the situation in basic education, the regulation will modify the

[225] The development objectives in nursery school are the equivalent to the final objectives of secondary education.

[226] See footnote number 256.

[227] I. NICAISE, op. cit.

regulation concerning the cost of study in secondary education, in the sense that the rule is now explicitly anchored in the decree (a vague description of the concept of the Constitution has now been also been cleared up for secondary education). This is a good thing in itself: parents will have the right to be immediately informed about regulations concerning costs. The NGOs fear that the cost of study may further increase for the same reasons as have been mentioned above.

Furthermore, it is positive that the government's agreement provides for a transition towards free secondary education and that the political note by the minister of education shows concern to work “on-the-spot”. It is still too early to verify whether these objectives will be achieved, it is however clear that during the present legislature, much effort is still needed.

The NGOs plead for free education in the secondary education.

Although the NGOs ask for everything to be done so that secondary education becomes free, and so that the system of study allowances thus becomes superfluous, the present situation still seems to call on the present system. The NGOs are of the opinion that a system of study allowances is above all controlled by the abolition of important gaps in an unequal regulation. It seems already that, as in the past, the costs of education will be of benefit to budgetary justifications and not the child's interests.

Besides, there is the question of the "Mattheus Effect": high psychological and administrative threshold levels related to the request for an allowance have meant that it is above all those families that do not need this allowance, that benefit from the system, whereas the group that must be reached, the most needy families, become in sorts the victims of the “non take-up” and do not receive anything.

The NGOs recommend that the system of study allowances be improved so that a greater number of families can receive this allowance.

Furthermore, as long as study allowances are necessary, alternative administrative rules must be found so that the Mattheus effect is ousted completely.

d. Higher education

Participation in higher education is relatively high in Flanders. Flanders has a system of study allowances for higher education; the universities and “high schools” (the latter to a lesser extent) receive the means from the authorities to build a network of social facilities for students. As is discussed below, the process of democratisation is not yet complete. Next to the other obstacles (see below), there it is still the question of financial thresholds. The system of study allowances becomes increasingly selective which makes the threshold even higher for some students.

A fundamental revision of the funding of higher education if planned. A first adaptation was the approval of the new decree on study grants: since the beginning of the 2001-2002 school year a new system will in operation. It is also positive that those students having to repeat a year will be able to maintain the right to a grant thanks to the Joker Grant.

To conclude: with regards to the four levels of education:

The NGOs wish to express their concern about the increasing tendency of the public powers to limit their spending on education, and to replace this by alternative types of funding. An example of this evolution is the decree on education XIII concerning sponsorship and advertisements in schools. As from next school year, secondary schools will be able to raise additional income by advertisements and sponsorship. The high costs mentioned above for activities in the final year and the mention of these costs in the school regulations are also measures that can be classified in the same way. These modifications seem to be temporarily

"irresponsible" and could be interpreted as the first stages of passing the responsibility to the authorities. Studies of comparable evolutions in other European countries have shown sufficiently that when the funding the education is (in part) submitted to the mechanisms of the market economy, the internal and external democratisation of the education suffers negative effects, leading to an inequality of opportunities. The NGOs hope that the government won't take this path, despite the first steps in this direction having already been made. Funding of education is and remains the responsibility of the Flemish Community.

3. Equal opportunities and non-discrimination in education

The elimination of financial obstacles is not really enough to eliminate the inequality of opportunities and discrimination. As well as the external hindrances, due to which access to education is refused, there are also of the internal hindrances, inherent barriers in the education system itself. Many mechanisms, including the structure and offer of education, mean that there are always groups that fall overboard (such as children of the most underprivileged social classes, immigrant children and handicapped children). This is among other reasons, a case of unequal opportunities, based on a tendency to consider the pupils' capacity with disdain, to anticipate they will drop out or play truant from school, etc. These less visible forms of segregation and possible remedies have unfortunately not been sufficiently considered in authorities official report.

The Flemish government has however taken various measures in recent years to better cope with the need for special attention of certain youths and children. Particular examples include the policy for priority education (OVB) for immigrant children, which was introduced in 1991 in primary and secondary education. Currently, an survey to assess the effects of this policy is being carried out, it is still too early to draw conclusions about the OVB. Initially, the implementation seemed difficult, but the system is now beginning to bear fruit. Another example is the project to increase attention to put a process of change in education in movement: the school will adapt to best serve the needs of the children so that their studies and develop progress well. The actions concerning inclusive education and the GON project have already been discussed in the sixth part of this report.

As well as these projects, it is also important to analyse the structure of Flemish secondary education. Over the past decades, a large number of structural adaptations have been made in an attempt to replace a traditional and categorical education system with a more complete structure, so that the unequal internal participation of the different groups can be aided. The present unit structure, which is the final result of this reform, is in fact a moderate horizontal structure, a compromise between the two systems. A great number of examples can be given on this topic, but nevertheless the divide and hierarchy between the different types of education continue to exist, leading to a cascade system. *The unit structure could not avoid that the inequalities that initially exist in secondary education are reinforced throughout the secondary education. The choice that the pupils make at the beginning of their secondary studies still determines to a great extent their future school career and even their professional one.* In higher education children from the lower social classes are still underrepresented[228].

The inequality in opportunities in education has undoubtedly been, over the past decade, one of the most important points for consideration. However, there is presently too little means and energy being spent on the accompaniment and implementation of these measures in the daily practices in the classroom.

> *The NGOs recommend that more attention be paid to the equality of opportunities in education so that still existing inequalities are eliminated.*

[228] DE WIT et al., "Chances égales dans l'enseignement flamand. La politique en matière d'égalité des chances", 2000.

4. IMMIGRANTS' CHILDREN AND ACCESS TO EDUCATION

In all education networks, schools that refuse to enrol children from minority ethnic groups still exist. In these schools, the argument of the "loss of concentration" is often given. This can be understood as follows: in 1993, the declaration of non-discrimination was established for Flemish education[229]. In this Declaration, two main objectives were mentioned: (1) a more equitable presence of pupils from target groups in the schools and (2) a more conscientious attitude by the schools to avoid and to combat discrimination. The Declaration determines that in cooperation at a local level, the schools must reach an agreement of non-discrimination. Most of the time, in these agreements the norms of "under-evaluated" (the number of pupils that a school can take) and of "over-evaluated" (the upper limit, from which a school can then reorient pupils) are taken into account.

Unfortunately it must be noted that these upper norms are used erroneously to refuse the enrolment of immigrants' children, solely on basis of their ethnic group (which is the same thing as racism). This situation leads to very uncomfortable situations in which the child has great difficulty in finding the education of their choice and is often obliged to attend a school kilometres from their home. All this is clearly in opposition to the C.I.D.E. [230]

In November 2001 the minister for education will submit a preliminary project for a decree for the equality of opportunities to the Flemish government. The obligation welcome will be introduced to schools, which is, in itself, a good thing. An important exception is however provide for, whereby the school can refuse immigrants if the schools' capacity to welcome them is exceeded. This capacity will be determined by the percentage of immigrants in the district.

The NGOs expressly recommend that, in cooperation with all those concerned, a policy be studied that would guarantee the non-discrimination and the genuine right to education for immigrants' children.

5. RIGHTS IN EDUCATION.

Although not all children have the right to education, all the articles of the C.I.D.E. must be respected. The right to participation is discussed in part III of the present report. Below we wish to discuss an initiative concerning the guarantee of rights for schoolchildren.

The rights and obligations of the young at school are presently not yet univocally fixed. There is often a lack of will of imprecision. This is not question of the security of the pupil's rights. To define the meaning of children's rights within the school, the NGOs plead for the introduction of the status of pupil. The rights and obligations of the pupils would then be determined. In this manner, the pupils would possess a greater security of their rights. Furthermore, the rights and obligations are clear from the outset, so that discussions and legal proceedings can be avoided.

A preliminary project for a decree for such a status has already been initiated by the "Vlaamse Scholierkoepel" and has been submitted to the politicians. The minister of education has committed himself to introducing the new decrees and the necessary application orders before January 2002 to the Flemish government. The measures would then be implemented from March 1st 2002.

The NGOs recommend that the status of student be created as quickly as possible, based on the preliminary project by the "Vlaamse

[227] Common Declaration concerning the law for non-discrimination , 1993.

[230] M. LAQUIERE, "Une vraie politique de non-discrimination. Une garantie pour l'avenir de nos enfants.", 2001.

Scholierenkoepel". They ask the minister of education to fulfil his promises.

On March 13th 1991 the Flemish government approved a decree that obliges the organising powers of secondary schools to establish a school regulation in which the rights and obligations of each pupil be described. In this decree, children's rights were also interpreted, albeit in a determined manner: the regulation consists of at least the regulation on study, order and discipline. The pupils' rights are considered here as a "right to combat". This regulation must be signed by the parents only. The NGOs believe that the pupils should also sign the regulation. It is very positive that the introduction of this regulation has led to a discussion on the pupils' rights.

The preparation of a regulation for basic education schools is planned in the decree on basic education of February 27th 1997.

B. THE FRENCH COMMUNITY.

Unfortunately hardly any data is available concerning very young children, and this despite the fact that even from their first hours, the newborn will suffer the consequences of their family's conditions on their lives. It goes without saying that the difficulties at school, noted even at the beginning of primary school in underprivileged areas, are due to the inequality of the families' living conditions and thus, an inequality in the parents' ability to assume the full development of their children. Furthermore, examples collected show that often, the underprivileged family's child already feels ill at ease, in difficulty because of the school's demands and even excluded because of their "differences" in nursery school. However, these difficulties do not appear in the statistics. Studies have shown that there is the highest proportion of children not in nursery school in underprivileged environments and in some categories of immigrants.

Furthermore, parents living in poverty can depend less than others on the existing structures, destined mainly to support them in their educational responsibility. For example day nurseries are over subscribed, and generally refuse children if one parent does not work, or the children are placed there under the pressure and constraint, following an intervention by the social security services for youths or the Youth Court. Another example is a project for a day nursery for teenage mothers in Laeken (Brussels), which is having trouble coming into being because of difficulties in getting support from the public authorities.

The general principles of the C.I.D.E. are put to test by the education system in the French Community. Numerous inequalities subsist, if not in the texts, at least in practice concerning access to education and education in general.

On the whole the school population is not distributed homogeneously, **children from favourable environments are rarely registered in the same schools as coming from underprivileged environments**.

The education system in the French Community is characterized by this important differentiation in the public. This differentiation is increased by the totally free choice of school for the families, and has been reinforced lately by the development of policies giving more autonomy to schools, and by fact their funding is public for the pupil[231].

This "quasi-market" situation[232] means that schools have to compete to attract pupils, leading to segregation between establishments that recruit within the same population.

A widespread idea exists that education is more efficient for good pupils when they are together in the same school, the same class. It is claimed that the presence of pupils that are

[231] These aspects are expanded on in the eighth part of this report

[232] V. VANDENBERGHE, "L'enseignement en Communauté française de Belgique : un quasi-marché", Reflets et Perspectives, pp. 65-66.

less gifted, less motivated, less well supported, lowers the education level, this has not been confirmed by existing research[233].

In fact, many parents from underprivileged environments feel discouraged from enrolling their children in certain schools (irrespective of the education network); passage of an entrance exam (whatever the education level); enrolment based on school report; enrolment with an obligation to participate in financially inaccessible extra-curricular activities (environmental classes, ski classes, etc.); suggestion to direct the child towards a "school which would better meet their needs"… Other schools claim they lack space[234].

This "duality" of schools is increasing both in cities and in the country according to the conclusions of the study group from "ATD Quart Monde"

Thus the children from poor families end up in "poor people's" schools. The "Mouvement ATD Quart Monde" also observes that sometimes children from very underprivileged families, who do not understand the school system and who have trouble in talking to the school, are "used by the school": they are kept back even if they succeeded their year, other pupils "pass to the next year" even if they clearly do not have the intellectual means. Pedagogically slow children are kept back as long as possible in a school, without receiving special attention or help; a child is changed hastily from one type of education to another, another child was accepted in a school that clearly no longer welcomed them, when they could not find anywhere else to enrol, to watch out for the pupils, to watch over a class…

This phenomenon is also found in special education where it can even lead to a change in the type of education[235].

The NGOs recommend that the education system encourage the welcome of children from different social backgrounds in the same establishment and the same class, by removing the obstacles with which these children are confronted. This should involve, in particular, work on changing mentalities in order to put an end the to preconceived ideas on the matter. The implementation of conclusive pilot schemes and experiments should a priority.

School orientation is also source of inequality.

Secondary education is organised in specific branches that are conceived as hierarchies, and in which pupils are oriented, not always according to their personal tastes or professional vocation, but in terms of relegation.

Although there are many different possibilities so that children and youths can chose the type of education they wish, the choice of the school is often a negative choice: professional education is chosen because there is nowhere else to go. For example, at the end of the year schools sometimes deliver a certificate certifying success, accompanied by a restriction on all other branches except the professional one and thus strengthening the character of relegation.

Some children that have succeeded in their education in a "low level" school see themselves refused access to general education. The information given by the competent services tend, in some schools, to mention in priority the professional education schools[236].

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[233] D. LIETAER, "Parfois quand la liberté passe, l'égalité trépasse", *La* Revue Nouvelle, October 1998. The author continues by specifying that research shows that pupils do not benefit from being regrouped. Integrated in a mixed class, with weaker students, they will all progress equally. See the summary of this research carried out by Marcel CRAHAY in "Une école de qualité pour tous !", Labor (Quartier Libre), 1997, pp. 54-57.

[234] Coordination des écoles de devoirs de Bruxelles, "Déclaration des réalités vécues dans les écoles de devoirs de la Région de Bruxelles-Capitale", October 1998, p. 1

[235] *Mouvement ATD-Quart Monde,* "Droit aux savoirs de base", *Feuillet de conjoncture n°20*, February 1996

[236] Coordination des écoles de devoirs de Bruxelles, op. cit; p. 2.

The “Mouvement ATD-Quart Monde” suggest that, based on a survey carried out in 1996, the proportion of children enrolled in special education and with a background of poverty is ten times greater than the proportion one of the whole school population in the French Community[237].

Beyond communicating better information to underprivileged families on school organisation, and concerning the available branches and aid (social-medical-psychotherapy centres, scholarships, etc.), the NGOs recommend:

- the reassessment of the means of education (especially in schools classified as "poor") in order to eliminate these inequalities while guaranteeing better access to all branches for all pupils, and quality training for all;
- a search for new methods for teaching, that take into account the situation of underprivileged children, notably by considering education for them, by developing their confidence in both their capacities and in those of their environment, so that no pupil remains without progressing.

