

CHILDREN'S RIGHTS BEHIND BARS

**Human Rights of Children deprived of liberty:
Improving the Monitoring Mechanisms**



**National Report - Belgium
2014**

This publication has been produced with the financial support of the Criminal Justice Programme of the European Union. The contents of this publication are the sole responsibility of Defence for Children International (DCI) –Belgium and can in no way be taken to reflect the views of the European Commission.

CHILDREN'S RIGHTS BEHIND BARS

Human Rights of Children deprived of liberty: Improving Monitoring Mechanisms

NATIONAL REPORT - BELGIUM
May – September 2014

DEFENCE FOR CHILDREN INTERNATIONAL (DCI) - BELGIUM

Sarah Grandfils

In collaboration with

*Marine Braun
Pierre-Yves Rosset*

Acknowledgements

My sincere thanks go first of all to the whole team that carried out the research for the report, and especially to Marine Braun, Pierre-Yves Rosset and Benoît Van Keirsbilck who made a significant contribution in fulfilling this project.

I would also like to thank all those who were consulted and interviewed during the research, as well as those involved in preparing the field visits, especially the volunteer members of the project advisory committee.

I commend the unanimously favourable and sincerely enthusiastic welcome that our requests for visits, interviews, information or simply support received, both during the preparation and implementation stages of the research as well as during the drafting of the report.

To conclude, I welcome the wide participation we have received from young people during our field visits. The experiences they shared with us have enlightened our research and have fed into our discussion on practices that we absolutely must prevent, monitor, regulate and bolster with sufficient safeguards so as to avoid them leading to the violation of children's basic rights when they are deprived of liberty. Or, if such violations take place, guarantee that the victims are effectively able to defend themselves.

Sarah Grandfils,
Coordinator of the project "Children's Rights Behind Bars".

TABLE OF CONTENTS

A.	INTRODUCTION	9
1.	List of Acronyms	9
2.	Organisation and team in charge of the research	10
3.	Methodology	10
4.	The limitations of the research	11
B.	THE INTERNATIONAL FRAMEWORK	13
1.	The International Convention on the Rights of the Child (ICRC)	13
2.	Convention against Torture and Other Cruel, inhuman or Degrading Treatment or Punishment (hereinafter: "CAT")	14
3.	The Subcommittee on Prevention of Torture (SPT)	15
4.	The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)	15
5.	The Universal Periodic Review	16
6.	Report of the Human Rights Commissioner for the Council of Europe	16
7.	The European Social Charter	16
8.	The Jurisprudence of the European Court on Human Rights	17
9.	Complaints mechanisms available to children under the following Conventions	17
C.	THE NATIONAL FRAMEWORK	19
1.	Legal framework on minor's deprivation of liberty in Belgium	19
1.1.	Legal Basis	19
1.2.	Acts Deemed to Constitute an Offence	20
1.3.	Decisions Taken by the Family and Youth Court	20
1.4.	Different types of deprivation of liberty for minors	21
1.4.1.	Minors under the age of 12	21
1.4.2.	From the age of 12 onwards	21
1.4.3.	From the age of 14 onwards	22
1.4.4.	From the age of 16 onward	23
1.4.5.	Mentally ill minors	24
1.4.6.	Foreign minors	24
a.	Unaccompanied Foreign Minors (hereinafter "UFM")	25
b.	Families with Children	25
1.4.7.	Minors deprived of liberty by law enforcement actions	25

1.4.8.	The other possibilities for the deprivation of liberty of minors	27
a.	Children detained with their parents	27
b.	Solitary Confinement measures	28
2.	The different types of places of deprivation of liberty of minors in Belgium.....	31
2.1.	The Location of detention institutions	31
2.2.	Public Youth Protection Institutions (IPPJ and GI)	32
2.3.	The Federal Detention Centres (FDC).....	33
2.3.1.	The FDC of "De Grubbe" in Everberg.....	33
2.3.2.	The FDC of Saint Hubert	34
2.3.3.	The FDC of Tongres.....	36
2.3.4.	The Residential units for minors within psychiatric hospitals: units UIC/ADCO or UIC/ADCO-PES-PUO	37
2.4.	The places of deprivation of liberty for immigrants.....	38
2.4.1.	Detention Centres for Immigrants	38
2.5.	The places of deprivation of liberty linked to police action	40
2.5.1.	Police stations' cells.....	40
2.5.2.	Holding cell facilities in court buildings	41
D.	National mechanisms for monitoring and processing complaints from minors deprived of liberty	43
1.	Establishment of a National Institute for Human Rights (Hereinafter "NIHR")	43
2.	The Ombudsmen for Children's Rights	43
2.1.	The General Delegate of the French Speaking Community for Children's Rights.....	43
a.	External monitoring mission.....	43
b.	Complaint processing mission	47
2.2.	Flemish Community Commissioner for Children's Rights (Kinderrechtencommissaris / KRC)	48
a.	External monitoring mission.....	48
b.	Complaints processing mission	51
3.	The Federal, Community and Regional Ombudsmen	52
3.1.	The Federal Ombudsman	52
a.	External Monitoring Mission	52
b.	Complaints processing mission	54
3.2.	The Flemish Ombudsman (« de Vlaamse Ombudsman »)	55
3.3.	The Walloon Ombudsman	57

4. Monitoring and complaints mechanisms specific to the places of deprivation of liberty for minors	58
4.1. Public (Community) Youth Protection Institutions	58
4.1.1. The Directorate for the Coordination of the IPPJs in the French-speaking Community.....	58
a. Internal monitoring mission	58
b. Complaints processing mission	60
4.1.2. The Internal Independent Care Inspectorate Agency of the Flemish Community («Zorginspectie »).....	62
a. Internal monitoring mission	62
b. Complaints processing mission - The “Jo-Lijn”	64
4.1.3. The other monitoring mechanisms	65
i. The DGDE and the KRC	65
ii. The Parliamentarians	65
iii. The Juvenile Court Judge	66
iv. The lawyers	66
4.1.4. The other complaints mechanisms.....	67
i. The directors of institutions.....	67
ii. The DGDE and the KRC.....	68
iii. The Flemish and Walloon ombudspersons.....	68
iv. Informal mechanisms.....	68
4.2. Monitoring the so-called “minors transferred to an adult court” sections of the federal detention centres (FDC)	69
4.2.1. Central Council of Prison Supervision and the Monitoring Commissions.....	69
a. External monitoring mission	69
b. Complaints processing mission	71
i. The Monitoring Commission of the FDC of Saint-Hubert.....	72
ii. The Monitoring Commission of the FDC of Tongres.....	73
4.2.2. The other monitoring mechanisms	74
i. The DGDE / The KRC.....	74
ii. The Federal Ombudsman.....	74
iii. The Parliamentarians	75
iv. The lawyers	75
v. The Service Droit des Jeunes (Juvenile’s rights service)	75

