Violence Against Children in

BELGIUM

Relevant extracts from an NGO alternative report presented to the UN Committee on the Rights of the Child

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Coordination des ONG pour les droits de l'enfant – English
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[…]

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 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 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 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) [1].

[…]

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 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[2].

[…]

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.

[…]

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[3], handicapped children[4], schooling for children from poor families[5], the high risk of fostering children from poor families[6], etc.

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[1] 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.

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

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

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

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[7]. 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[8]. 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.

[…]

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[9]. 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[10].

[…]

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[11].

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.

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

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

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

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

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

[10] Ibidem.

[11] "Le risque suicidaire et les adolescents", Maison du Social, Province de Liège.

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.
[…]

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.

[…]

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.

[…]
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" [12], 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.

[12] 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.

[…]

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.

[…]

> *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.*

[…]

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. […]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 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 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.

[…]

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[13].

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

[13] See Fifth part - VI point: children deprived of their home environment

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.

[…]

> *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.*

[…]

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".

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.

[…]

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[14]. 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[15].

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[16]. 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. [17]

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[14] As we saw in the IX point of the fifth part on the home environment and replacement protection.

[14] Final report of the national Commission against sexual exploitation of Children, " children call us ", October 23, 1997, recommendations 8 and 9.

[14] ECPAT Belgium," Trafficking children for sexual purposes: Belgium", May 2001.

[17] "Plans of action against the sexual exploitation of children for commerce, " workshop, September 3, 2001.

[17] ECPATS INTERNATIONAL, "A glance backwards while preparing for tomorrow", Report 1999-2000.

[17] http://www.info.fundp.ac.be/~mapi/rapintro.htm

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 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[18].

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)[19] 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 struggle against sexual exploitation of children, international dimension must be met in an adequate manner. To this

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[19] " children talk to us ", recommendation 34.

[19] 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)

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[20].

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[21].

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 cooperation exists between Belgium and other countries to instruct some business[22].

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 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

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[21] 107. V. MUNTARBHORN," extraterritorial penal legislation against sexual exploitation of children", Fund of the United Nations for childhood, 1999.

dignity. The NGOs finally recommends developing a better international collaboration to dismantle networks of bill of children.
[…]