The **actual cost of education that a family must support remains high** and free education, even in primary education, is not a reality.

In the French Community, article 100 of the decree on the missions of schools (July 24th 1997) affirms that access to obligatory education is free: all “minervals” are therefore forbidden. However, the same article draws up a list of acceptable expenses that the school can expect from families. These expenses therefore become obligatory for all children frequenting a particular school. The decree thus legalises the financial contribution by families, even though it specifies that the non-payment of expenses cannot be a motive for either refusing enrolment or for exclusion, and it recommends that establishments "take into account the social and cultural origins of the pupils, in order to assure social, professional and cultural equality to all".

Thus, in a number of schools, the school expenses are high: payment of school supplies including textbooks in the absence of a system of loans, photocopies, enrolment to the library, payment of obligatory sport activities, school journeys and excursions, paying day nurseries, cultural activities, etc[238]. It can be affirmed that free education exists almost nowhere and that the costs increase each year the child is in education (especially dramatic in secondary education, both for the children from poor families generally in professional education, which is especially expensive). These financial obstacles seriously disrupt the daily education of the child and lead to considerable suffering for both the pupil and their family[239]. They are also at the origin of some cases of dropping out of school, and even go so far as to make attending school impossible for some, and this can be as early as during basic education.

The “Ligue des Familles” carried out an extremely interesting study in 2001 on the costs of schools[240]. The survey questioned the directions of schools and enabled the following conclusions to be drawn: All schools depend on parents to pay for the material, activities and services that the school offers the pupils and this offer greatly exceeds the list of payable expenses admitted by article 100 of the decree on the missions of schools. Almost all schools meet problems concerning the payment of expenses, essentially delays but also refusals. The urban environment, an underprivileged social environment, adherence to positive

[237] ATD Quart Monde, “Sortir de l’inactivité forcée”, June 1998.

[238] Coordination des écoles de devoirs de Bruxelles, op. cit.

[239] Mouvement ATD-Quart Monde, “Travail d’évaluation du Réseau de l’enseignement”, December 1998.

[240] La Ligue des Familles, “Le coût scolaire privé”, April 2001.

discrimination, the large size of the school, strong involvement are all factors that lead to a high frequency of payment problems. The opposite factors seem to mean there are less payment problems but do not suppress them entirely.

The annual family expenditure varies from 500 BEF to more than 20.000 BEF and there is not a narrow correlation between the quantity spent and family wealth (the poorest families do not necessarily spend the least). This reveals the great disparity between school policies and raises the question about inequality in schools concerning support for learning and education. Families testify to the weight of the opinion of other children (40%), of other families, of the directions and teachers (25%) on the children who cannot pay. The tactics for avoiding paying (not sending the child to school) are considered by one third of families when they cannot pay. Payment difficulties are especially common in mono-parent families, those whose parents have a low level of education, whose father is unemployed and those with a low income, but they are also met in all other categories of families.

The "Ligue des Familles" suggests taking two courses of action. On one hand the cost of schooling should be decreased by acknowledging the participation Council's rights and duty to give an opinion on all decisions that imply private costs; by reviewing and reducing the list of accepted expenditures fixed by article 100 on the decree of missions of schools; by encouraging economising practices… On the other hand, the inequalities should be reduced by developing solidarity practices such as stating that all collective paying activities can be attended by all pupils, without exception; by organising real help for families with difficulties for payment; by planning at the beginning of year all the paying activities and services, thus no longer using the pupils and teachers as treasurers and collectors...

To conclude, as the "ATD Quart Monde" recalled, "totally free basic and secondary education and access for all families to a decent income, are essential conditions for equitable access, dignified education and an institution specialised in the provision of the right to education"[241].

Finally, the decree of June 7th 2001 concerning social advantages[242] could have a positive impact on free education and non-discrimination. Indeed, it allows all schools in a given category and in the same district, which provide free education subsidised by the French Community, to benefit from the same social advantages in the district.

Schoolwork at home in primary education has just been included in a decree of March 29th 2001 that regulates its length, content and assessment. The decree simply bans homework in nursery school, in the first and second years of primary school, and limits it to twenty minutes in the third and fourth year and to thirty minutes in the fifth and sixth year, which is very positive, although the length is a figure that is difficultly measurable. The limitation on content is the most decisive measure of the decree, provided that it is applied effectively. Indeed, it assumes that all stages of training will covered imperatively in class, under the teacher's direction, in solidarity with friends, with the support of school equipment accessible to all. Finally, it is planned that homework will no longer be graded and will not therefore count for the success or failure of the pupil. These measures are important as they reduce the mechanism emphasising social inequalities and make the school take a big step towards the democratisation of education. It is however necessary to pay attention as to how this decree will be applied effectively by the teachers

Concerning the **choice of the language spoken in education**, the NGOs are concerned about a decree being developed in the German-speaking community. In the present system, one can choose either a French-speaking or a German-speaking section both in the primary and the secondary schools. However, once this decree is promulgated, one will still have the choice in primary education, but not in the secondary school, where the lessons will

[241] ATD Quart Monde, "L'enseignement fondamental et secondaire n'est pas gratuit !", op. cit., p 25.

[242] Entred in force the 1st September 2001.

only be taught in German with the possibility for a bilingual course (part-time French, part-time German).

The NGOs wonder whether the rights of the French-speaking minority in the German-speaking community will be still be respected with this new legislation.

The NGOs recommend:

- that it be kept informed about the analyses and propositions made by the "Ligue des Familles" concerning free education[243]. Noting that the implementation of totally free education in basic education and the gradual institution of it in secondary education will take of the time, the "Ligue des Familles" proposes that while waiting attempts should be made to correct at least some of the inequalities. It proposes to act in three directions at the same time: the list of admitted expenses, the schools and the families.

- That work is carried out to simultaneously remedy the whole set of inequalities generated by the education system in order to put an end to the duality of the existing education system!

B. School discipline

A. IN THE FLEMISH COMMUNITY

See the topic on school regulations and the pupils' status discussed above.

B. IN THE FRENCH COMMUNITY

The decree on the missions of schools[244] regulates in part some aspects of the school discipline: the refusals for enrolment and definitive exclusions.

Schools that refuse to enrol a pupil must deliver a certificate on which the incentive of the decision of refusal appears. Very few schools deliver this document spontaneously; some even refuse to deliver it when the pupil asks for it (clear refusal or, the school tells the pupil to come back with their parents, that the director is unavailable and only he can deliver it...).

Furthermore, the legal motives for refusing an enrolment vary depending on whether the pupil addresses a school organised by the French Community or one that is subsidised by the French Community. In the former case, the school cannot refuse to enrol a pupil unless there is insufficient space (in which case the school must advise the French Community) and in the latter case, the school cannot refuse to enrol a pupil on racial, social or sexual discriminations grounds (reading this text "literally" leaves space for all possible interpretations, since it opens the door to refusals for any other motive). This has just been modified by the decree of July 12th 2001 aiming to improve the material conditions of schools of basic and secondary education, which in this respect puts all schools on the same level concerning the obligation of enrolment. Unfortunately, this modification will only enter in force January 1st 2003.

The obligation for clear reasons stated in the decree is a progress, but it is far from being respected. The written motivation does not always reflect what is evoked orally to the pupil: if the pupil presents a "bad report" (grades or behaviour) they are told there are already other "difficult" pupils, that the school's level is too high for them (sometimes even that this is not the right place for them, as this school prepares university students...) and written on the enrolment refusal certificate there is often "no more space". Besides, the decree does not provide a sanction in case of inadequate motivation, and only the local Commission of

[243] Position de la Ligue des Familles sur la gratuité de l'enseignement obligatoire, March 1998, pp. 4-6, and "Le coût scolaire privé", April 2001.

[244] Decree of 24th July 1997 defining the priority missions for basic and secondary education and organising the specific structures needed to achieve these objectives.

enrolments to education organised by the French Community has the power of injunction to enrol a pupil in a school in its network.

Finally, concerning excluded minors that can “no longer be enrolled in a school" the "positive discrimination" decree[245] provides that they could be taken on by social services for a renewable length of three months (and this for a maximum of one year during the minor's whole education). In the same way, for the minor "in crisis" who can be taken on for a maximum length of one month (and this for a maximum of 6 months during the whole education). The minister of education considers that in such cases the minor has satisfied the law on the obligation to attend school. Does such a system conform with the principle of the right to instruction? Does not this encourage exclusions instead of the contrary?

Concerning **definitive exclusion**, it is provided that the facts justifying expulsion must be serious (which leaves a large part of the evaluation to the school, in particular, with regard to facts that harm the moral integrity of others), the facts must be established, the pupil or its parents must be heard (an actual hearing can difficultly be checked), the opinion of the teaching body and of the social-medical-psychotherapists centre (C.P.M.S.) must be given (the text presumes that the C.P.M.S. has already been called, which is rarely the case). It is only at the end of this procedure that the head of the establishment or of the Organising Powers can take the most appropriate decision. In the case of expulsion, it must be noted that a certain number of heads of establishments show little concern about objectify the youth’s situation and omitting to take into account the elements put forward by the pupil. The absence of a real contradictory debate is recurrent; the decision for expulsion is obviously taken before the parents are met. The question of the respect of the defendant’s rights is thus asked. An increase in the number of expulsions can be noted, including in primary and in special education[246]. If the pupil or their parents contest the decision, an appeal is generally foreseen within a specified delay (10 days). But the appeal does not suspend the decision and the pupil remains suspended from school during the examination of their appeal.

The appeals organised by the decree are not often efficient appeals that enable an objective re-examination of the contested decision. Indeed, in some cases, the superior hierarchical proceedings very explicitly become the defender of the school, and clearly mix the roles of "judge" and “party”. From then on, one cannot talk about an appeal in the sense of an unbiased re-examination by another process.

It is provided, within a given branch of education, that there be a procedure for the re-enrolment of expelled pupils. This is a progress compared to the previous situation but here too, the pupil has no idea about how long it will take for them to find a new school. The decree does not impose this. The working of this procedure remains complicated. A number of parents, pupils and professionals lose themselves in it.

It should be noted here that the “positive discrimination” decree has established a non-exhaustive list of motives for exclusion and specifies that the facts justifying definitive exclusion can take place outside the school grounds.

The devices to fight against dropping out of school are numerous. They are characterised by practices that aim to extend social control. It is clear that all the rules adopted in this framework tighten the relationship between the young and school, without attaining the primary objective: to allow the school to fulfil its mission with regard to all[247].

It is increasingly difficult to get derogation in order to recover regular pupil status. As well as the question of the objective thus pursued, the consequences that induced such a situation can be questioned, notably concerning the pupil’s and the school’s incentive, whereas one knows that an unmotivated pupil will more easily susceptible disrupt the smooth running of

[245] Decree of 30th June 1998 aiming to guarantee that all pupils have equal opportunities for social emancipation, in particular by the implementation of positive discriminations (M.B. 22/08/98)

[246] Contribution by Fabienne Diez, Service du droit des Jeunes, July 2001.

[247] *Journal Droits des Jeunes*, n° 179, November 1998, éditorial. See the file dedicated to this subject in this edition.

their lesson. Furthermore, the fact a minor is kept with the status of free pupil goes against the principle of the obligation to school that aims to allow a child to have as advanced a training as possible[248].

A very reduced approach arises from the "circular on school violence" according to Minister of secondary and special education, Pierre Hazette, facing a, at the very least, complex problem. The idea of classifying the different types of violence by alphabetical order, starting obviously with "armes" (weapons) sets the tone. Several criticisms can be made. Firstly, the status of this text is not clear. Whereas in the text this concerns a circular, an employee in the ministry affirms that he does not know about it. Secondly, whereas this circular precise clearly the "repressive" steps to be followed in such or such a case, the text remains vague concerning prevention and the discussion to be had between the different protagonists[249].

The NGOs recommend suppressing all discrimination between pupils in official or subsidised education with regard to access to school, the school obligations, the disciplinary procedures and the paths for appeal.

II. Educational objectives

The "Missions" decree of July 24th 1997[250] defines the objectives that the basic and secondary education must pursue simultaneously and without hierarchy:

- 1st to promote confidence in oneself and the development of the person of each of the pupils;
- 2nd to lead all pupils to appropriate knowledge and acquire the expertise that make them capable to learn all their life and to take an active place in the economic, social and cultural life;
- 3rd to prepare all pupils to be responsible citizens, capable of contributing to the development of a democratic, united, pluralistic society that is open to other cultures,
- 4th to provide equal opportunities for social emancipation to all pupils. This definition is in conformity with the one of the NGOs (and notably the one of the “Ligue des Familles”).

The NGOs recommend that a coherent policy be led on the subject and that the objectives are effectively achieved by the schools.

III. Leisure and cultural activities

A. Generalities

The NGOs note that the policy currently followed on the subject is of an isolated nature and can be characterised by a dispersal of initiatives and subsidies.

Whereas the market for leisure and cultural activities is developing, it remains essentially inaccessible to a large part of the population for financial, information, geographical and cultural access reasons...

However, multiple interesting initiatives target this public. They are often local, of small size, function on limited means, or based on volunteers. They are thus fragile, struggling in financial straits; their salaried staff often has great responsibility and a precarious status. Thus,

[248] Contribution by Fabienne Diez, op. Cit.

[249] Points 5, 6 and 7 see contribution by Carla Nagels, Commission jeunesse de la Ligue des droits de l’homme, May 2001.

[250] Decree of 24th July 1997 defining the priority missions for basic and secondary education and organising the specific structures needed to achieve these objectives, M.B., 23rd September 1997, art. 6.

these initiatives exist difficulty in the long-term, what is essential with this population, and their capacity of welcome and animation is quite insufficient to face the needs.

Thus, all a fringe of youngsters and children does not have access to leisure and the enriching cultural activities. Let's add that they as often live in the districts arranging the less parkland, of plains of games and sporty and cultural facilities. Besides, these are them that can the less to participate in the multiple activities, to the journeys proposed by the schools, but that are paying. This situation also asks the question of a welcome and an animation for the children and the young outside of the school hours, that either accessible to all, that the parents have or no a professional activity.