vi.	Detainee's Support Service (SAD)	76
4.2.3.	The other mechanisms for processing complaints.....	76
i.	The prison management.....	76
ii.	The DGDE and the KRC.....	77
iii.	The Federal Ombudsman.....	78
4.3.	Monitoring of the units for adolescents in the psychiatric hospitals (UIC).....	78
4.3.1.	The Public Prosecutor, the juvenile court judge for the minors for the place of the service and the inspecting doctors of the Federal Service of Public Health.	78
a.	Monitoring mission.....	78
4.3.2.	The other monitoring mechanisms	78
i.	The DGDE and the KRC.....	78
4.3.3.	The Ombudsman (for complaints) of the Consultation Platform for mental health	80
a.	Complaints processing missions.....	80
4.3.4.	The other complaints mechanisms.....	82
i.	Informal complaint mechanisms	82
ii.	The Management of the institution.....	82
iii.	The DGDE and the KRC.....	83
iv.	The Order of Physicians	83
v.	The monitoring and inspection services of the Communities and Regions	83
4.4.	Cells for minors located in police stations and in buildings belonging to the Department of Justice.....	84
4.4.1.	Standing Police Monitoring Committee	84
a.	External monitoring mission.....	84
b.	Complaint processing mission - The Investigating Department, section «complaints ».....	85
4.4.2.	The General Inspectorate of the federal and local police	87
a.	Internal monitoring mission	87
b.	Complaint processing mission - The Directorate for individual investigations of the AIG	88
4.4.3.	The other complaint processing mechanisms.....	89
i.	Internal Monitoring Service of the police corps	89
4.5.	The immigrant detention centres and the "return houses"	90
4.5.1.	Non-governmental organizations / citizen's vigilance	90

a.	External monitoring mission	90
4.5.2.	The Federal Ombudsman	92
a.	External monitoring mission	92
b.	Complaint processing mission	93
4.5.3.	The DGDE and the KRC	93
a.	External monitoring mission	93
b.	Complaint processing mission	94
4.5.4.	The Parliamentarians	94
4.5.5.	The Centre for Equal Opportunities and the Fight against Racism	94
a.	External monitoring mission	94
4.5.6.	The other monitoring bodies	96
4.5.7.	The other complaint processing bodies	96
i.	The Complaints Commission and the Permanent Secretariat	96
ii.	The Director of the immigrant detention centre	98
iii.	Judicial procedures / Committee P, AIG	99
E.	Conclusion	101

A. INTRODUCTION

1. LIST OF ACRONYMS

ADCO	Act Deemed to Constitute an Offence
AI	Amnesty International
AIG	<i>Inspection Générale de la police fédérale et de la police locale</i> (General Inspectorate of the Federal Police and the Local Police)
AO	Aliens' Office
API	<i>Accompagnement post-institutionnel</i> (Post-Institutional Aftercare)
CAT	United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCAJ	<i>Conseil Communautaire de l'Aide à la Jeunesse</i> (Community Youth support Council)
CCSP	<i>Conseil Central de Surveillance Pénitentiaire</i> (Central Council of Prison Supervision)
CERD	Committee on the Elimination of Racial Discrimination
CoE	Council of Europe
Committee P	Standing Committee on the Supervision of the Police Services
CPMO	<i>Consultation Permanente des Médiateurs et Ombudsmans de Belgique</i> (Permanent Consultation for Belgian Ombudsmen)
CPT	The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRC	Committee on the Rights of the Child
DAS	<i>Service d'Aide aux Détenus</i> (Detainee's Support Service)
DGAJ	<i>Direction de l'Aide à la Jeunesse de la Communauté française</i> (Youth Support Direction for the French-Speaking Community)
DGDE	<i>Délégué général aux droits des enfants</i> (General Delegate of the French-Speaking Community for Children's Rights)
ECHR	European Convention on Human Rights
ECRI	European Commission against Racism and Intolerance
FEDASIL	<i>Agence fédérale pour l'accueil des demandeurs d'asile</i> (Federal Agency for the Reception of Asylum-Seekers)
FDC	Federal Detention Centre
GI	<i>Gemeenschapsinstellingen</i> (Community Institutions for Youth Protection in Flanders)
HCR	United Nations High Commissioner for Refugees
ICRC	International Convention on the Rights of the Child
IPPJ	<i>Institutions de Publiques de Protection de la Jeunesse</i> (Public Youth Protection Institutions)
KRC	<i>Kinderrechtencommissaris</i> (the Flemish Community Commissioner for Children's Rights)
MD	Minors experiencing difficulties or at risk
NIHR	National Institute for Human Rights
NPM	National Prevention Mechanism
OCD	<i>Organe de Consultation</i> (Consultation Body)
O.J.B.	Official Journal of the Belgian Government
OLT	Order to Leave the Territory
OPCAT	Optional Protocol to the Convention against Torture and Inhuman or Degrading Treatment or Punishment
PES	Problematic Education Situation (equivalent to minor at risk)
PMS	Psycho-Medico-Social
PUO	Put under Observation
SAJ	<i>Services d'Aide à la Jeunesse</i> (Youth Support Services)
SAMIO	<i>Sections d'Accompagnement, de Mobilisation Intensifs et d'Observation</i> (Intensif Support, Mobilization and Observation Sections)
SC	<i>Commissions de Surveillance</i> (Monitoring Commissions)
SDJ	<i>Services Droit des Jeunes</i> (Juvenile's rights service)

SPJ	<i>Services de Protection de la Jeunesse</i> (Youth Protection Service)
UFM	Unaccompanied Foreign Minors
UIC	Units for Intensive Care
UPR	Universal Periodic Review (of the United Nations Human Rights Council)

2. ORGANISATION AND TEAM IN CHARGE OF THE RESEARCH

The purpose behind the work of **Defence for Children International (DCI) Belgium** is to protect and defend children's rights in Belgium as well as in other countries working together with the other national sections of the Movement and with other partners through-out the world. Their main actions include: training, education and awareness raising; taking action when children's rights are being infringed and provide oversight and monitoring on Belgium's respect for the fundamental rights of every child. Their main fields of intervention are: children's access to justice and juvenile rights; migrant children; the right to freedom of expression and the right to participation.

The DCI-Belgium team members, in charge of Belgian national research, are: **Sarah Grandfils** (coordinator of the project «Children's Rights Behind Bars » and juvenile justice expert), **Marine Braun** (Juvenile Justice Officer) and **Pierre-Yves Rosset** (Juvenile Justice Officer), with the support of **Benoît Van Keirsbilck** (DCI-Belgium director and President of the International Movement), **Andrea Salcedo** (financial and project manager) and **Ioanna Gimnopoulou** (communications officer), with the participation of **Esther De Graaf** (Researcher at the VUB University).