It is also important to recall that too often the leisure appear in a perspective occupational, restraining that aims actually to frame the young to avoid the juvenile delinquency, whereas the goal of the leisure and access to culture must be above all to allow access to knowledge and emancipation. If one wants to speak of social, individual and collective emancipation, it is necessary to recognise the FRENCH MINIMUM WAGE (guaranteed minimum knowledge) in society and to recognise the essential place of culture in the development of society to allow man to respect his position in the world, to act on the course of his individual and collective history. **For that to make, it appears necessary to come out of our settings of reference concerning corporate action that it is as actors or as political. Decision-makers**

B. In the French Community

Thus, the French Community put of it. Policies aiming to palliate thesis social inequalities and eradicate so much the existing discriminations in the education (decree positive Discriminations) that in culture (the free operations District, Young.) with respect to article 2 of the C.I.D.E. However, yew thesis policies can contribute to fight against the segmentation of the cultural life, they passed today of temporary countries to structural decisions. Thus, if of the decrees as the one of help to the young in French Community or the one under development in region from Brussels on the communal action has the merit to be carrier of a will to come out of a logic of condemnation, they are not less of them the resolutions that find their place to additional title in the sides of other policies organising the academies, the sporty clubs, the cultural institutions, the organisations of youth. Thesis last should accept that the cultural and social difference (regrouping immigration, poverty, the women, the young, the without jobs.) complete makes leaves of our society and is to take in account in the participation of it[251].

To this title, regrettably, within sight of the pressure that the European measures can exercise on the social policies put of it. Every member state, to notes that, the Charter of the rights fundamental of the European union adopted by the European Parliament at the time of the Summit Nice of December in 2000 nearly made the dead end one the question of the right to the culture, except three articles (the articles 13, 22 and 25) that reduce this question one the one hand to the political conditions of the development of the culture, do not take in consideration the conditions economic and social of the exercise of this right of the artistic liberty and the involvement to the cultural life and write down discriminatory practices finally in has text of law: only the aged people haggard right to lead has worthy and independent life and to participate in the social and cultural life. This regret is shared by the Minister of the Culture and Youth who expressed his discontent about the politics led on a European scale in term of

251 C. FREDERIC, "efficient right to culture is a prevention against dependence", June 2001.

251 R. DEMOTTE, "Culture(s), open letter in the Europeans", Ed. Luc Worse, coll. Ashlars.

culture in the "Cultural book". On the occasion of the Belgian Presidency of the union European." [252]

> *While subsidizing the activities in a prompt manner, the government, since the beginning of the 90s, has put the social and economic precariousness under surveillance. To leave this dead end, one is not able to withdraw the corporate action, the prevention, help and the control and to make immediately of this one of the motors of the individual and collective emancipation of youth written in the cultural field recognizing politically and budgetary does not belie its function and its social utility? This can be considered in a global, economic, political and cultural approach.* While giving back to the associative third party function, this one can sustain the collaboration of the different actors of a region (economic, policies, cultural.) in has perspective of social change and to act previously and of inescapable manner one the reasons of the social and economic precariousness and one the conditions of the welfare and collective and to exercise some personal rights[253].
>
> *The NGOs recommend that a global politics be led on the subject, guaranteed to the numerous associations working on the land (plains of games, houses of youngsters, etc.) a serious and recurrent financing. Of the leisure and activities cultural of quality and accessible to all are to this price.*

C. In the Flemish Community

1. PHYSICAL AND PSYCHIC SPACE OF GAMES FOR THE CHILDREN

The Flemish NGOs can note only that the children ask to bodies and screams for more of spaces of games. Various demands of the children insist on this point[254]. The adults agree with them on the principle, but in the practice, it is a lot more difficult.

The first question of the children is not to have places of explicit or exclusive games, but many space to shelter their games. It is the car that poses problem. Who stops the children from playing, as they want it? The car is aggressive and dangerous, besides it takes a lot of place and to conclude that is one" step touches" that does not accept that a bullet touches it. The parents react with anxiety to this demand of the children. In the aftermath of the Dutroux drama parents do not have much esteem for security that society brings them; they are over protective towards their own children and whilst they reject other children. Therefore, the children live more and more isolated. The authorities try hard to fight crime, them trying to eradicate the road insecurity in the villages, but they make little to bring a positive contribution in a living place where the children have their place.

The demand of the children for specific places, mainly intended to the game of the children comes in second position. In the setting of a big shortage of open spaces and the sales value raised of soils, it is clear that the area of game is not a priority. The central authorities do not make anything to bring some changes. At the time of the setting up of a destination plan, no place is reserved to install a zone of games. In the legislation concerning the social housing, the needs concerning housing of the children are never landed (including

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[253] C. FREDERIC, Cit op.

[253] An Action of voting with a ballot that is Policed to protect the rights of infants.

J. VAN GILS, " Children speak about their philosophy of the city. A living investigation done on the basis of conversations with children of 10 to 12 years old", Meise, Kind in Samenleving, 2000.

J. VAN GILS, A convenient investigation on the involvement and the implication of infant. ", Antwerp provincial Authorities, 2000.

the spaces of games in the environment of the dwelling). Contrary to other countries neighboring, no zone of game does not exist with a permanent guide, so that the children of the places very urbanised can have contacts with animals, of the plants, so that the children can construct, to bury.

A possibility to answer this specific space demand is the opening of the school courses during the time free of the children. This solution is not absolutely stimulated in our country. In the newly constructed schools, the court of recreation is placed to such a place that the children cannot use it comfortably after the school. The authorities should give specific instructions to this topic.

The Flemish government (the Minister of the Culture and Youth) makes real efforts to stimulate the communal councils to install a politics of area of games. The concrete results let themselves wait again, but one can expect a good impulse.

The most concrete initiative taken by the Belgian authorities this last time concerning games is the introduction in a legislation of the European norms of security in the area of the devices of games and playgrounds. Thanks to a very intense lobby, one could avoid that it does not lead to a short cut. One searched for in an active way a method that would permit to adapt the value of the game and the necessary security (the children have right at two). As well the merchant sector (the manufacturers and sellers of games), that the non merchant sector (promoters of initiatives of games, organisations of rights of the child) that the public authorities conferred to know how one and the other could act in the child's interest. The AR there pertaining can be considered like a success.

The biggest problem in the area of the areas of games of the children is the one of the time. As well the obligatory time (school welcome) that the time free of the children becomes organised so that it remains game a short time on the child's diary. It depends on the manner of which their parents organised work and family's life on one hand and for the children the school and the welcome on the other hand. In the discussion on family-work relation, the clean perspective of the children is hardly ever or landed not. The problem of time of the children is never landed with either. It is about a strong attack to their luck to play.

2. THE WORK OF ANIMATION IN FLANDERS

In Flanders, there is the question of an offer varied of initiatives for the games of the children that generally is sustained well with regard to the township. The social importance of youth sports is recognised and is appreciated. There remain a certain number of points of friction.

- The formal internal involvement (internal involvement in the form of meetings, dialogue.) could be installed better. The authorities can stimulate these types of involvement.
- Social inequality in free time
- The generation of the young knows the apartheid and the social inequality. The social inequality follows largely the separation lines described previously between the different types of education in the secondary education. It is for example about the refusal of a musical taste or preferences cultural of the groups of youngsters in a of youth centre. The danger exists that the young that are always considered as' different' but especially as' lower' do not finish by turning the back to the society of which they have particularly little to wait. The social workers and the public powers would do well to act with prudence and discernment to counter this way of thinking as ' different.' As making accessible of the open areas and the general facilities in a clear and positive manner for all children and the young, the organisations of youth and the authorities can play a strong role to put in practice an inclusive thought.

The usefulness of work of the animators

- The work of animation has been put in with a big number of preventive objectives. The animators must reduce the aggressions, to work towards the reduction of complaints, to

construct social help accessible to all, to detect problems in time. The involvement is brought back the question of accessibility. The involvement animation is a method that depends on fixed objectives while thinking about prevention and security.

- The NGOs think that the inter-sector work and participating must be a new starting point. It is not the young that must join the animators, but for the animators to join the young. The profile of the animation work owes in other words useful being as instrument of support of the objectives of the children and the young. The work of animation will always have to more methodically to adapt to the securities and norms, types of relations, culture of the young with which the animators work. The involvement means that the social analysis makes itself with the young and demands a big dose of auto-reflection. The involvement is not a method but a starting point.

Eighth part - SPECIAL MEASURES FOR THE PROTECTION OF CHILDHOOD

I. Children in emergency situations

A. Sheltered children[255]

Within the territory of Belgium the today situation is extremely preoccupying: although some initiatives are being taken notably to call the associative world to face the legal concerns, it is manifestly clear that they are first and foremost foreigners before being minors as far as the Belgian state is concerned. The Belgian state does not give any particular statutory right to minor's claims of asylum. Thus, it is regrettable that the next reform of the refuge procedure did not preoccupy the statutory right of the minors.

Various liabilities and declarations of legal or political nature bind the Belgian state as for the non-accompanied foreign minors that ask for asylum in Belgium:

- Article 22 of the C.I.D.E.
- Besides the article 22 of the aforementioned Convention, it refers and corresponds also to the official position of the Belgian government, as expressed in the report in the Convention of the children's rights in application of article 44 of this report:
- To note that numerous measures should be taken again in order to improve the situation of young refugees:
- It now becomes indispensable to have new subsidies in order to create new families of welcome for these young people as well as to create new specialized centers, especially in the French-speaking part of the country.
- Finally, on June 26, 1997, the Council of the European Ministers of justice adopted a resolution concerning minors that are nationals from third country third in which, for the claimants of asylum (article 4 of the resolution), specific liabilities of the member states are clearly defined:
- It is foreseen that the member states of the European union will be able to place minors of 16 years of age or more in transit or exchange for adult claimants of asylum (article 4, 4°); to the contrary, such is not therefore the case for the minors of less than 16 years;
- The requests for asylum introduced by non accompanied minors must be treated by the member states as an important issue (article 4, 2°);
- The minor must also be able to attend every interview for the asylum procedure (article 4, 5°, see article 3, 4°, as a minimal guarantee to be granted to all non accompanied minors);

Finally, these interviews must be led by civil servants that have some experience and suitable training (article 4, 5°, b) in order to really take into consideration that a minor, seen to have maturity and intellectual development, can only have limited knowledge of the country of origin (article 4, 6°). If the NGOs subscribe to the diagnosis and to the minimal liabilities taken by Belgium and the member states of the European union, they are right to deplore the

[255] Les éléments dont il est fait état ici ont fait l'objet d'une audition de la Ligue des droits de l'Homme à la Commission « Intérieur » du Sénat sur l'application pratique des lois des 10 et 15 juillet 1996 modifiant les lois du 15 décembre 1980 sur l'accès, le séjour, l'établissement et l'éloignement des étrangers et du 8 juillet 1976 organique des C.P.A.S. La Ligue des Droits de l'Homme se faisait à l'occasion le relais du véritable cri d'alarme lancé par les diverses associations qui travaillent sur le terrain avec des mineurs étrangers : le centre « Exil », l'A.S.B.L. « Mentor », le service « Droit des jeunes » et, jusqu'il y a peu, le centre « l'Escale ».

immense gap that one discovers here between the speeches and the actual practices concerning statutory rights and integration.

First of all, it is right to reveal the unsuitability of the welcome, legislative and authorized procedures that are reserved to non-accompanied foreign minors.

The non-accompanied foreign minor, who meets alone on the border of Belgium, or even within the territory such as the minors of sixteen to eighteen years do, is immediately confronted with a perspective of remoteness. All too often, the child is required to declare refugee status whereas personal history is not necessarily likely to make the child get statutory rights and that, especially; was not necessarily the initial intention.

In these cases, the general Commissioner to the refugee's only expertise is to examine the demands of recognition of the refugee's statutory right and not visas or residence permits. It cannot give to the child the protection that is required in situations of weakness and vulnerability.

Under the present legislation, the Minister has the power to allow a minor to stay on Belgian territory in the waiting period of a temporary solution (article 9, paragraph 3, of the law of December 15, 1980).

The concession of such a stay would give an opportunity to the Belgian authorities, to better understand the reasons behind the arrival of non-accompanied foreign minor in Belgium, to search for families effectively and, finally, to take a decision based on reason.

The responsibility of the administration is to recover the parents of the children whose rights are stigmatized: this role is implicitly confided to the young themselves and to the NGOs.

The minor must be defined as aged less than eighteen years, whatever its nationality. No sub-category (for example, 16-18 years) can be foreseen legally, or in practice. Indeed, according to the article 118 of the royal decree of October 1981 8, the Foreign Office has the ability to deliver a deportation order to "foreigners less than eighteen years old" and one notes that in practice, the Foreign Office uses this disposition often.

The NGOs worry about the means test of average age of minors. The Belgian authorities determine the age of the minors. Thus, the Foreign Office resorts to a medical test (wrist x-ray) that is not entirely recognized by the medical world because of its significant error range. This test must be abandoned, therefore. The NGOs recommend that all people pretending to be less than eighteen years old be to be presumed and treated as such. In the case of recourse to a medical exam, it is right to grant him the benefit of the doubt. If the minor refuses the exam, a presumption of lie cannot be spread on any account to speech.

The foreign unaccompanied minors will be able to be refused access or be detained at the border. A residence permit should be conceded to them temporarily so that they can benefit from a period of acclimatization to allow them to be informed about their situation, with Belgian procedures, so as to find an answer most adapted to the motive of their arrival in Belgium. Since April 1st, 1999, interns to the office of the foreigners foresee the delivery, to all non-accompanied minors holding a temporary residence permit, intended to identify it, to search for families and in principle to search for the best solution for him. We note that unfortunately it functions very poorly. Indeed, a good number of minors going under definition of unaccompanied children see themselves as excluded from this device (for example because they have an adult with them). The office of the foreigners maintains that these minors are in a very precariousness position in not delivering a residence permit (one maintains them with a document named "declaration reached ", without big value, during very numerous month). This circular, without legal basis, only has a very restrictive value and does not protect the minor.

With regard to the welcome, the handling and the housing, the NGOs wish to recall that the non-accompanied foreign minor must be welcomed and considered before all other considerations as a child and not as a foreigner. The NGOs wish to denounce the legislations very firmly so much that the practice that drives the Belgian state to lock minors of age in the

closed centers in. Thus, some foreign minors frequently meet, whatever is their age, accompanied by their families or legal representatives or non-accompanied convicts in closed centers for adults situated at the border.

However, this detention is not automatic but constitutes a faculty only for the Minister (article 74.5 of the law of December 15, 1980 permits maintenance in a place determined at the border, or in other places assimilated inside the kingdom, of any foreigner who does not fulfill the conditions to enter Belgium and that is declared a refugee at the border).

The minister is authorized therefore to not detain a minor and to confide in people or ad hoc institutions whilst their case is being treated, in order to find a solution adapted to the specific age and situation. This solution would respect article 5 of the back-up European Convention of the rights of man and fundamental liberties of November 4, 1950 that limit the hypotheses in which the detention of infants under monitored education and detention by the competent authority is allowed. Article 37 of the C.I.D.E. defines the infant's detention very clearly as a last resort and therefore only as an exceptional measure.

However, when one analyses what the legislation and the conditions in which the detention takes place in the closed centers, it appears that the detention is not used as a measure of last resort and that it is not as short term as possible. The detention of non accompanied minors in the closed centers must be considered as an illegal measure by the Belgian authorities that is an inhuman and degrading type of treatment according to article 3 of the Convention on human rights[256].

The Belgian authorities have a most regrettable attitude in this matter. Since 1994, the Belgian government has recognized in the report on the Convention on children's rights, that it was indispensably necessary to obtain subsidies to find new families of welcome and to create specialized centers. However, after the declarations of November 2000 according to which the minors would not be detained anymore in the centers, the situation was suddenly reversed in May 2001 when some families were once again locked in the closed centers. The press made an echo in June 2001 of a project that was to create a closed centre reserved to minors who would be relocated to the border in "secure open centers" that would be destined to claimants of asylum[257]. No indication on the notion of "security" is given. Are they open or closed places? However that may be, it appears that the discussions of the Belgian government concerning welcome of the minor claimants of asylum and minors in exile clearly go in a sense safe and post-closing incompatible with the various international liabilities taken by Belgium, notably at the time of the ratification of the Convention to the children's rights.

In the hypothesis however where the Minister of the interior would continue to order the detention of foreign minors that are non accompanied, he appears to respect the liabilities to which he has himself subscribes and that are against the detention of foreign minors of less than 16 years that ask for asylum in a centre for adults (article 4, 4°, of the resolution of the aforementioned in June 1997 26). A minor's detention in a closed centre must be a measure of last resort. The NGOs recommend that solutions of opened type must be found by the Belgian authorities to welcome the minors who arrive in our territory.

To this consideration, the NGOs are delighted with the initiative of various open centers that organized sections especially conceived for the minor and anticipated an adequate[258] framework. A social, legal and school follow-up is assured in some centers. These centers are accepted by the authorities, what seem to us to be clearly making progress.

It is necessary to raise the issue of the actual position of responsibility in a clear and coherent way for certain centers such as the welcome centre for refugees in Bevingen that

[256] . F. VAN HOUCKE, "The legality of the detention of claimants in minor age refuge centres", JDJ, n°206, June 2001, pp. 5-18.

[256] "The rainbow wants to create a closed centre for the young refugee candidates," The Soir newspaper, June 20, 2001.

[258] "Presentation of centres that welcomes unaccompanied foreign minors in Belgium", Newsletter of the "minors in exile, " n°8, May 2001.

keep non accompanied infants whether or not they have a request for asylum. "If the negative decision intervenes, it is not in the interest of the young to expel it out of the country and if a positive decision intervenes, it is not always sufficient for an independent infant to live alone in an apartment. Therefore, the length of the stay of the youth does not depend on the speed of the asylum procedure, but on their behavior, their age and the speed with which they can find an alternative in the centre. The research of a welcome family and a housing centre for the young is another possibility for autonomy."

The legislator should give the supplementary human and financial means to permit the generalization of this welcome. Indeed, some centers complain about not being able to fulfill their missions correctly in the absence of these means.

Finally, the NGOs wish to denounce the lack of psychosocial framework of the child candidate's refugees and children that are victims of illegal armed conflict or children traumatized by exile. This framework should be organized systematically for all minors who arrive in Belgian territory.

Concerning the procedure of asylum, the child's welfare should excel in all decisions being made. The exam for the request for asylum of a non-accompanied foreign infant by the competent Belgian authorities can take, despite article 4, 2°, of the aforementioned resolution, an unacceptably long time such as the case of an infant testified by the ASBL "Mentor": who arrived Belgium in 1994, and had not been interrogated (second practicum of the exam of asylum request) until May 1996.

This waiting generates in the minor's a difficult psychological pressure: already isolated in a country that it does not know and facing a procedure that is at the very least complex, the uncertainty in which it is placed stops it from dedicating itself fully to the projects of insertion that are either submitted to him or imposed.

The rights of the defendant of non-accompanied minors are not respected correctly in the setting of the procedures for asylum. The demand of recognition of refugee's procedure by the office of the foreigners is conducted with a first interview of all asylum claimants without a lawyer being allowed.

Besides the fact that it violates the fundamental principle of respect for the rights of the defendant, this practice contradicts the Resolution aforementioned in June 1997 26 that, in article 4, 5°, expressly demands that the minors have the possibility to attend every interview.

Some civil servants of the competent Belgian authorities end up specializing in the treatment of requests for asylum introduced by non-accompanied foreign minors. It is right to observe that no specific formation, in article 4, 5°, b, of this Resolution, is not dispensed to the office of the foreigners as prescribed. However, for the general Police to refugees and stateless people, a framework and supervision and training has been organized for the people who treat and receive the minors.

The non-accompanied foreign minor being in Belgium faces many problems in the concession of social help.

In effect, the mission of the C.P.A.S. limits itself to the concession of urgent medical help with regard to a foreigner who stays illegally in the Kingdom (article 57.2. 1st law of July 8, 1976 on the C.P.A.S.). *A foreigner, who is declared refugee, stays illegally in the Kingdom when the request for asylum has been rejected and that an order to leave the territory has been notified abroad to the concerned.*

It means that the minors of age who stay illegally in Belgian territory (for example those that received an order to go back or whose parents received an order to leave the territory " definitively") or that stay there irregularly (for example those that are waiting for a decision by the Minister for permission to reside but are not even authorized to stay) cannot benefit from some social help. They have had little luck in seeing their rights respected when they introduce recourse in opposition to such a decision.

It is necessary to raise an exception however with regard to the minors who have introduced a demand for regularization. Indeed, our body of a law dedicates the right to social help of these last without this right can exercise itself immediately by the C.P.A.S. (which won't get repayment by the state or help bestowed in contradiction with article 57.2 of the law); it is then necessary to get a judicial decision to make this right efficient again.

For the other minors in illegal or irregular stays, the C.P.A.S. does not intervene (but always does for questions of repayment).

Some carried before the jurisdictions of work the principle of the pre-eminence of measures of the Convention on children's rights (of which some are sufficiently precise) on the law on the C.P.A.S. The jurisdictions of work show evidence of a lot of resistance and foolhardiness in this area. An isolated decision by the court of the work of Antwerp (5th Hp. October 21, 1998) distinguishes itself however while recognizing at the Convention has a direct effect as a result of which the articles 1st, 2, 3, 6, 22 and 27, are sufficiently precise, and must apply and excel on article 57.2 of the law.

Some minors in illegal or irregular stay benefit however from protection: a circular of January 30, 1995 (by the Ministry of Public health) allows the repayment by the state of financial help granted by the C.P.A.S. to a minor of non accompanied foreign age. For lack of volunteers, the C.P.A.S. helps this category of minors.

However, the social help is well often indispensable to the non-accompanied foreign minor to allow him to organize stay. The vital character of this question is expressed in articles 26 and 27 of the C.I.D.E. The Belgian authorities are also very conscious of it since, in a passage (to the non accompanied foreign minors that ask for asylum in Belgium) of text in the first returned report to the Committee of the rights of the child by the United Nations, they indicated this: "It would be necessary to grant financial help as well as family allowances to help these minors. *Currently, the communities bestow financial help to families who welcome the young placed according to protective politics for help towards youth. In the meantime, the young have the right to the equivalent rate of welfare benefit or cohabitation, so they will only get it after several months and after having made recourse to the current practice of refusal by the C.P.A.S. If the welcome family resides on the territory of one of the towns that has the legal right to refuse all new enrollments, then the young won't get anything from the C.P.A.S.*

- But, the relations between the non accompanied foreign minors and their C.P.A.S. (public centre of social help) are strained by problems that, added to others, are not without consequences on the concession of social help:
- The absence of social follow-up on behalf of the C.P.A.S., the lack of training for employees that deal with the matter of the refugees;
- The frequent and faraway displacements, necessary to make payments for social help, that is caused by the plan of distribution of the asylum claimants that, considering the remoteness, has the tendency to rarefy the contacts of the social workers with the young;

The delays taken by the C.P.A.S. to deliver an indictment, indispensable formality for a sick minor who wants to be going to consult a physician (often enough, the minor is healed" or paid for himself this physician before the delivery of the indictment). The consequences concerning public health and access to care are not negligible.

The last modification of the article 57.2 of the law of July 8, 1976, that implies the deletion of the social help for a person in an illegal stay, applied to the non accompanied foreign minors, puts in evidence the absurdity of the politics of the Belgian authorities in this area. Indeed, the minor who is asked to leave the territory "is tolerated" generally in Belgium until 18 years old, but how can it continue to survive if it sees itself cut off from social help? What is also the sense of school obligation that is imposed if it cannot provide needs at the same time, as it must go to school?

This hypocrisy, that pushes the infant into a marginal position or to delinquency, is unacceptable: a State simply cannot organize a situation of non-right for infants being on their territory without seriously contravening article 3, 1 of the C.I.D.E. INTERNATIONAL CENTRE FOR CHILDREN

To conclude, let's raise as an example, the responsible and coherent position of the C.P.A.S. of Brussels that chose to bestow social help systematically to illegal minors while invoking the Convention explicitly to children's rights (deploring that this help is insufficient and extensively lower than the amounts granted to other people). It should be generalized and improved. The state should encourage the C.P.A.S. to assume their responsibilities.

Different international instruments dedicate the right to education for a non-accompanied foreign minor being on the territory of Belgium.

In the French Community, a " decree viewing the insertion of newly arrived pupils in either organized education or education subsidized by the French Community" was adopted on June 14, 2001.

It is an extremely positive text insofar as it allows the exercise of real right for the instruction adapted for children coming from foreigners. This decree applies specifically to children claimants of asylum or to stateless people's statutory right, and to the children of claimants of asylum and nationals of developing countries, who have been in Belgium less than one year.

It also permits the integration of these children in the classes adapted to their level, even though they are not holders of documents that are proving the success of their studies in their country of origin.

This decree finally plans the creation of "middle classes ", to various conditions, notably in the vicinity of the centers of welcome for claimants of asylum.

Some questions preoccupy the NGOs however about these measures:

- Some children, who have arrived since more than one year ago in Belgium and who having lived there clandestinely could see themselves excluded from this system since the day where they were able to fit into the scholastic system;
- This decree does not foresee specific training of teachers charged with taking courses in these classes;
- Only the claimants of asylum, and the children of asylum claimants can benefit from an "admission certificate" in one year of secondary education; it is not the case of the children that stay in Belgium and wish to get a residence permit (for example for humanitarian reasons); this decree will have therefore for consequence to force these children to make a request for asylum even though it is not their intention to; it has no possibility of recourse against the decisions taken in this area;

The education of the child centers of closed welcome is not assured.

However, the NGOs wonder about the minor's possibility to invest in a study program from the moment when one knows that a decision can be taken or that the social help will be cut while waiting for this if a decision is not made immediately.

The right to education and the school obligation does not make any sense insofar as the minor can do a school project on his own terms. Regularization permitting this school project is imposed and would have the effect of valorizing the stay of the foreign minor in Belgium while giving him the opportunity to come back to its country of origin endowed with a diploma.

By definition, with regard to a non-accompanied foreign minor, no one is invested with the parental authority. A minor that finds itself alone and uprooted, faces enactments and

authorization in which it must pave itself a path to tempt to adjust situation. The people who want to help a non-accompanied foreign minor can also be confronted to the same problem.

Article 3. 1, of the International convention on the rights of the child of November 20, 1989, states that the child's interest must excel; it is therefore essential that the secretary of the Interior uses his expertise to grant a right of stay on basis of article 9, paragraph 3, of the law of December 15, 1980 when he is manifest that a minor is welcomed, without fraud, by a family who raises it and assumes the education and the interview of it.

If one can understand that the office of the foreigners requires that a situation of fact is covered by a judicial decision making the child's presence in the family official, it should be satisfied however with a measure of placement decided by the C.P.A.S., the adviser of help has guidance. Indeed, these decisions are always taken after a meticulous examination on the child's situation that excludes all fraud. The office of the foreigners has acted in dialogue with these authorities and recognizes their intervention.

Otherwise, in order to respect article 20, 1, of the C.I.D.E. and the authorities concerned, the C.P.A.S. and the assistant youth advisers, must fully assume the role that is legally incumbent upon them in this matter.

The NGOs are pleased of the draft of law that institutes a system of guidance with regard to the non accompanied minors and will allow this guardian to exercise on this one the parental authority, to help it in all administrative steps that he must accomplish, to assure him the housing and schooling and to represent it by the various processes of refuge. It is about an indispensable first step in order to assure the protection of these minors. Unfortunately, more than one year later, this project did not see the day again. The NGOs finally insist that an independent guardian should be submitted to professional secrecy.

It is right to recall here that regularization, even when temporary, is not only likely to put an end to disastrous situations, but also takes into consideration the child's welfare (article 3, 1, of the C.I.D.E. INTERNATIONAL CENTRE FOR CHILDREN). It also permits an effective research of the minor's parents. All the importance of the possibilities offered by the article 9, paragraph 3 of the law of December 15, 1980 to the Minister of the interior.

The NGOs are delighted with the creation of a service of tracing by the Red Cross that permits them to search for the families of a detached minor that is without news of their parents. However, they emphasize that this tracing cannot be an instrument of control used by the Belgian authorities to verify the minor's declarations. The goal of the tracing must be to search for the minor's families. Besides, the collaboration with the authorities of the country of origin can have prejudicial consequences for families. Finally, this research must make itself inevitably with the minor's agreement himself, but the case of seriousness suspicions that the child escaped its parents[259].

A general policy is applicable to the non-accompanied foreign minors that arrive on the border of Belgium. Those that are already in the territory of Belgium are not saved either because, in practice, the foreigner office frequently orders a minor, aged of sixteen to eighteen years, to leave the territory while motivating this decision most of the time by the fact that the minor demonstrated that it could travel alone.