3. METHODOLOGY

The main objective of this report is to provide an overview of the Belgian juvenile justice system's capacity to grant sufficient and adequate protection of the fundamental rights of the child in facilities in which they may be detained or deprived of liberty across Belgium. More specifically, the report aims to provide an outline of the way in which the rights of the child are monitored / overseen and of the different possibilities children have at their disposal when seeking to enforce their rights if these have been violated. On the one hand, the national research project evaluated the existence, functioning and effects of the monitoring mechanisms in place within facilities that deprive minors of liberty, while also carrying out the same evaluation on the complaint mechanisms available to children deprived of liberty. By comparing the existent, legally recognized mechanisms to their implementation in the field, the report identified a series of weaknesses and loopholes in the system as well as structural incoherencies that put into question the system's ability to protect and safeguard children that are being detained, thus safeguarding them from violations of their rights. Furthermore, the report sheds light on the crucial importance of currently existing informal mechanisms available to children in the absence of formal mechanisms or which act as an alternative thereof.

The national research is based on the **research protocol** designed to be implemented by the 14 European partner countries participating in the project. This report is the result of a **thorough documentary research** at a national and international level on the existing literature, legal and statutory provisions, international standards and the available reports on the specific provisions of monitoring and complaint mechanisms for minors deprived of liberty. Information and statistics gathered during the **visits** made to a sample of detention facilities and during the **semi-structured individual interviews** carried out with key stakeholders within the facilities and on the outside were used along with the documentary research –the interviews complied with the **procedures and ethical considerations guidelines** and the children interviewed received an information document and consent forms written in a language they understand. The report is also based on **secondary sources of information** and on reports on the field of juvenile justice in Belgium made by experts, researchers or civil society organizations.

To address the research's needs, two advisory committees (FR/NL) consisting of key actors in the juvenile justice sector were created.

The research team, in conjunction with the two advisory committees, chose **5 facilities to visit in the French speaking Community** and **4 in the Flemish Community**. A total of **33 young persons** (5 girls and 28 boys) and **22 staff members** were interviewed in the 5 facilities visited in the French speaking Community. A total of **32 young people** (8 girls and 24 boys) and **33 staff members** were interviewed in the 4 facilities visited in the Flemish Community. Moreover, **19 stakeholders** from different monitoring and complaint management mechanisms were also interviewed. (See appendix 1).

Four (4) main pillars articulate the national report: the international bodies' recommendations about the national complaint mechanisms (i); the national framework on the different measures depriving of liberty (ii); the different facilities that are considered as places of deprivation of liberty; and the articulation between theory and practice among the monitoring and complaint mechanisms as well as, on the one hand, their good practices and on the other, the main obstacles or difficulties they encounter during the implementation process (iv). In the light of the Practical Guide that must be written after the project has concluded, some recommendations and lines of thought have emerged. The practice-based Guide will be as concrete as possible in order to respond to the needs of all of the professionals responsible for the prevention and protection of the rights of children deprived of liberty.

4. THE LIMITATIONS OF THE RESEARCH

The main limitation was the limited time available to fulfil the research (from mid-May to mid-September); however, the research provided as complete and faithful picture of the reality as possible, in regards to: existing monitoring and complaint mechanisms, their operating mode and the experience / perception of the stakeholders, including minors themselves, on the minors' liberty deprivation system. We were unable to visit all places of deprivation of liberty; for example, we couldn't visit the detention facilities for immigrants. Despite submitting the authorisation forms on a timely manner, the administration of the Everberg detention centre denied us access to their institution. The same applies to the request to visit the police stations' cells for minors in the Brussels police area. We carried out a thorough documentary research about these facilities to be able to feed the report.

Furthermore, we are unable to take into account those facilities that are legally defined as open but that include, to a greater or lesser extent, some aspects of detention. For example, the IPPJ or the *return houses for immigrant* –places where immigrants may stay when they are about to be sent back to their countries and that, from a legal point of view, benefit from a slightly more “open” regime than detention centres.

Moreover, as agreed with all of the partners, this study didn't take into consideration children that were detained in prisons with one of their parents.

B. THE INTERNATIONAL FRAMEWORK

In Belgium, the provisions of the international agreements ratified by the State form an integral part of the domestic legal system and have mandatory force. For that matter, Belgian Courts and Tribunals must apply these international provisions to the extent that they are self-sufficient and self-executing.

Hereafter you can find the main recommendations made by international Treaty-bodies and Charter-bodies with regards to the monitoring and complaint mechanisms available to children in places of deprivation of liberty in Belgium.

1. THE INTERNATIONAL CONVENTION ON THE RIGHTS OF THE CHILD (ICRC)

On the 16 of December 1991, Belgium ratified the UN Convention on the Rights of the Child (hereinafter: "the Convention"). Belgium submitted three periodic reports¹ to the UN Committee on the Rights of the Child (hereinafter: "CRC") pursuant to article 44 of the Convention.

In its concluding observations, the CRC suggested that Belgium should create a **permanent mechanism of coordination, evaluation, monitoring and follow-up** for policies aiming at the protection of the child in order to ensure that the Convention on the Rights of the Child is fully respected and implemented, at the federal and communities levels; establish a ***national commission for the rights of the child*** and provide it with adequate human and financial resources; prepare and implement an action plan implementation of the ICRC through an open, consultative and participatory process².

Noting the establishment of ***the Children's Rights Commissioner for the Flemish Community*** ("Kinderrechtencommissaris", hereinafter: "KRC") and of ***the General Delegate of the French-Speaking Community for Children's Rights*** ("Délégué général aux droits des enfants", hereinafter: "DGDE") the CRC however expressed, in its 2010 Concluding observations, its concern regarding the absence of an equivalent institution in the German-speaking community and at the federal level. The CRC welcomed the appointment of an ***ombudsperson in this community***, the establishment of ***the National Commission for the Rights of the Child*** in 2006 and the adoption of the 2005-2012 ***National Action Plan for the Children***³.

In its last report, the CRC urged Belgium to **harmonize the mandates of all the ombudsmen institutions** and to ensure adequate coordination of the ombudsmen institutions. It further exhorted Belgium to **ensure that ombudsmen institutions are accessible to children** and empowered them to receive and investigate complaints of violations of children's rights in a child-sensitive manner and to address them effectively⁴. Regarding the administration of ***psychiatric facilities***, the CRC recommends that Belgium implements an independent mechanism to monitor the rights of children in psychiatric care.

Finally, it is worth pointing out the recent **ratification (on May 30, 2014) of the third additional protocol to the Convention, related to the acceptance of individual complaints procedure**. We will come back to this mechanism further on.

¹ 6 September 1994; 25 October 2000 (examined by the ICRC in May 2002); 15 July 2007 (examined in May 2010). The next periodic report is due on 14 July 2017.

² CRC, Concluding observations addressed to Belgium CRC/C/15/Add.178, 13 June 2002, §11.