Similar attitudes are unacceptable: a minor's isolation is only admissible if it corresponds in search of the child's interest, in the minor's regrouping with families. Only one beacon must guide the Belgian authorities from then on in their politics of seclusion: article 3, 1 of the C.I.D.E. an infant's repatriation may or may not be voluntary.

Finally, the NGOs regret that the project of reform of the refuge[260] procedure did not specify the statutory age of the minors but there were two measures: one expressing the

[259] F. CASIER, “tracing", Letter of information of the "Minors in exile ", n°6, September 2000.

[259] Draft of Law reforming the procedure of asylum, Ministry of the interior, version of December 26, 2000, art. 40 and 41.

minimal rules of the procedure led by the federal administration of the asylum and the second, instituting the test destined to determine the claimant's age. On the other hand, the NGOs worry bout the absence of independence that is conferred to the future federal Administration of the refuge.

To tempt to put a term to the numerous denouncements and to consider treating the non accompanied foreign minor as a minor before seeing it as a foreigner; it is to an inversion of the priorities which is necessary to proceed.

The NGOs recommend therefore the creation of a statutory right that is specific to the accompanied child and respectful of foreign minor's interests. This statutory right must answer all remarks that are formulated above adequately and must be inspired by the recommendations of the "Minors in exile."

B. Children affected by armed conflicts

Belgian foreign politics has, these last years, granted a lot of attention to the problem of armed conflicts and their consequences on the children. The Belgian NGOs are delighted by the particularly active role played by the Belgian government in the institution of an interdiction. The production, trade and use of mines affect children. In this manner, they encourage the government to display pioneer's role while pursuing the implementation of the treaty of Ottawa on the prohibition of these mines.

At the end of the 90s, Belgium also initiated a movement concerning the problem of light weapons and the consequences of their diffusion to children, notably in the developing countries. This process has been followed insufficiently. The NGOs blame the Belgian government for lack of consistency. Belgium already has in principle a good legislation concerning trade of weapons, but this law has been reviled repeatedly to make possible the deliveries of weapons to particular destinations (Turkey, Mexico.). The NGOs call the Belgian government to apply coherent affairs of state on the subject and to grant particular attention in general to the consequences of the deliveries of weapons for the civil populations and the children in particular.

For several years Belgium has dedicated particular attention towards the problem of the child soldiers in the world and was one of the pioneers in the negotiations inside the task groups of the United Nations Organization for an optional protocol on child soldiers in the C.I.D.E. More particularly the Belgian Coalition against the uses of children soldiers - call the Belgian authorities to ratify this protocol as quickly as possible and to fix the age to 18 as minimum age for voluntary recruitment. They ask that Belgium dedicates its diplomatic contacts to encourage the partners of the European union, but also the other countries in the world with which Belgium maintains good relations to ratify also without conditioning the protocol.

The Belgian Coalition against the use of children soldiers prompted the authorities to put an end to the military statutory right of the minors in the military schools, since according to the international humanitarian right, they should be protected in cases of armed attacks.

The NGOs encourage the Belgian government to widen efforts in the setting of the international collaboration against the use of children soldiers and for the rehabilitation of the former children soldiers.

II. The children in circumstances of conflict with the law

At the beginning of this century, a movement of reform of the protective law of the youth of April 8, 1965 displayed the intention to bring a new orientation to the public management of juvenile delinquency. Belgium is in search of a new social answer to the situation of the children in conflict with the law.

The temptation to infringe this law implies a penalty of assorted legal guarantees; the general and convergent tendency raised in the present discussions is the adoption of a more sanctioning model. This option reenters, as before 1912, the intervention of the youth judge around the act committed.

The NGOs think that the major challenge for this operation resides in the question of the economic and social rights of the young. Indeed, protection is in favor of punitive responsibility of the minors, development of a politics of social emancipation with more of acuteness. "Child rights reforms are led astray when they develop in isolation[261]." regardless of a social prevention polity that permits us to understand the passage to the act.

This risk of a drift toward a politics securities aiming at risk populations is indeed especially imminent when this reform takes place in a particular campaign. First of all, impulses in one period of socioeconomic crisis encourage retrenchment. So, it is conceived without concession in question of the reference to the punitive model with which the right sanctioning tempts, in practice, to adapt.

At the same time, it appears clear that the protective system of youth can be improved in some aspects. To name an example, the measures taken in opposition to the young for an indefinite delay to fulfill their educational role, because the young do not know how. Besides, the absence of proportionality in the present system of inconveniences and anticipated introduction in the present draft of law structural answer to the delinquent behavior of the young presented by July 16, 2001 by the Minister of the Justice would make the justice more fair. It would be necessary to reserve however the possibilities to adapt it while foreseeing for example in the law of the maximal attention to detail. The draft also foresees a minimum age from which a minor can be the subject of an answer of the justice for minors, what seems very positive to us. Indeed, the minor is presumed without discernment below the age of 12 years.

However, the NGOs are anxious to formulate some fears with regard to the present draft of law structural answer to the delinquent behavior of the young. First of all, the draft was anxious to depart from the models. However, the model of repairing justice gave good results shows the reduction of the recidivism rate. Besides, of a protective law of youth, one passes to one before government bill carrying answer to the delinquent behavior of the young. Thus, of a legislation centered on the minor's person, the draft reenters all on the answer given to the "delinquency." The logic of the project appears us as being in the lineage of the federal plan of security that erected the young in new emblematic face of insecurity[262].

The project puts the accent on the setting up of "certain guarantees necessary for jurisprudence." However, the NGOs worry that on this agenda these guarantees are not going to do any more justice. The NGOs are also worried of the introduction of the dimension of "vexation" and the essential nature of the sanctioning penal system planned for adults (that showed all limits besides). It is in contradiction with the pre-eminence of the educational dimension and social rehabilitation on the repressive approach that is defended at the same time by the same draft of law. The approach of the juvenile delinquency puts on a finality of law and order, spotless to the criminal law, thus. However, the penal answers do not suit the minors of age whose evolution is not yet finished.

The NGOs regret that although he proposes various answers to the delinquent behavior, the project does not articulate the confinement of the delinquent minor. Indeed, article 53 foresees the possibility of keeping a minor in a jail as abrogated then (this abrogation has been one of our recommendations for years), the Minister of justice announced the creation of five new federal institutions specialized in jailed delinquent minors. It appears from the moment globally, the number of places foreseen in closed institutions is not going to decrease but on

[261] G. CAPPELAERE," Some reflections on the "Walgrave report, JDJ n°173, March 1998, p.22.

[262] Press release of the League of the human rights, "minor delinquents: new expiatory victim of the Minister of the Justice, Brussels, July 17, 2001.

the contrary rather to increase. These new types of confinement foreseen by the Minister are not more respectful of the Convention to the children's rights and do not guarantee the legal security that to very short term. On the contrary, the number of social workers and educators affirm that the whole work achieved in the districts and the families are questioned again when a youngster was the subject of such a confinement.

Despite these remarks, it is positive that the attorney General works to a modification of the legislation to solve the mentioned problems. But the initiative lets itself wait and a lot of time will be necessary again so that the government bill is approved. The NGOs ask the authorities to take emergencies into account and to consider the reform of the youth rights as an absolute priority.

The NGOs recommend in this campaign that a model aiming towards the integration and the rehabilitation of the young be taken into consideration. In the long run it is only constructive measures that will institute social peace and protect society. It is also right to avoid an explicit reference to the criminal law of the adults, which showed all these limits.

A. Administration of the justice for minors. (Article 40)

The NGOs wish to pinpoint different Belgian situations in connection with the procedural guarantees expressed in article 40.2 of the C.I.D.E. INTERNATIONAL CENTRE FOR CHILDREN

1. "RIGHT TO BE PRESUMED INNOCENT UNTIL PROVEN GUILTY WAS LEGISLATED"

Since 1991, we attend in Belgium a meaningful enough resurgence of the "sanctions reforming praetorians." First experienced by the section youth of the public prosecutor's office of Brussels, this new politics trying to fight "petty delinquency" by measures judicial so-called " alternatives" saw itself institutionalized and extent to other precincts in the setting of a global Plan for the use. The contracts of security and society permit the engagement of loaded temporary officials thus specifically to organize the execution of these measures in the cheap and common that make the demand of it.

According to the public prosecutor's office, the philosophy of these working sanctions inclines on the principle according to which the absence of reaction led by the closing acquittal the young offender. All infringement should bring a firm reaction therefore on behalf of the judicial power.[263]

The scale of such measures raises two types of problems denounced as being preoccupying many times. [264]

On the one hand, these judicial practices often make an effect of extension of the social control observed by the criminologists. The objective being to fight against the impunity, these measures are not in applied fact that to the least serious infringements. They touch the delinquents descended of the underprivileged classes more.[265]

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[263] Royal decree of August 12, 1994. See also the circular of the department of Justice of March 7, 1995.

[263] N. OF VROEDE," A new answer to delinquency amongst the young: measures of diversion", JDJ, n°133, March 94, pp. 13-15.

[263] J. - P.BARTHOLOME," repairing Measures, hard labor or educational sanctions", Newspaper, n°85, May 1986 pp.12-15," The experimentations of the Public prosecutor's office", JDJ n°45, May 1995, pp. 216-217; R.CARIO," Criminal law of minors. Decadence in education", JDJ ed. fr., n°164, April 1997; Ph. MARY and D. De FRAENE," Sanctions and measures in the community. Critical question in Belgium", Report to the King Baudouin Foundation, 1997.

Hp. ELIAERTS," the non custodial uses of alternatives to imprisonment", Alternatives to custodial sanctions. Proceedings of the European seminar held Helsinki in, Finland, 26-28 September 1987, HEUNI, Pub. N°15, 1988, pp.194-227.

It is regrettable that the Council of state declared these demands due to a lack of interest and avoided making a decision on this question.

On the other hand, these penal injunctions decided by the public prosecutor's office pose important legal problems. Their legality can appear indeed as very doubtful to some considerations: presumption of innocence, right to equitable suit, rights of the defendant. First of all, the organ that is charged of the pursuits and the functions of investigation on the materiality of the facts is the same that the one that decides and supervise the measures.

This organization imposes some conditions to an innocent presumed guilty whose guilt a court has not been established contradictorily. Finally, the agreement given by the minor can appear as irrelevant because it was obtained in doubtful conditions. It is in this respect troubling that the draft of law of the Minister of the Justice ratifies these practices.

Different requests in annulment against the circular of March 7, 1995 organizing these measures have been introduced before the Council of state. In the waiting of a reform fundamental of the law of 1965, the fundamental critiques touch these pragmatic practices in boundary of legality should bring a bigger reserve as for their opportunity. The scientific assessment desired by the Commission Cornelius about these working sanctions proves to be indispensable.

The federal plan of security and the juvenile delinquency, presented in January 2000 by the Minister of the justice[266], includes ten projects represented under the category "juvenile delinquency" and enroll in the same logic. To name an example, the project 64 encourages a bigger collaboration between the sectors judicial and school. *The police and the justice do not enact this collaboration of the "security partner" beyond a new extension of fieldwork.* Also, the project 72 expresses itself like "the unbiased juvenile delinquency report on dormitories" and propose to understand the circumstances that drag some youngsters (also foreign) in crime and it is right to examine the question to know how the youngsters (also foreign) integrate in the criminal organizations. This reference clarifies "equally of foreign origin" gives the tone. As Dominique Of Fraene denounces, the plan signifies new progress in securities production within the setting of a political spectacle that offers the public an illusion of security. *(.) These speeches and these repressive practices have a logic of a vicious circle, to reinforce the exclusion of some youngsters, in other words, to reinforce the hidden violence that they undergo. Invisible violence that can yet be considered like one releases visible violence that is presented to us as being dramatically preoccupying[267].*

Finally, let's raise the issue that in the same order of thought, one closing possibly having value of warning assorted of conditions when the minor recognizes the materiality of the fact qualified infringement is foreseen by the draft of law structural answers to the delinquent behavior of minors. It goes in opposition to the very principle of the CLOSING THAT implies that the fact is not pursued. IF THERE IS NOT CONDEMNATION, NOR PAIN, ONE UNDERSTANDS WHAT THE WARNING OR THE CONDITIONS THAT WOULD COME WITH THIS "CLASS WITHOUT CONTINUATION" MEAN POORLY, SORT OF "PUNITION BEFORE THE LETTER."

2. THE RIGHT TO HAVE KNOWLEDGE OF THE ACCUSATIONS CARRIED AGAINST A HUMAN BEING, SO NECESSARY THROUGH THE INTERMEDIARY OF SOUND OR PARENTS OR LEGAL GUARDIAN.

In the official report by the authorities, it is specified that the law of February 2, 1994 carrying modification of the law of April 8, 1965 concerning the protection of youth widened the rights of the young. It would be necessary to assure that the young have access to incentive measures' during the phase of preparation, as well as of the other decisions taken to consideration. (P.122 and 123)

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[266] D. DEFRAENE, "disorganised Appeal for a return to order", JDJ, February 2000, p. 6.

[266] Cit op., p. 11.

[266] See 2nd relative Part to the child's definition, and to a lawyer's consultation without the consent of parents.

It proves to be the case that the practice is not always in agreement with the law. When the young declare ready to participate in an alternative judicial measure and execute this measure correctly, they do not receive some processes that are judicial or any supplementary information concerning the continuations in their file. A good number of youngsters (and their parents), have a feeling of dissatisfaction. Often a youth can ask the parents and this information also does not dare to reach the judicial processes. (They continue to fear) It is maybe about one point of reflection to try to improve the communication between the citizen and the judicial processes.

3. THE RIGHT TO BENEFIT FROM A LEGAL AID OR ALL OTHER AID APPROPRIATED FOR THE PREPARATION AND THE PRESENTATION OF ITS DEFENSE [268]

As mentioned in the official report of the authorities, the law of February 2, 1994 carrying modification of the law of April 8, 1965 concerning protection of youth widened the rights of the young. In the preparatory phase, they got the right to be attended of a lawyer as soon as the business is carried before the judge.

The aid by a lawyer is not actually always insured. On the contrary, the young are not often informed of what a lawyer actually. When advice is well presented, it sometimes counter acts against remuneration, whereas in principle LAWYERS MUST DEFEND THE YOUNG. Thus, the law of November 23, 1998 on the legal help 269plans the exemption from payment of a lawyer's guide for the minors of age. It is necessary to raise the point however that SUITABLE TRAINING could certainly improve the quality of guidance. To this topic, see the private bill of the Senate aiming to guarantee to the minors a lawyer's aid, second part.