³ CRC, Concluding observations addressed to Belgium, CRC/C/BEL/CO/3-4, 18 June 2010, §6.

⁴ *Ibidem.*, § 18.

2. CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (HEREINAFTER: "CAT")

On 25 June 1999 Belgium ratified this Convention including article 22 which recognizes the competence of the Committee against Torture to receive and process individual complaints. Since its establishment Belgium has submitted three reports⁵ to the Committee against Torture.

In 2003, the Committee noted with satisfaction the establishment in 1991 of the **Standing Committee on the Supervision of the Police Services** (hereinafter: "Committee P") under parliamentary authority, and already stressed the **urgent need to take the appropriate measures to guarantee its Independence** as well as the **independence, impartiality and efficiency of the General Inspectorate of the Federal Police and the Local Police** (hereinafter: "AIG"), especially by providing the institution with the necessary means to receive and process complaints.

The Committee also welcomed the repeal in 1999 of article 53 of the Act of 8 April 1965 allowing minors to be placed in detention centres for a period of not more than 15 days, and the efforts being made by the Flemish and French Communities to solve problems of overcrowding in specialized establishments for juvenile delinquents⁶. In response to the recommendation of the Committee to urgently modernize its prison law, Belgium subsequently adopted several provisions: on **12 January 2005 an Act on principles governing the administration of penal institutions and the legal status of detainees** (hereinafter: "Dupont Act" or "Act on the principles"); on the 18 May 2006 an Act prohibiting to invoke a state of necessity to justify torture; minimum standards for detention facilities available to the police and the requirement that chronological deprivation of liberty registers be kept⁷.

Furthermore, the Committee exhorted the **urgent need to improve the monitoring of penal institutions by guaranteeing a rapid replacement of the administrative commissions with more effective organisations, and by authorizing NGOs to visit prisons regularly and meet with the detainees**. Finally, the Committee required Belgium to ensure that **the solitary confinement of juvenile delinquents** is imposed only in entirely exceptional cases, and for a limited period of time⁸.

In 2009, the Committee recommended, with regards to the **immigration centres**, that the Belgian authorities adopt alternative measures to enhance monitoring (use of videotaping by civil society) and that an **independent body be implemented to monitor immigration centres** where children may be deprived of liberty (unaccompanied minors or minors detained with their families). It also pointed out the fundamental need to inform children deprived of their liberty about their rights, in a language they can understand. The Committee also exhorted Belgium to envisage the establishment of an **independent national institution for the protection of fundamental rights** involving the civil society actors.

In its last report, the Committee invited Belgium to take the necessary measures to ratify the **Optional Protocol to the Convention** with the objective of putting in place a system of regular, unannounced visits by national and international observers and to organize regular inspections and monitoring⁹ for the purpose of preventing torture and other cruel, inhuman or degrading treatment or punishment.

Moreover, Belgium is called upon to set up a **fully independent mechanism for the investigation of allegations of torture and ill-treatment** and establish a specific register of allegations of torture and cruel, inhuman or degrading treatment or punishment. The Committee further invites Belgium to take measures to

⁵ 27 May 2003; 19 January 2009 and 2 January 2014.

⁶ CAT, Concluding observations addressed to Belgium CAT/C/CR/30/6, 23 June 2003, §4.

⁷ CAT, Concluding observations addressed to Belgium CAT/C/BEL/CO/2, 19 January 2009, §3.

⁸ CAT, CAT/C/CR/30/6, *op.cit.* footnote n° 6, §7.

⁹ Complying with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173 of 9 December 1988).

implement the provisions of the Act on the principles aimed at **establishing effective, independent complaints mechanism** specifically devoted to monitoring and processing complaints in detention centres.

3. THE SUBCOMMITTEE ON PREVENTION OF TORTURE (SPT)

The Optional Protocol to the Convention against Torture (hereinafter: "OPCAT") established the Subcommittee on Prevention of Torture (hereinafter: "SPT"). The SPT has a mandate to visit the places of deprivation of liberty in the States Parties. Under the Optional Protocol, States Parties shall establish independent national preventive mechanisms (hereinafter: "NPM") for the prevention of torture at the domestic level. These mechanisms should also have a mandate to inspect detention facilities, and they apply equally to juvenile and adult detention facilities. To date, Belgium has not ratified the OPCAT; therefore, the SPT is not competent to conduct visit on the Belgian territory.

4. THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT)

On 23 July 1991, Belgium ratified the European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment establishing the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter: "CPT"). The CPT has the authority to visit any place, within the jurisdiction of a signatory State, in which individuals are deprived of liberty by a public authority. Since 1991, the CPT has carried out eight visits to the country and submitted, during the first four visits¹⁰, specific recommendation regarding children deprived of liberty. During these four visits the CPT went to the IPPJ of Braine-le-Château (public institution for the protection of minors), police detention facilities, the juvenile detention centre of De Grubbe (Everberg) and the Brussels psychiatric hospital of Titeca (hereinafter "CHJ Titeca"), including the B3 closed unit for adolescents, in two different occasions, amongst others.

In its last report, the CPT recommended that the Belgian authorities:

- Urgently establish an **effective remedies procedure for detainees**¹¹.
- **Reform the detainees' disciplinary system.**
- Regularly carry out **visits by the administrative / judiciary authorities of the detention facilities** in order to prevent ill-treatments.

In its 1998 report, the CPT welcomed the establishment of the **Committee P**, amongst other things, to **collect and process complaints about the actions of police** and recommended Belgian authorities to increase the **monitoring of Police detention facilities**. It also recommended the Ministry of the Interior that they remind the law enforcement personnel that they must respect the rights of those in their custody and that any abuse will be subject to severe sanctions¹². The CPT felt it was useful to point out that one of the most effective ways to prevent ill-treatments was to have an **independent authority conduct thorough analysis of all of the complaints submitted against law enforcement personnel** and, if necessary, to **impose adequate sanctions**¹³. Finally, the CPT recommended keeping a record of every case in which **means of restraint** are used, and **writing specific instructions** in this regard¹⁴.

¹⁰ Visits carried out: from 14/11/1993 to 23/11/1993; from 31/08/1997 to 12/09/1997 ; from 25/11/2001 to 07/12/2001 and from 18/04/2005 to 27/04/2005.

¹¹ CPT, Report to the Belgian government regarding the CPT delegation visit from 14 to 23 November 1993, CPT/Inf (94) 15, 14 October 1994, §245

¹² CPT, Report to the Belgian government regarding the CPT delegation visit from 31 August to 12 September 1997, CPT/Inf (98) 11, 18 July 1998, §14.

¹³ CPT, Report to the Belgian government / CPT visit from 18 to 27 April 2005, CPT/Inf (2006) 15, 20 April 2006, § 16.

¹⁴ CPT, Report to the Belgian government / CPT visit from 25 November to 7 December 2001, CPT/Inf (2002) 25, 17 October 2002, § 94.