4. THE RIGHT TO BE JUDGED WITHIN A REASONABLE DELAY

The legislation of 1994 introduced an article 52 limits the length of the preparatory investigating phase to 6 months. It is about there a merely formal measure that has no effectiveness: in practice, the NGOs note indeed that the 6 months are passed easily, less in the big precincts. In the same way, the delay of two months granted to the public Ministry not to mention in a public legal hearing after the preparatory investigating phase is accompanied with no sanction and is very often comprehensively out of date.

Besides, concerning the temporary placement in closed establishment, an article 52 quart brings some derogation to the principle expressed to the article 52. This type of measure is like the detention awaiting trial of the adults. In three situations enumerated by the law, the poor obstinate conduct, the dangerous behavior or when the instruction requires it, a minor could be interned theoretically before judgment during an indeterminate length. "When the minor is placed in a closed educational institution, the preparatory stage is not delayed.[270]" The length foreseen by the article 52 is indeed of 3 months renewable only one time but it can be prolonged nevertheless of month in month by well-founded opinion of the judge or the court of youth. With this conception, as specifies it. It would be permissible to the court of youth to order a temporary measure of placement when the investigation is difficult in order to have a longer delay to carry through it. In this way, it would avoid to pronounce a discharge because the file on which it enacts is incomplete.

5. THE RIGHT TO THE RESPECT OF LIFE DEPRIVED AT ALL STAGES OF THE PROCEDURE

In some institutions of confinement, the telephone calls of the young, as well as the domestic visits take place in presence of an educator. With difficulty justifiable by educational

[268] See D. DOBBELSTEIN," The new legal help has arrived", JDJ, n° 193, March 2000.

[268] P. RANS," arrangements applicable to minors having committed a qualified infringement", in Louvain, 1995, pp. 245.

[268] Th. MOREAU," The rules of procedure in the reform of the law of April 8, 1965 on the protection of youth", in Louvain, 1995, p.267.

considerations, these practices can be lived like intrusions in the intimacy of these young and their families.

Considering that the respect of the private life passes by the respect of the domestic life, the NGOs note that too often, and to all stages of the procedure, some measures are taken with regard to a minor without the parents being informed. Again, this situation is especially the case in the big precincts.

With regard to the area of intervention with regard to the minors and more especially the setting up of measures to treat these children without resorting to the order of procedures, Belgium stays inevitably at fault as for the setting up of a social assistance policy intended for the young. Yet judged important in the different devices foreseen in 1965 and 1991 and recalled in the "Minimum Legislation rule of the United Nations concerning the administration of justice for children" (Minute Convention of Beijing) and especially in the leading principles of the United Nations for the prevention of juvenile delinquency (the Principles of Ryad), the general social prevention remains systematically confined to the intention of declaration stage. The public management of the delinquency of the minors continues to take refuge in an individualizing formation of the prevention. This tendency to react only to the problem that the young poses contributes to overlook the social and political measurements of the phenomenon and, therefore to clear the administrator on the one hand important of this one.

Compared to the deficiencies of a real policy emancipative of youth, the means dedicated to the "socio punitive prevention" have been increased considerably during this last decade. The essential of the present criminal politics is nearly centered exclusively on the struggle against the urban insecurity imputed to what it is suited to call "petty delinquency.[271]" This recourse to a "surgical approach" centered on specific situations and on the definition of groups to risks and menacing population offers to become dominant.

It yet appears like evidence that the question that occupies us won't be able to find a solution solely in the judicial spheres or in the specialized interventions. The young are at the source of the social difficulties. It is in this sense that the recourse to the detention does not constitute a solution!

These phenomena of juvenile delinquency and urban insecurity constitute the social problems whose management cannot be let to the only departments charged of the keeping of order above all (Interior) and of the sanction (Justice). To give them such a place constitutes drift securities strictly speaking susceptible to vow to the failure all other approaches these phenomena[272].

Fundamentally, the participation resides therefore in the choice of the way to borrow to answer delinquency. To talk actual social policy and to debate crime and penalization is not the objective anymore. For the time being, the" flight forward" in a diversification of the individualizing corrective interventions continue the major characteristic of our system, sense in which be in motion the draft of law structural answer to the delinquent behavior of the young.

To head toward a justice of the minors really supplementary would require to accept" above all (...) *to analyze economic and social transformations and to examine the findings as for ways of integrate the young[273]."* The option to sanction the survey to Ministry of the Justice puts again with more of acuteness the questions of the place of the young in our society and the one of their economic and social rights. To lead this reflection would deserve, at less, an

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[271] Y. CARTUYVELS, L. SIEVE CAMPENHOUDT," The soft violence of security" contracts, The New Magazine, 1995, n°3, pp.49-56; Ph. MARY," Delinquents, delinquency and insecurity: a half century of treatment in Belgium", Brussels, Bruylant, 1997; A.REA," Security or solidarity. Confusion in the politics of securitisation of the cities", Marxist Notebooks, 1995, pp.51-66; D. OF FRAENE," Prevention does not have limits", JDJ n°170, Jan. 98, pp.13-22.

[271] Ph. MARY, D. OF FRAENE, op. cit., p.48.

[271] F. BAILEAU," Chronicle of a decline", JDJ ed. fr., n°172, February. 98, p.29.

effort of dialogue between the different concerned ministries. The partitioning stretched between judicial power "decision-maker" and power communal "payer" let to all least confused.

The NGOs recommend that all the procedural guarantee are respected, such as the presumption of innocence, the rights to benefit from a legal aid or all other aid appropriated for the preparation and the presentation of defense, and the right to the respect life deprived at all stages of the procedure, etc. The NGOs recommend the development of a preventive policy that tries on the one hand to guarantee the well-being of all and on the other hand to warn the reasons of the delinquency of the minors.

B. Treatments reserved to the children deprived of liberty, and children submitted to all types of detention, confinement and placement in a guarded establishment (article 37 al. b, c and d)

The arrest, the detention or a child's confinement must be in conformity with the law, to be only a measure of last resort, and must be as brief as possible.

1. MEASURE OF LAST RESORT?

Offering little efficiency and having harmful effects on the individual, the confinement continues by nature to be excluding, it has in any case an instrumental function: to exclude the minor of socialization. Different international measures (C.E.D.H., C.I.D.E.) and national (decree of help youth) insist on this principle: the separation of their family's children must be exceptional. However, one notes today in French Community of Belgium, stagnation to the stage of the speeches and the good intentions[274].

The confinement of the minors in conflict with the law is also presented as subsidiary and exceptional solution in the two propositions of fundamental reform to the survey to the department of Justice. A new insight in the solution of the massive institutional placements is the confinement in which risks to fall again these projects régime if they are put into practice. Yet to criticize one major defect of the law of 1965, no precise guarantee is in these propositions that would permit a really subsidiary use, that is to say most moderate possible of this extreme measure. The guarantees foreseen on paper risk do not bring any real limitation if one refers to the exponential growth of the detention awaiting trial of the adults.

It is necessary to underline the way in which judges currently choose the I.P.P.J. (protective public Institution of youth) where they send youth: according to the availability of places, and not according to the specific educational project. It is clear that the objective of confinement supplants the educational project.

2. TO FORESEE MEASURES OF SUBSTITUTION?

Since the middle of the 1980´s, the French Community has subsidized the private services whose exclusive mission is to frame the execution of the measures of general interest work imposed by the courts of youth. Presented initially like alternative to the placement and as supplementary individualization means for the judge confronted to a delinquent minor, the on a big scale application of these measures did not permit to observe no reduction of the number of youngsters shut in a centre of detention or a jail however.

[274] See Fifth part - VI point: children deprived of their home environment

2. All children deprived of liberty must be treated with humanity and with the respect due to the dignity of the human person.

1. THE PLACEMENT OF THE MINORS IN JAIL.

In Belgium, the question of the confinement of the minors, anticipated by the article 53 of the law of 1965 caused since numerous years of important controversial. The confinement of the minors, authorized exceptionally and for one term of 15 days maximally, if it is impossible to find an individual or an establishment at once in measure to shelter it, constituted a real "inhuman and degrading" treatment especially as it often exercised itself in decrepit penitentiary structures, overcrowded, in which it is not practically possible to guarantee the effective separation of the minors and adults.

Today, the NGOs are delighted with the abrogation of the article 53 that will take place January 1st, 2002. This abrogation was indeed one of our main recommendations.

However, the NGOs worry that the abrogation of the article 53 let place to another type of confinement.

Indeed, statistics show that in 1996, not less than 303 minors have been placed in jail, in 1997, 275, in 1998, 212 (tendency to the reduction) and in 1999, 272 (the number of confinements increases 60 confinements[275]). The question arises to know what is going to be the reaction of the youth Judges with regard to these same youngsters.

A constant and concrete proposition is to increase the number of places in closed sections. This solution may be pushed aside as an unresolved problem...Should not attention be focused on a solution to one of our social problems: juvenile delinquency? The number of available places is symptomatic of this first problem.

A more deepened and constructive work would require an action of longer breath on behalf of the government but it would have at least the merit to bring lasting solutions. It would be thus necessary to put some alternatives in place to the placement in jails, more respectful of the human rights, and that would tackle to the real reinsertion of the young in the society.

The abrogation of article 53 of the law on youth protection is therefore taking the opportunity to develop some alternatives that truly maximize confinement, as recommended by the C.I.D.E. and other international treaties.

The NGOs recommend to the state to look after that that of the alternative solutions to the confinement and more respectful the children's rights are found, notably while analyzing the effects of the practice of the recourse to the confinement as answer to the delinquency of some youngsters.

2. THE PSYCHIATRIC TREATMENT OF THE CHILDREN[276]

The NGOs worry about a practice of the authorities aiming to send some delinquent minors in psychiatry when some institutions are in difficulty facing these.

Besides, the social categories in situation of precariousness are the first aimed by such measures of control.

Indeed, this psychiatric handling is a matter for wills to create a new type of social control with regard to a category well concluded of the population. Can one fear that under the

[275] Contribution of Christelle Trifaux, Youth Commission of the League on human rights, May 14, 2001.

[275] Contribution of Fabienne Druant, Youth Rights Service, July 2001.

[275] Letter to Mrs. Marshal, Minister of help to youth, JDJ, March 2000.

table setting of kindliness or therapeutic approach, by this control, one avoids to ask the true question, the one of the social question? [277]

Besides, such institutions would be created for a number of about six cases truly "psychiatric" per year and it appears more discriminating to be able to use the existing institutional and legal tools, rather than to create new institutions. A better joint of work between the different actors of land must be also sought-after in an important manner. The question of the choice of the criteria that would be kept to determine a psychiatric case is evidently crucial. It is right to avoid the recourse to criteria of type prediction to decide the confinement or no of people.

With regard to the legal setting, the former article 43 of the law of April 8, 65 gave the possibility to the judge of youth to order the minor's internment because of mental state.

This article has been replaced, in the setting of the article 38 § 12 of the law of June 1990 26 to the protection of the person of the mental patients, by the disposition according to those: with regard to the child, the justice of the peace takes protective measures foreseen by the law of June 1990 26 to the protection of the person of the mental patients while respecting measures of this law. *From the moment where a minor is put in observation in a psychiatric or tidy service in a family, and as a long time as hard the maintenance, the application of the present law is suspended, except with regard to the article 36, 4°.*

It is the justice of the peace who becomes from then on competent and either the judge of youth to conduct the placement closed of a minor in a psychiatric establishment. This transfer of expertise asks question. An exception is foreseen however to the profit of the youth judge " Except with regard to the article 36 § 4 ") but it asks the question of the interpretation.

With regard to the German-speaking community, the fact to arrange that of a protective open structure of youth he to encourage the return in psychiatry of the cases the more difficult does not risk? It appears necessary to create other structures of welcome in German-speaking community.

In the Flemish Community, as well the committee (by the Decree coordinated of 1990) that the youth judge (by the law of February 2, 1994) confide the minor in a psychiatric institution to open or closed régime as obligatory educational measure. At the time of choosing the institution, one must be careful to not to hinder the family's work (article 23 § 2 of the coordinated Decree).

Since problems of behavior account about 10% of delinquent cases, it would be well to have more collaboration between the committee, youth judges and psychiatric institutions that could solve a lot of youth problems quicker and to prevent behavioral problems amongst the young. One knows in the meantime that a young presenting an ADHD problem (Attention Deficit Hyperactivity Disorder) can evolve toward an aggressive child who can commit some acts named offenses. Depression increases in children and can lead to suicide. One must free more means therefore to return psychic help accessible to children, what is not currently the case. Interminable treatment lists have inevitable consequences.

3. REMOVAL

Removal is the measure taken according to article 38 of the law of 1965 that aims to consider that a minor of age must be judged like an adult by classic penal jurisdictions. It can only be decided from the moment where the court of youth estimates inadequate on duty all measure, of education and preservation with regard to youth pursued to have committed a fact qualified infringement.

Removal is therefore a radical measure that puts minors on the same footing as adults, while placing them in a situation even less enviable since criminal judges know that a court of original jurisdiction already "presumed guilty".

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A judgment of removal often clears on a preventive incarceration and then on a prison sentence. The conception that makes the penitentiary administration of a "minor loosened" has a consequence that it is not considered anymore like minor and that all specific rights are denied to him therefore.

Belgian legislation knew on this point a few legislative modifications (law of February 2, 1994). Strength is however to note that these go in the sense of the widening of the application of the measure since the obligation to do a social survey is suppressed if the minor subtracts itself of it (notion that is interpreted in an extensive manner), and that this same obligation is suppressed for minors having made the object of a first removal already become enforceable.

Statistics seem on the subject to confirm an increase of the application of this measure[278]. Disparities of application between judicial precincts show that the appreciation of conditions of application is very variable. The "degree of tolerance" is certainly not the same everywhere.

When a measure, that wants to be exceptional, loses this character, it is right to interrogate the measure herself and the general consistency of the system put in place. To recommend educational measures on the one hand and to apply those that have less on the other hand this character is contrary to the principles that underlie our legislation.

The NGOs recommend either to suppress the measure of removal, either to return him really exceptional character while limiting the possibilities to resort there, preoccupation of the children's rights Committee following presentation of the 1st report of Belgium. Besides, it is right to look after what conditions of detention of minors, shut in following this measure, are in conformity with international principles notably United Nations minima rules concerning the administration of justice of minors (Rules of Beijing) and United Nations Rules for the protection of minors deprived of liberty. These principles, ratified by Belgium, imply notably that the measure of confinement is exceptional and, as far as possible, replaced by measures alternative to the detention.