The CPT noted the existence of **external monitoring mechanisms for the Jean Titeca Healthcare Centre**¹⁵: yearly visits from the public prosecutor and the Justice of the Peace as well as controls by a psychiatrist medical inspector. Regarding the **complaint mechanisms**, the CPT considered that the establishment of a **regional ombudsman**, independent of the institution, would be an effective way to deal with complaints from patients¹⁶.

The CPT carried out other periodic visits¹⁷ but didn't submit any specific recommendations to the situation of children deprived of liberty. Its last visit was conducted in 2013. The report, not yet publicly disclosed, is especially expected due to the visit conducted to the federal detention centre for minors of Saint-Hubert.

5. THE UNIVERSAL PERIODIC REVIEW

The Universal Periodic Review (hereinafter: "UPR") of Belgium in May 2011 raised the following issues:

- The **implementation of existing complaint mechanisms**, especially for the centres for asylum-seekers.
- The improvement of the legal aid services¹⁸.
- The follow-up on the submitted complaints against police officers. Complaints that not always lead to the imposition of commensurate penalties¹⁹.
- The establishment of an effective complaint system for ill-treatments during expulsions²⁰.

6. REPORT OF THE HUMAN RIGHTS COMMISSIONER FOR THE COUNCIL OF EUROPE

Following his visit to Belgium in 2008, the Commissioner, Mr. Thomas Hammarberg, highlighted in his reports²¹ the large number of complaint mechanisms and human rights structures existing in Belgium. With regards to the protection of the Rights of the Child, he particularly pointed out the existence of the KRC in the Flemish community and the DGDE in the French-speaking community. However, he emphasized that there is no independent specific mechanism to monitor and process complaints within the juvenile institutions. He recommends Belgium to adopt a national action plan for human rights and an independent and transparent mechanism to monitor law enforcement activities.

7. THE EUROPEAN SOCIAL CHARTER

Belgium ratified the European Social Charter on 16/10/1990 and the amended European Social Charter on 02/03/2004 including article 17²². Belgium accepted the Additional Protocol that provides a collective complaint system on 23/06/2003 but has not yet made a declaration enabling national NGOs to submit collective complaints. Between 1992 and 2013, Belgium submitted 12 reports on the application of the

¹⁵ Psychiatric Hospital

¹⁶ CPT, Report to Belgian government /CPT visit from 25 November to 7 December 2001, *op.cit.* footnote n° 14, § 152.

¹⁷ Visits from 28/09/2009 to 07/10/2009, from 17/10/2011 to 19/10/2011 and from 23/04/2012 to 27/04/2012.

¹⁸ Human Rights Council, Report of the Working Group on the Universal Periodic Review (Belgium), A/HRC/18/3, 11 July 2011, § 100.55.

¹⁹ *Ibidem.*, § 101.16.

²⁰ *Ibidem.*, § 101.23.

²¹ Report of the Human Rights Commissioner for the Council of Europe following his visit to Belgium from 15 to 19 December 2008, CommDH(2009)14, 17 July 2009

²² Article 17 – The Right of children and young persons to social, legal and economic protection.

Charter and 8 on the application of the Revised Charter. During the drafting of this report, it did not appear relevant to us to include the recommendations submitted in this context.

8. THE JURISPRUDENCE OF THE EUROPEAN COURT ON HUMAN RIGHTS

The European Court of Human Rights (hereinafter “ECtHR”) has held on many occasions that Article 13 of the European Convention on Human Rights guarantees the **availability at a national level of a remedy to enforce the substance of the Convention**, namely the rights and freedoms that should be respected under the domestic legal order regardless of their form.

Moreover, Belgium has been sentenced on three occasions²³ for the practice, up until 2008, of incarcerating foreign minors (regardless of their status).

9. COMPLAINTS MECHANISMS AVAILABLE TO CHILDREN UNDER THE FOLLOWING CONVENTIONS

The ECtHR:

According to Article 34 of the European Convention on Human Rights, any individual (including minors) may lodge a complaint before the ECHR to report a violation of his/her fundamental rights as stated in the convention thereof. Nevertheless, the conditions of admissibility and the proceedings before the ECHR turned out to be a clear obstacle to minors’ access to justice due to their legal incapacity. **The exhaustion of domestic remedies and the length of time of the proceedings may constitute other obstacles specifically to minor’s access to justice.**

The third Optional Protocol to the Convention on the Rights of the Child:

A minor (or his/her representative) may lodge a complaint before the CRC once all available domestic remedies have been exhausted and if his/her request is admissible; however, Article 7 §e of the Protocol states that: “this shall not be the rule where the application of the remedies is unreasonably prolonged or unlikely to bring effective relief”. Considering the length of the proceedings before the Belgian domestic jurisdictions and the minors’ legal capacity (article 372 of the Belgian civil Code), it is legitimate to expect a certain flexibility on behalf of the Committee in this respect.

The Individual Complaint Mechanism under CAT:

The Convention against Torture includes an individual complaint mechanism for the cases in which one of the provisions of the Convention has been violated. If necessary, the Committee may take temporary measures to prevent a violation. Later on, the Committee will adopt a decision based on the information received from the individual and from the State concerned, on the complaint.

²³ ECHR, *Case Mubilanzila Mayeka and Kaniki Mitunga c. Belgium*, 12 October 2006, application n° 13178/03, §§68-69; ECHR, *Case Muskhadzhiyeva and others c. Belgium*, 19 January 2010, application n°. 41442/07; ECHR, *M.S.S. c. Belgium and Greece*, 21 January 2011, application n° 30696/09, §§367-368.

The 1995 Protocol to the Revised European Social Charter:

Belgium ratified the additional protocol to the Revised European Social Charter providing for a system of collective complaints in 2003. This protocol provides that NGOs which have consultative status with the Council of Europe may lodge complaints before the Independent Committee of Experts. This Committee will determine if the complaint is admissible and, if so, will analyse the arguments and information received with the aim of drafting a report that will be submitted to the Committee of Ministers. DCI-Belgium already resorted this procedure. For instance, in the case *(DCI) v. Belgium (No. 69/2011)*, DCI alleged that Belgium was violating articles 7, 11, 13, 16, 17, 30 and E of the revised European Social Charter because the Belgian State was failing/neglecting to provide Social Support and legal aid to UFM and to asylum-seeking families (with children).

C. THE NATIONAL FRAMEWORK

1. LEGAL FRAMEWORK ON MINOR'S DEPRIVATION OF LIBERTY IN BELGIUM

1.1. LEGAL BASIS

The Act of 8 April 1965 on juvenile protection, the care of minors who committed an act deemed to constitute an offence and the reparation of damage caused thereby²⁴ (hereinafter: "Act of '65") provides the various situations in which a minor might be imprisoned.

The Act defines the Belgian minor's justice system as a model that relies on **education and a sense of responsibility, rather than on repression**. It based on a federal system and on a division of competences among the different levels of power (federal State and federated entities). This division is being reformed after the 2011 institutional agreement²⁵ that established the communalization of juvenile delinquency.

Thus the federal State is competent to determine²⁶:

- Criminal offences (Penal Code);
- The juvenile jurisdictions organisation (Article 76 of the Judicial Code²⁷);
- The territorial competence of juvenile jurisdictions (Article 44 of the Act of '65);
- The procedure before the juvenile jurisdictions (Articles 45 et seq. of the Act of '65);
- The deprivation of liberty (Act of 20 July 1990 on pre-trial detention)²⁸ and the rules on the minors' hearings (Article 19 *bis* à 101 of the Code of Criminal Procedure);
- The execution of sentences imposed to minors who committed an act deemed to constitute an offence (hereinafter: "ADCO") and that were transferred to an adult court (Articles 606 of the Code of Criminal Procedure²⁹).

Since 1 July 2014 the Communities³⁰ are competent to determine:

- The measure that a juvenile court judge might take (former federal competence – Articles 37 §1, to 4 and 37 *bis* et *ter* of the Act of '65) with regard to children suspected of committing ADOs: their nature and purpose, the criteria and conditions, the duration, the extension, the revision, the measures' hierarchy, the specific motivations, the organisation of public and private services to carry out the research and implement the measures;
- The rules to transfer a minor to an adult court: providing and organising its conditions and effects;
- The rules for sentencing to a detention centre;
- The administration of detention centres (hereinafter: "FDC") following procedures yet to be determined. Before the federal State used to deal only with security aspects, whereas the community dealt only with pedagogical aspects.

In addition to the competences that it already held, namely:

- The operations of the Public Youth Protection Institutions (hereinafter: "IPPJ") (IPPJs' Code³¹) and the Community Institutions for Youth Protection in Flanders (hereinafter: "GI")³²;

²⁴ *O.J.B.*, 14 April 1965; the Act has been modified several times (recently through the 15 May 2006 and 13 June 2006 Acts).

²⁵ Institutional agreement of 11 October 2011, chapter 3.4 Justice, p 37 http://www.dekamer.be/kvvcr/pdf_sections/home/FRtexte%20dirrupo.pdf.

²⁶ Report from the working group established on the Minister's for Youth support initiative, "Communalizing certain provisions of the Act of 8 April 1965 on juvenile protection, the care of minors who committed an act deemed to constitute an offence and the reparation of damage caused thereby", March 2014, page 6.

²⁷ Modified by the Act of 30 July 2013 establishing a Family and Youth Tribunal, *O.J.B.*, 27 September 2013.

²⁸ *O.J.B.*, 14 August 1990.

²⁹ Article 26 the special Act of 6 January 2014 on the sixth reform of the State, *O.J.B.*, 31 January 2014, and that entered into force 1 July 2014.

³⁰ French-speaking Community, Flemish Community, German-speaking Community and Community Commission Brussels Commune.

³¹ Governmental Decree of the French-speaking Community on the code of Public Youth Protection Institutions referred to in Article 19bis the Decree of 4 March 1991 on youth support of 13 March 2014, *O.J.B.*, 17 July 2014.

³² Article 5 Flemish government Decree of 24 October 2008 implementing the Decree of 7 March 2008 on special youth support and the framework Decree concerning Political Administration of 18 July 2003, *O.J.B.*, 2 March 2009 and the GI's Internal Rules,

1.2. ACTS DEEMED TO CONSTITUTE AN OFFENCE

We should bear in mind that the Act of '65 contemplates **ADCO** but never refers to offences in itself when talking about minors. As a matter of fact the Belgian system does not contemplate minors as being mature enough to be able to commit an offence in the strict sense of the penal law. That is why it refers to acts –that committed by an adult- would constitute an offence. Hence, minors can only be subject to (educational) **measures** imposed by the **Family and Youth Court**, and not to sentences given by a Penal Court; however, one of the foreseen measures may be the deprivation of liberty.

It is worth pointing out that the number of ADCOs submitted has experienced a clear and continued decrease between 2009 and 2013. (See Annex 3, *Statistics – Table n°1*)

In 2012, only 5% out of 992'772, the total population of minors in the French-Speaking Community, and out of 42'578 registered to have been cared for at least once by the *Direction de l'Aide à la Jeunesse en Communauté française* (Youth Support Direction for the French-Speaking Community, hereinafter: "DGAJ"), have been reported for ADCOs and less than 3% for ADCO combined with other forms of participation (voluntary, coerced or both), from which girls constitute a clear minority³³.

1.3. DECISIONS TAKEN BY THE FAMILY AND YOUTH COURT³⁴

In Belgium, the Family and Youth Court is competent to take decisions concerning people under 18 years old³⁵ (age of criminal responsibility). Until the community legislations are adapted, section II of the Act of '65 provides "care, protection and educational" measures that the court might take concerning minors, as well as the conditions that have to be met.

Therefore, the judge has to take into considerations several factors to decide which will be the most appropriate measure³⁶:

- The character and maturity of the person concerned
- His/her living environment
- The seriousness of the acts, the circumstances in which it took place, the damages and repercussions on the victim
- Previous measures taken against the person concerned and his/her behaviour during their execution
- The safety of the person concerned
- Public safety

Before choosing any other measure, preference should be given first of all to **restorative offers**³⁷, and also to the **minor's written project**³⁸. The Act explicitly states as a priority maintaining the minor in **the same living environment**³⁹ before considering resorting to **placing the minor under detention**. Lastly, an **open regime** detention should be favoured over a **closed regime** detention.

If the minor is over 16 years old and that the offence is very serious (murder or rape) and that the judge feels that he/she does not have the appropriate provisions at his/her disposal, he/she can decide to relinquish the case and transfer it to adult court. As we will see further on, in section 1.4.4, page 23.

«Huisregels Gemeenschapsinstellingen» <https://wvg.vlaanderen.be/jongerenwelzijn/assets/docs/hulp/gi-FDC/algemene-huisregels.pdf>.

³³ Juvenile Welfare report n°1, 2012 edition, pages 4 to 8.

³⁴ Act of 30 July 2013, *op.cit.*, entered into force 1 September 2014.

³⁵ Except for the cases of minors transferred to an adult court, referred to *infra*.

³⁶ Article 37 § 1 of the Act of '65, *op.cit.* footnote n°24.

³⁷ Mediation and group restorative dialogue as set out by articles 37bis to 37quinquies of the Act of '65, *op. cit.* footnote n°24.

³⁸ Article 37 §2ter of the Act of '65, *op.cit.* footnote n°24.

³⁹ Article 37 §2 subparagraph 1, 1° to 5° of the Act of '65, *op.cit.* footnote n°24.