4. RIGHT TO REMAIN IN CONTACT WITH FAMILY BY CORRESPONDENCES AND BY VISITS

The visits regulation in some closed establishments appears as particularly strict and sometimes more restraining that the penitentiary regulation reserved to adults. It is clear that restrictions irresponsibility that we are going to describe can enter in total contradiction with the objectives of reconciliation and maintenance of relations with the middle of socialization.

The young are allowed to receive a domestic visit per week; these must be announced in writing or by telephone. These visits always take place in presence of an educator. Personal external searches for families can only be allowed after written agreement from the youth judge.

Telephone calls are also greatly allocated: young people only have the right to 3 communications per week. During a call, an educator is always close to the young. No external telephone call is transmitted directly to the young.

Due to a lack of general regulation, the regulation of contacts with the outside is very heterogeneous of an institution to the other. The extreme practices described above (far from the " to maintain contacts between minors and their relations") are those in forces in has public Institution to closed régime.

[278] For the French Community, 90 in 1994, 145 in 1996, 130 in 1997and 134 in 1998. Source: Brussels general package, Liege and Mons and published in C. Lelievre, Annual Report 1997-1998 of the general delegate to children in the French Community.

5. LEGAL AID DURING PLACEMENT

Article 54 of law 1965 foresees obligatory aid of the minor's lawyer in all order of procedures. On the other hand, before the administrative processes or in the minor's relations with the services of help to youth, there is obviously strong to make.

In practice, when the decision of the juvenile court is made on the strength of legal jurisdiction, lawyers rarely pay a visit to the infant within the institution. The solution of the presence of the educational referent for the defense of the minor's interests can sometimes appear like dissatisfactory as regards to impartiality. "Within the establishment, there are grounds to think about a possible aid system facing an educational team or facing direction (...)." This type of solution, advanced by M. KLAJNBERG, deserves to be studied. This permanence of a professional lawyer within establishments besides the very defense of minors would open legal possibilities of information and access to rights.

III. Children under exploitation, including their physical and psychological re adaptation and their social rehabilitation,

A. Economic exploitation, notably work of children

With regard to international treaties that have a direct or indirect impact on the well-being of children and respect their rights, NGOs ask the Belgian authorities to conduct the ratification of optional protocol without delay concerning the trade of children, child prostitution and child pornography, for the C.I.D.E. and the Convention by International Labor Organization of the United Nations number 182 concerning the most serious types of work done by children.

It is necessary to mention the exploitation of which are victims non-accompanied minors that meets in the circuit of prostitution or work to the black from now on[279].

With regard to the work of children, NGOs raise the lack of studies and statistics permitting to establish a profile and to be able to approach this reality thus correctly.

B. Use of narcotics

In 1998-1999, according to various investigations in the school environment[280], about 25% of pupils of 15-16 years tried an illegal substance once at least, about 20% of pupils of 15-16 years consumed once of cannabis at least during the last 12 months, 15% of this age group, consumed once of cannabis at least during the last month, the proportion of users of illicit substances being raised more among boys that among girls. From the age of 15-16 years onwards, derivatives of cannabis are the most frequently used products whilst ecstasy (an hallucinogenic drug) is the second most consumed product. Among younger pupils, the abuse of solvents, hypnotic and sedatives products is more clear. The proportion of users increases with age, reaching more than 40% of 17-18 years having consumed at least once during their life.

These numbers show us that consumption of drugs in the broad sense of the term is not a phenomenon isolated at teenagers. Besides, it is necessary to raise a clean increase of the number of consumers according to investigations led during the last decade. This fact of society must be taken therefore seriously in consideration.

In Belgium two alliances of policy exist concerning drugs: a federal policy on drugs that consists of managing the problem essentially by a policy of securities that oscillates between help and control, and a more oriented communal and regional axis toward a politics of

[279] See point C about sexual exploitation and sexual violence.

[280] Belgian National Report on drugs 2000, Belgian Information Reitox Network, 2000, p.11

reduction of risks bound to drugs use in a perspective of health promotion with objectives of responsibility and autonomy.

It is in this last perspective that works most associations of land. Prevention remains however the poor parent of programmers insofar as budgets is concentrated in general on care and help. Besides, the political world resists sustaining the "reduction of the risks approach", only coherent and non-inciting politics.

Finally, the very notion of prevention meets important divergences within various people even at the political level. Indeed, the prevention in the sector of health (to which belong institutions of land) and some education aims to develop the mind critical of the young and adults so that they can make choices illuminated according to their own securities. On the other hand, for the police's strength, the notion of prevention defines itself as the respect of laws and law and order, security and struggle against delinquency and crime (what comes with the absence of respect of professional secrecy and confidentiality, that is for institutions of land bases it of all prevention work[281]).

In a general manner, NGOs regret the repressive campaign that surrounds the drug addict since he is first considered as a delinquent whereas this one should be the subject of help on the contrary in the setting of a social policy of health.

Since April 17, 1998, a new common guideline to politics of pursuits concerning detention and retail trade of illicit drugs entered in application in Belgium. The essential of this guideline consists in promoting and to impose an operational definition of the formula used by parliamentarians of the "drug" task group to designate their position with regard to the penalty of the use of cannabis: the weakest priority of politics of pursuits. The guideline does not specify the quantity of tolerated cannabis however, although it makes a distinction between the cannabis and other drugs.

The most important innovation is to allow the police to choose for themselves, according to the circumstances, the minutes simplified for the commission of an infringement concerning the use or detention of cannabis. These are kept by the police and a listing is transmitted monthly or every two weeks to the public prosecutor's office. The listing is transmitted with data whose essential collection is to allow the magistrate to ask at all times for the minutes to which it estimates that there is grounds to give continuation. Data contained in the simplified minutes contain the judicial antecedents, the physical aspect and the state of health of the concerned person as well as domestic, social and professional situation notably. As many discriminative data destined to use the use of cannabis as judicial action lever and to distinguish users according to their physical aspect or the social criteria that will be decisive of derogations planned for the guideline. Thus, this new guideline does not constitute a politics of decriminalization, but well a tolerance of practices of partial decriminalization of fact with regard to the occasional use of tiny quantities of cannabis.

January 18, 2001, the federal government adopted a "political message of the federal Government on the drug problem[282]." The personal consumption of the cannabis is not pursued anymore; it won't be raised anymore in proceedings except usage clauses problem or of social nuisance. The import, production, transportation and detention of cannabis non-intended to a personal use are always punished. Nothing changes concerning hard drugs. This note only concerns adults and no minors of age. Use in presence of age minors is besides expressly taxed of "social nuisances" and minors of age are considered automatically like problem users. In the area of prevention, NGOs are delighted with to note that 500 million supplementary are going to be freed every year for the prevention and aid. According to the federal government, prevention of addiction at the young must start in primary education and

[281] Contribution of Infor-drugs, May 31, 2001.

[281] See http://www.infor-drogues.be/quest-rep.htm

continue until in higher education. With regard to aid, a course of care specific is required for minors of age.

Following the confusion brought about by the federal memorandum, the ministerial circular Hazette of January 2001 31 "modification of federal state rules on cannabis" recalled the necessity for school establishments to act on it. Politics of information and constant and firm prevention under the lighting of two principles directors: the school is places of welcome of minors and to this title, must assures has protection without fails, on the one hand and one the other hand, the right to the pleasure, recognized like incentive of the teenager's behavior. It recalls the interdiction of the consumption of cannabis for the same reason as the consumption of alcohol during school time[283].

The difficulties that NGOs wish to put forward are the following:

There is confusion in the mind of the public maintained by the political power and the media with regard to the last instructions and federal note with for consequence a poor interpretation of the texts. Whereas the law does not change, a big part of opinion is persuaded that cannabis is legalized to see legalized even. It could entail an increase of consumption at young in age of education and a loss of legitimacy and credibility of public power as well as all actors embodying an authority (parents, teachers, etc.).

The last governmental note is also civilizable for various motives[284]. For possessors of a small quantity for personal use, a verbal suit should not be written more but obligation to pay for expenses of justice subsisting, the police would be obliged to identify every consumer in an administrative report, what looks like an oral proceeding! The notion is not clear and will be appreciated by policemen who do not have structure required for it. Finally, no maximal quantity has been fixed, what can be source of an important legal insecurity.

One notes an increase of measures has legal of policemen and magistrates towards youth: trivialization of controls of urines, intimidation, encouragement of denouncement, trivialization of penal transaction that creates a socioeconomic discrimination (fines and confiscation of merchandise).

The risks of pursuit are the same but vary a judicial precinct to the other and also according to discriminations led by the directive: criminal use, risk of marginality and incarceration, of indebtedness.

Is prevention of risks done bind to the use of drugs made even more delicate with the youngest in a confused and ragged legislative campaign in relation to a very different land reality (as to avoid "contagion" of the youngest in such a campaign?).

The role of the police, magistrates, agents of prevention are somewhat confused and too often they fulfill the same functions (therapeutic injunctions pronounced by a magistrate, social work done by a policeman, police work done by social workers, etc.) The effect of these policies centered on illicit substances tends to conceal to the eyes of the population and policy makers the problems important of addictions of the young concerning tobacco, alcohol and some medicines.

Finally, with regards to the Inform-Drugs project by the ASBL, the Non Government Organization worries that the model consumer based in our society excessively consumes all kinds of products and their advertising messages, which condition the young notably to the extent that the "product" becomes an answer to the existential lack and difficulty of getting consumables. The state has responsibility in this model that she propose and permits.

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[283] F. BARTHOLOMES, "cannabis at school? ", Rights, n° 39, March 2001, p. 8.

F. BARTHOLOMES, "Arbitrary at all stages", Rights, n° 39, March 2001, p. 7.

[284]

The NGOs recommend a change in the decriminalization of drug users, being always considered as a delinquent patient by the law; - a consistency on a political level: standardization and adequacy of a regulation anxious to harmonize access to recognized drugs like intoxicants (essentially cannabis and derivatives) as well as use (age limit, quantity, places of consumption, guaranteed of quality of products etc; - the development of a coherent preventive politics of reduction of risks bound to the use to federal and communal level that appears in a perspective of health promotion - the setting up of a data book (composition, number of consumers, effects.) drugs of synthesis belonging to class of the phenethylamines (MDMA and derivatives more commonly known as ecstasy) that are increasing in Belgium and in all Europe in order to develop adequate preventive actions.

C. Sexual exploitation and sexual violence

Our country had the sad privilege, as developed country, of have been confronted in 1996 in a manner explicit and direct to criminal disappearances, to sexual exploitation, and to murders of children.

These events led to various legislations, some bringing some improvements concerning protection of victims and others not seeming to go always in the common sense[285]. However that may be, it appears that means sometimes miss to be able to apply and to bring a follow-up to these various legislations. It is necessary to note the lack of a coordination organ that would permit to make the tie between the various associative or governmental actors who work in this same area also.

In this delicate matter, it appears necessary to make the balance between protection and autonomy, between the refusal of the exploitation and the right to one sexual life[286].

The exploitation and sexual violence is not that a national problem but also a problem international in that the traffic of human rights, notably of non-accompanied minors, is a growing problem between Eastern Europe and the west and that Belgium is a country of transit and destination for these people[287]. The Centre for the equality and struggle against racism, in annual pension of May 2001, concluded to this topic that the traffic of human rights was more and more controlled by organized crime and the Albanian mafia, Nigerian, troublemakers and Mafioso Eastern European organizations.

The NGOs are worried to note that poverty has been considered like a reason of sexual exploitation of children to commercial ends at the time of the first world Convention against the sexual exploitation of the children to commercial ends that had place in Stockholm. [288]

The sexual exploitation questions the place granted to people in our society and, in particular, of the child. An education on people's respect should be given from an early age within the family and in the school environment. The woman's picture transported in the press, on television or in advertisements does not contribute to training of a bigger respect of oneself and other certainly. Authorities have a big responsibility in this matter. However, education is

[285] As we saw in the IX point of the fifth part on the home environment and replacement protection.

[285] Final report of the national Commission against sexual exploitation of Children, " children call us ", October 23, 1997, recommendations 8 and 9.

[285] ECPAT Belgium," Trafficking children for sexual purposes: Belgium", May 2001.

[288] "Plans of action against the sexual exploitation of children for commerce, " workshop, September 3, 2001.

[288] ECPATS INTERNATIONAL, "A glance backwards while preparing for tomorrow", Report 1999-2000.

[288] http://www.info.fundp.ac.be/~mapi/rapintro.htm

not sufficient, it is necessary to take account also and to improve global economic context in which are families and children who become victims of exploitation or sexual violence.

The NGOs are also convinced of the importance to give a participating and active place to people having been victim of exploitation or violence.

1. CHILD PROSTITUTION

It is necessary to distinguish the case of prostitution of Belgian nationals and the case of forced prostitution often linked to traffic. The reasons are different in two cases.

Indeed, one could say that prostitution of national children is rooted in "a system of maladjusted support for children, the absence of a judicial system that clarifies the treatment the problem, and the recognition of the E.S.E.C. (sexual exploitation of children). The second will be analyzed in the third point.

The NGOs recommend that more means be given in Belgium to investigate in particular in this area. The NGOs invite Belgium to ratify the additional protocol quickly in the C.I.D.E concerning the sale of children, prostitution of children and pornography putting in stage of children.

2. CHILD PORNOGRAPHY ON INTERNET

According to a report by E.C.P.A.T., child pornography does not stop growing considering easiness of access to Internet, that enables possession and publication of pornography. Anonymity, speed of diffusion, and technological development accentuate difficulties of struggle against child pornography[289].

Campaigns of sensitization exist intended to limit access to Internet to minors of ages. However, these countries would be able to more and also to sensitize young on risks of Internet in order to allow them to foil themselves traps of this communication mode.

Since law of March 27, 1995, advertisement and distribution of pornographic products implying minors of age can be punished. Child pornography possession is illegal according to article 383, paragraph 2 of Criminal code.

The law of November 28, 2000 to computer crime consists mainly of measures to data logging, to research on network, to particular obligations of collaboration in a computer campaign as well as to adaptation of modes of tracking and interception of telecommunications.