1.4. DIFFERENT TYPES OF DEPRIVATION OF LIBERTY FOR MINORS

1.4.1. Minors under the age of 12

A minor under the age of 12 charged of an ADCO may only be subject to measures that maintain him/her in his/her living environment.

1.4.2. From the age of 12 onwards

The Family and Youth Court may decide to place minors over 12 years old under the custody of a community public youth protection institution (IPPJ or GI), in an open or closed regime. The magistrate has to establish a maximum length for the detention that cannot be exceeded unless there are exceptional motives related to a persistent misconduct on the juveniles behalf, and a dangerous behaviour to themselves or others⁴⁰. The detention measure in an open or closed regime taken by the judge shall be reassessed within 6 months. Juveniles may only be placed in IPPJ/GI until the maximum age of 20.

Legislation restricts the access to IPPJ to juveniles that have committed acts that if they were committed by an adult would be sentenced⁴¹. Thresholds for the sentences may vary depending on the type of educational detention chosen (open or closed regime).

Closed regime educational detention:

1st hypothesis: from the **age of 14 onwards** and meets one of the following conditions:

- 1° commits an act subject to (if the author was an adult) 5 to 10 years of imprisonment or more
- 2° has been sentenced for either an indecent assault involving the use of violence (article 373 of the Penal Code) and conspiracy (article 323 of the Penal Code) or for threats against people (article 327 of the Penal Code).
- 3° has already been placed in IPPJ by definitive sentence and commits an offence using force and causing injuries or that is subject to a 3 year or more imprisonment sentence.
- 4° has been found guilty of premeditated assault and battery causing damages (article 400 of the Penal Code), destruction (article 525 of the Penal Code), or of violent and armed rebellion (article 269 of the Penal Code)
- 5° if the minor has not complied with previous measures (sanction detention)

2nd hypothesis: requires that all of the following cumulative conditions have been met

- 1° is between **12 and 14 years old**
- 2° has been found guilty of serious interference with a person's life or health
- 3° presents a particularly dangerous behaviour
- 4° meets one of the 5 conditions under the 1st hypothesis

The juvenile court judge also has the possibility to adopt interim⁴² "detention measures" in a closed or open milieu⁴³.

⁴⁰ Article 37 §2, subparagraph 4 of the Act of '65, *op.cit.* footnote n°24.

⁴¹ Article 37, §2 quater of the Act of '65, *op.cit.* footnote n°24.

⁴² That is to say that it is not a decision on the merits.

⁴³ Articles 52 and *seq.* of the Act of '65, *op. cit.* footnote n°24.

Measures for care in a closed educational regime:

Only when there are serious signs of guiltiness, when the person concerned presents a dangerous behaviour to –to themselves or others- and when there are valid reasons to believe that, if the person concerned were to be released, he/she would commit another crime or offence, seek to evade justice, tamper with evidence or engage in collusion with others.

This measures may only be imposed, in principle, for **a length of maximum 3 months renewable only once**; however, they may be **extended on a month to month basis** under serious and exceptional circumstances in those cases in which public safety may be in danger or when the concerned person's character is cause for concern.

1.4.3. From the age of 14 onwards

Provisional Detention Centre

When the youth judge considers that a minor must be detained because he/she represents a danger for society AND if there is not enough room in a IPPJ/GI, the judge may send the minor, provisionally, to a **Provisional Detention Centre** (located in Everberg, Tongres and Saint-Hubert), provided that the following conditions are met⁴⁴:

- 1° the minor must be between **14 and 18 years old** at the time of his/her commission of the offence
- 2° if the act had been committed by an adult the offence should have been subject to a 5 to 10 years or more imprisonment sentence
- 3° public safety is in danger
- 4° there is no appropriate space available in a community institution (IPPJ/GI)

Under no circumstance may it constitute a sentence; it is only a provisional **measure of societal protection**.

5 days after the original order has been given, the Family and Youth Court decides month to month if the measure is withdrawn, modified or maintained, without exceeding a total length of 2 months. After 2 months and 5 days, the juvenile court judge must adopt a different measure.

This measure may only be taken *“for the shortest appropriate period of time and exclusively when the purpose of the provisional measure cannot be attained any other way”*. The objective cannot be to *“exercise immediate suppression or any form of coercion. It must comply with provisions 37 and 40 of the Convention on the Rights of the Child”*⁴⁵. The judge must give appropriate reasons to justify the ruling⁴⁶.

Exception: detention of minors at risk

The Flemish Community⁴⁷ allows the **detention of minors at risk**⁴⁸ in a GI in an open or closed regime.

Complying with a certain number of cumulative conditions related to failed attempts at voluntary care or during urgent circumstances (Article 47), the juvenile court judge may, at the request of the Public Prosecutor's Office, take judiciary action against minors in a worrisome situation. These actions may include (Article 48, 11° and 12°):

⁴⁴ Act of 1 March 2002 on provisional detention of children who committed an act deemed to constitute an offence, *O.J.B.* 1st March 2002.

⁴⁵ Article 4 of the Act of 1st March 2002, *op. cit.* footnote n°44.

⁴⁶ A. DE TERWANGNE, “Placement provisoire de mineurs ayant commis un fait qualifié infraction, I. Commentaire juridique », *J.D.J.*, February 2003, p. 3.

⁴⁷ Articles 37 and 38 of the Flemish Decree of 7 March 2008 on special youth support («Decreetinzake Bijzondere Jeugdbijstand»), *O.J.B.* 15 April 2008, modified by articles 47 and 48 of the 12 July 2013 Decree, *O.J.B.* 13 September 2013.

⁴⁸ Minors that have not committed or are not suspected to have committed an offence.

- Placing the minor in an **appropriate open regime institution**, as an exceptional measure and for no more than 1 year;
- Placing a minor from the **age of 14** in an **appropriate closed regime institution**, as an exceptional measure and **for no more than 3 months**, if it can be proven that the minor evaded the measures stated in point 10⁴⁹ and 11° two or more times and if the action is taken to preserve the minor's integrity of the person;

1.4.4. From the age of 16 onward

A minor from the age of 16 onward may be **transferred to an adult court**: under certain conditions the Juvenile court judge may remit cases of especially serious⁵⁰ acts to an adult court. Belgium is linked to international standards on juvenile justice systems; but unlike these, Belgium allows juveniles to be tried as adults.

The law states that *"if the person accused of an act deemed to constitute an offense before the Juvenile Court is aged 16 or more when the act was committed and that the juvenile court considers that care, preservation or educational measures are inadequate, the judge may relinquish jurisdiction through a reasoned decision and remit the case to the Public Prosecutor's Office for the purpose of prosecution (...)".*⁵¹

The motivation to transfer a minor into an adult court has to take into account the minor's and his/her relatives characters and the juvenile's maturity. Therefore, a social study and a medical-psychological examination are required.