An Anti-Pedophile movement on Internet (MAPI)[290] has been created by Academic Faculties at Notre-dames Namur in order to think about problem of child molestation market and publications that encourage sexual exploitation of children, to sensitize users of problem and to propose various recommendations and various action towards use of suppliers, users of Internet services, as well as political world. It appears very difficult to be able to do a control. The movement concludes to a proposition of auto-regulation before gaps of law with regard to suppliers of services, but also with regard to users of Internet, and in this setting, it is more about personal ethics.

3. CHILDREN´S BILL

The traffic of children in a sexual objective is a meaningful and growing problem in Western Europe. However, it appears that victims of bill of human rights are often considered like foreigners before being considered like victims that it is necessary to protect. In the

[290] " children talk to us ", recommendation 34.

[290] S. BOLLAERTS, C. GEORGES, S. VOET," De extra-territorially toepassing sieve de strafwet inzake misdrijven tegen offspring reindeer", 2000-2001. (The extraterritorial application of the legislation concerning malevolent acts in opposition to children)

struggle against sexual exploitation of children, international dimension must be met in an adequate manner. To this consideration, there are grounds to foresee, in respect of fundamental rights, of types of collaboration in information exchange as well as places of centralization of data[291].

And if it is certain that it is necessary to fight against networks of prostitution, it cannot act as argumentative in order to put a more and more restraining migratory politics in place.

The legislation permits that victims of a bill of human rights who carry a complaint and collaborate with Belgian judiciary powers have the right to stay and the right to social rights during the period of procedures, which is certainly positive. The victim has right to a housing, and to a legal, financial and medical aid. It also has right to work and to pursue some studies. According to report by the E.C.P.A.T., these measures would have entailed an increase in judicial testimonials successful pursuits against traffickers.

The Non Government Organization however also use a practice that is used by Belgian authorities that consists of placing victims of bill on people in the I.P.P.J. in confinement, even when they haven't committed an offense. Thus, if it appears clear that it is necessary to protect victims of bill of human rights against networks of bill, this measure is quite maladjusted. A welcome and a framework should specifically be organized.

To approach the problem of the bill of human rights and therefore some children require processed of reference marks cultural of person victim and from to understand what socioeconomic context it is. *Help brought to these people must be adapted to this campaign.*

The NGOs also recommend assuring an adequate handling of victims of bill of children as well as authors of these acts.

4. SEXUAL TOURISM AND EXTRATERRITORIALPENAL LAW

Before, Rule of criminal procedure permitted pursuit in Belgium of facts of exploitation and violence sexual abroad clerks that as far as infringement is punished at a time by Belgium and in country of destination where infringement has been committed (principle of double incrimination). This principle is not fortunately applicable today. It means that a Belgian or a foreigner being in Belgium will be able to be pursued in Belgium for facts committed in a foreign country where they are not penal. In this manner, Belgian criminal law will be able to be applicable to all facts committed abroad and punish by Belgian law[292].

The NGOs consider having good legislation on the subject today. However, the setting in practice of this law puts various problems:

- Difficulties to gather information sufficiently to have some proofs;
- Very elevated cost of an investigation beyond borders;
- The judges do not have still the will to turn toward action, investigation and judgment;
- Bilateral collaboration is not always simple. Does working bureaucracy of embassies provoke delays?

In retrospect the question stands remains whether a sufficient œoperation exists between Belgium and other countries to instruct some business[293].

A lot of actions have already been achieved around this problem, but one begins to a lot to move. Next to a good legislation and sanction, one always needs a better diffusion of legislation and sensitization. The needs of sensitization campaigns by possible offenders

[292] 107. V. MUNTARBHORN," extraterritorial penal legislation against sexual exploitation of children", Fund of the United Nations for childhood, 1999.

make themselves feel. It is necessary to hold here account of tourists, but also of people other groups that travel abroad, as staff of embassies, army and even NGOs

The NGOs return to recommendations of national Commission against sexual exploitation of children ("The Children question us" of 23rd of October 1997), while respecting mind of authors of the report and in particular while opting for a preventive action assuring to parents and children conditions of well-being allowing them to lead a personal, social, emotional, sexual life, in conformity with human dignity. The NGOs finally recommends developing a better international collaboration to dismantle networks of bill of children.

IV. Children belonging to a minority or to an autonomous group

Article 2 of the C.I.D.E. stipulates that "The State is committed to respect rights that are expressed in the present Convention and to guarantee them to all children, being a matter for their jurisdiction, without any distinction (...), of their national, ethnic or social origin," *On this subject, the Committee of child rights states that "even foreign children of which the statutory right of resident is not applicable are a matter for the responsibility of the States in which they live."* How is this obligation respected in Belgium?

Without having answered this problem in the present report, the NGOs wish to write down their analysis all the same in a more global perspective than the one that confines the assessment of the right of foreign children to the question the child refugee claimant and to the non accompanied minor.

- Recommendations of the Committee of children's rights indicate besides to States to go in this sense:
- Raising General Principles: to bring some precisions on concrete measures to fight against the discrimination with regard to children (...) foreign (point 9), notably in order to encourage the integration of children of immigrants, notably in schools and in the welfare departments (point 11), that principles and objectives of the Convention are translated in languages of main groups of refugees and immigrants (point 17), to study the possibility to integrate the education of principles and measures of the Convention to the training schedules destined to different professional groups, notably to civil servants of immigration services (point 18), to sign and to ratify the Convention International on the protection of rights of all migrating workers and their family's members (point 20);
- Concerning the protection of the home environment: in case of measure of expulsion of a parent's territory to stay up to indicate in what measure the child's welfare is taken in consideration. In the same way, a minor can make him the object of an expulsion measure (point 14), please indicate measures that can be taken to avoid exceptions quoted to the article 10, al 2 and, notably in the case of children refugees or parents of refugees whose reunification would take more than two years (point 15).

We must note unfortunately that the second Belgian report nearly made not echo of the follow-up assured to recommendations of the Committee of children's rights.

The NGOs invite Belgium to ratify the Convention as soon as possible on European centers for the protection of minorities, which has already been ratified by all European countries excepted by our country and by France.

The NGOs recommend from the moment editors of next reports tackle to examine the essential question of the place that the child occupies in families immigrated in Belgium under all facets.

THE NGO's MAIN RECOMMENDATIONS

The NGOs are anxious to highlight the principal recommendations that in their eyes justify the most urgent and worrying actions and which Belgian governments should immediately tackle:

First of all, the NGOs recommend that Belgium puts an end to the interpretative declarations to the Convention for Children's Rights.

First part: General Application Measures

The NGOs recommend:

The Convention that should permitted, future, to nourish has quantitative assessment of politics led. This priority is the previous to the participation in it. It would permit to develop a permanent reflection on these themes and a methodology for the confection of the official report. It was already about a recommendation of the Committee following the 1st Belgian report. Five years later, nothing moved.

The NGOs recommend that the National Commission becomes a real and permanent tool for the planning and developing a global national strategy in favour of children. The NGOs should be associated.

The ratification is by authorities of international treaties that directly or indirectly concern the well-being of children and the respect of their rights are as follows: the additional Protocol by the C.I.D.E. on the trade of children, child prostitution and the child pornography, the Convention n° 182 of the International organisation of Work concerning the most serious types of work and exploitation of children, the Protocol introduced by Costa Rica aiming to increase the number of expert interns to the Committee of children's rights from 10 to 18, the La Haye Convention of May 29, 1993 concerning protection of children and collaboration in the area of international adoption, the La Haye Convention of October 19, 1996 concerning expertise, applicable right, aggregation, implementation and collaboration in the area of parental responsibility and the protective measures of children and the additional Protocol by the C.I.D.E. on armed conflicts.

To the example of the Flemish community - is generalized to all levels of powers. To the level of the Flemish Community, the NGOs recommend a real application of the obligation of impact report on the child.

The creation of a mediation service for children to the federal level and a minister's nomination charged of the coordination of children's rights (that arranges own budget).

Mechanisms intended to make know principles and measures of the Convention extensively and to associate children there. Some efforts must be made in particular in the setting of education. Finally, authorities must assure a large publication to the content of the official report, as well as to recommendations given out by the Committee.

Belgium of the principle of international solidarity that must permitted the application of the Convention elsewhere in the world and in particular, through foreign politics of Belgium and cooperation to the development.

In particular, the NGOs wish that Belgium took, on the model of the action led concerning anti-personal mines, the initiative of an international action against the manufacture, use and the sale of light weapons and against the incorporation of children of less than 18 years as soldiers.

The processed of children's rights like an objective important of cooperation to the Belgian development and that the respect of these rights and the impact of cooperation on children are used systematically like decision criteria of sustained programmes.

That Belgium encourages States that did not deposit their initial report again strongly and sustains them so that they fill this important obligation.

That the engagement to dedicate 0,7% of the GNP for cooperation to the development is respected by Belgium.

Second part: Definition of the Child

The NGOs recommend:

The organisation of a quality aid, by formed and voluntary lawyers, of minors pursued before jurisdictions of youth and the guarantee of lawyer's free choice by the minor. This one passes by the formation of lawyers, the guarantee of the largest access to the file, the facilitation of contacts between the young and their lawyers in all circumstances (therefore also in case of placement in a public institution). The NGOs hope that a legislative initiative will be taken as soon as possible or that the government bill deposited at the Senate in view of the nomination of youth lawyers will be reissue and been back at work.

Of the convenient or legal amenities to improve the audition of minors in justice and the modification of the article 931 of the Judicial Code in order to return he in conformity with the article 12 of the Convention.

Third part: General Principles

The NGOs recommend:

The NGOs hope that the good intentions of ministers charged of the road safety will ensue on satisfactory concrete realisations.

The NGOs invite authorities to generalize the "advantages of existing practices" and to achieve some investigations on the most adequate methodology.

The setting up of suitable structures in order to allow the young to express their opinion to all levels and that their opinion is duly consideration in accordance with the article 12 of the Convention.

Fourth part: Freedom and civil rights

The NGOs recommend:

That authorities grant a particular attention to the right to have access to child information, on the one hand while proposing them an information of quality and on the other hand while protecting them against programmes that could be they harmful. In the Flemish community, supplementary effort is made for the radio media, the written press as well as communication and information technology (I.C.T.). An efficient control and the sanction of offenses are necessary to protect children against programmes and advertisements that could be they harmful.

Fifth part: Family Environment and the Protection of Replacement

The NGOs recommend:

That federal authorities and Communities, in a common reflection, finally aim to limit negative consequences of a separation on children. On the one hand, it is right to adopt a human legislation on divorce (in this included the practice of mediation at the time of separations or mediation domestic, the distinction between the conflict between partners and parents and infants, guarantees for the regular payment of alimonies via a fund.) so that forming spouses did not go back up one against the other. On the other hand, it is right to grant the specific position of the children more, in these included measures in view of the audition of the children.

The necessity to give body to reforms adopted by the French Community in term of substantial reduction of the number of placements, so that this measure becomes an exceptional measure. Motives for placement and conditions of this one should clearly be specified in the decision ordering the placement.

Concerning adoption, the modification of the civil code (defining the adoption like a structural contract on a child), the enactment of a legislation for the region of Brussels-Fundamental and the ratification of the La Haye Convention on the protection of children and cooperation concerning international adoption. It would permit that rights are protected better and to avoid withdrawals of children of their parental environment, international abductions, notably.

Sixth part: Health and Well-being

The NGOs recommend:

The importance of a preventive approach of the health questions and from then on the recognition of the means to concede to him, notably of campaigns of health promotion in order to decrease suicides of the young, abortions.

An integral politics, a better welcome and a better insertion of children handicapped in the plain school environment, a better access to the social life.

The concession of family allowances like a right bound to every child's existence

The setting in evidence of the tie between the Convention of children's rights and the respect of human rights in Belgium and particularly those that guarantee the economic, social and cultural needs of the "parents" and families.

Year offer of good quality welcome, that would answer needs of parents without passing the strength of resistance of children, with tariffs (incomes and depends children) that hold account of the family's possibilities.

The setting up of more adequate policies is done to support the poorest families and is also trying to answer the real needs of these families. It is the participation in it. Real the article 27 §§ 1 to 3 the Convention to the right to has decent standard of living that will guarantee the child's right to live in home environment. It implies to come out of the setting of the help politics to youth to bring some solutions in term of housing, of health, of education, etc.

Seventh part: Education, Leisure and Cultural Activities

The NGOs recommend:

That in the Communities, the set of inequalities generated by the education system in order to put a term to the bifurcation of the existing education system today are remedied, notably while generalizing the exemption from payment of education. Indeed, the education system must be a factor of integration and no of exclusion or maintenance of inequalities.

That is suppressed all discrimination between pupils who follow courses in an official or subsidized school with regard to access to school, obligations of the school, disciplinary procedures and remedies at law. In this setting, the NGOs recommend that a politics of non-discrimination can be put of it. The Flemish Community with look to the right to the education of the migrating children.

That the Flemish Community works without delay to the introduction of the student's statutory right

That a central place is recognised to the culture as motor of social evolution and that a global politics is led on the subject that guaranteed to numerous associations working on the land (plains of games, houses of youngsters, etc.) a serious and recurrent financing.

Eighth part: Special Measures for the Protection of Childhood

The NGOs recommend:

The creation of a specific statutory right for foreign non-accompanied minors that is respectful of their interests would put a stop to detentions of minors in prisons. It would also bring more transparency and better access to foreign office services. At the time of the presentation of the 1st Belgian report, the Committee had already worried about the situation of minors non accompanied. This file remains in waiting despite emergency.

The application of the Convention in whole to the minor "in conflict with the law", notably with regard to placement of minors in jails, the removal of the youth judge (and in the waiting, to guarantee the respect of norms minima of the United Nations to minors deprived of liberty what is far from being notably the case today for minors incarcerated after removal). The Committee had already worried about this question at the time of the presentation of the 1st Belgian report. Today, a reform could see the day. However, the NGOs fear that the person of the delinquent minor and education is not anymore consideration to the profit of the act and a politics more securities.

The respect of procedural guarantees, as the presumption of innocence, the right to benefit from a legal aid of quality, the right to the respect of life deprived to all stages of the procedure.

The decriminalisation of soft drugs (cannabis and derivatives) and the development of a coherent preventive politics of reduction of risks bound to the use of drugs.

Recommendations of the national Commission against sexual exploitation of children ("The child inquest" 23rd or October 1997), while respecting the mind of authors of planning and in particular while making distinctions between protection and autonomy, between and the refusal of the exploitation and the right to one sexual life and while opting heart has preventive action assuring to parents and children conditions of the well-being allowing them to lead has personal, social, emotional, sexual life, in conformity with human dignity.

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