The proceedings will take place before:

- If the person concerned is suspected to have committed an offence or a correctionable crime⁵², the proceedings will take place before a specific chamber within the Juvenile Court (composed of two juvenile court judges and one judge from the Correctional Court) that applies de common criminal law and the common criminal proceedings.
- If the person is suspected to have committed a crime that cannot be relinquished to the Correctional Court, the proceedings will take place before the Court of Assize^{53,54}.

A minor can only be transferred to an adult court if he/she has already gone through one or several protective measures or if he/she has committed a serious offence.

In the event of a sentence to imprisonment without suspension, the minor concerned will complete the sentence in a Federal Detention Centre (hereinafter: "FDC"). By the time the juvenile reaches his/her 18th birthday, he/she could be transferred to an adult prison if there is not enough space within the FDC or if there are serious disruptions in the institution.

⁴⁹ Place the minor in the care of an applicant's host.

⁵⁰ Referred to in articles 373, 375, 393 to 397, 400, 401, 417ter, 417 quater, 471 to 475 of the Penal Code or the attempt of committing an offence referred to in articles 393 to 397 of the Penal Code, that is to say the following offences: indecent assault involving the use of violence or threats; rape; murder, assassination, parricide, infanticide, poisoning or the attempt to commit any of the above-mentioned offences; assault and battery causing incapacity to work, an incurable illness, full loss of function of an organ or a serious mutilation; assault and battery causing unintentional death; torture; inflicting inhumane treatment; robberies involving the use of violence or threats.

⁵¹ Article 57bis of the Act of '65 (as modified in 2006), *op. cit.* footnote n°24.

⁵² Very serious offences that in theory are the jurisdiction of the Court of Assize but that may be tried in the Correctional Court if the justice system considers there are mitigating circumstances.

(http://justice.belgium.be/fr/ordre_judiciaire/cours_et_tribunaux/tribunal_de_premiere_instance/tribunal_correctionnel/quelles_affaires/).

⁵³ Composed in accordance with the provisions in article 119, subparagraph 2, of the Judiciary Code.

⁵⁴ On 13 March 2008 the Constitutional Court, following an appeal presented by *Ligue des droits de l'Homme* and Defense for Children International, quashed the provision that allowed the Court of Assize to try minors that had committed crimes that cannot be relinquished to the Correctional Court arguing that the Court of Assize did not have judges who specialized in youth. Since the sentence was given, the Legislator has kept the provision and has merely established that some judges should follow a youth specific training.

1.4.5. Mentally ill minors

The 2006 reform incorporated various provisions⁵⁵ into the Act of '65 –provisions that have not yet entered into force- on minors who have committed ADCO (Article 36, 4°) and suffer from psychological or psychiatric disorders. In the meantime, the magistrates resort to Article 37, 7° of the Act of '65 pursuant to which the juvenile court judge may “(...) place them in an appropriate institution according to the terms established by each Community so that they are sheltered, treated, educated or given a professional training”.

The Act of 26 June 1990 on the protection of mentally ill persons⁵⁶ allows hospitalization in a psychological institution –eventually in a closed regime- but it also allows to put in place observation (hereinafter: “PUO”), maintenance and aftercare measures in their family environment. The conditions for the application of the Act of 1990 are severe and cumulative: the person must have been diagnosed with a mental illness; the person must pose a risk to themselves or others and the person does not have any other available treatment.

Additionally, the medical-psychological units are subject to a federal protocol that regulates the forms of cooperation between those units and the judicial bodies⁵⁷. In the French-speaking Community, these units are also subject to a charter of the specific rights of hospitalized children to whom compulsory treatment has been imposed by a judicial authority –there is no equivalent charter in Flanders.

These two non-binding instruments are the result of joint work made by the working group “*Santé Mentale et Justice des mineurs*” (Mental Health and Justice for Minors) which brings together since 2007 all of the actors on the ground of the concerned fields. This initiative has allowed those actors to share exchange and ponder the practical issues that they face during the necessary interaction of their respective services. Nevertheless, authorities only relatively take into consideration the work of these actors; the concerned authorities should without a doubt be a lot more reactive when it comes to this joint work.

The length of time to which a minor who committed an ADCO may be placed in compulsory treatment is of 6 months renewable once, in theory; however, it changes depending on the case and might be extended beyond that period on the basis of a medical report. When a minor is put under observation (PUO) by a decision of a judge in a psychiatric institution under the responsibility of a physician, this physician may decide to close down that section. This measure has a time limit of maximum forty 40 days but may be maintained, on the basis of a detailed report from a chief physician, for maximum two 2 periods that cannot exceed 2 years each.

1.4.6. Foreign minors

Up until 2008 foreign minors that arrived in Belgium (accompanied or unaccompanied) were placed in Detention Centres for Immigrants, they were deprived of liberty.

This practise was denounced on several occasions by numerous organisation, by parliamentarians, by the DGDE and the KRC and by the United Nations High Commissioner for Refugees (hereinafter: “HRC”), and Belgium was condemned by the ECHR in three of its judgements⁵⁸.

Since then, in theory, there are no longer any foreign minors detained in Belgium. However, this rule might suffer few exceptions.

⁵⁵ Article 37 §2 5°, 7°, 9° and 11° of the Act of '65, *op. cit.* footnote n°24 : Ambulatory care or placement in a child psychiatry service.

⁵⁶ O.J.B., 27 July 1990.

⁵⁷ O.J.B., 26 June 2007. The protocol was evaluated in 2011 in the French-speaking Community in order to include the new health-care system plans created since the protocol was established. The competent authorities did not approve the evaluation. Moreover, the Flemish Community was not able to carry out this type of evaluation. A new evaluation is being carried out in the French-speaking Community and should be finalized by the end of the year 2014.

⁵⁸ ECHR judgment, *Case of Mubilanzila Mayeka and Kaniki Mitunga v Belgium*, 12 October 2006, motion n° 13178/03, §§68-69, ECHR judgement, *Case of Muskhadzhiyeva among others v Belgium*, 19 January 2010, motion n° 41442/07, ECHR judgement, *M.S.S. v Belgium and Greece*, 21 January 2011, motion n° 30696/09, §§367-368.

a. Unaccompanied Foreign Minors (hereinafter "UFM")

In theory, since the Act of 12 January 2007⁵⁹ entered into force no more UFM⁶⁰ may be deprived of liberty in a detention centre for immigrants⁶¹. Indeed, *"an alien who claims to be a minor and that nothing puts into question his/her minority is placed in an observation and orientation centre from the moment he/she crosses the border"*⁶².

Nevertheless, if there is a reason to doubt his/her age, the UFM has to undergo an age test. While awaiting the test results, if the UFM is considered an adult or after receiving the test results, he/she will be placed in a Detention Centre for Immigrants, in like manner as if he/she was an adult. The reliability of the test is highly questionable.

b. Families with Children

On 18 March 2008 Belgium concluded an agreement in order to comply with the jurisprudence of the ECHR. The agreement stated, amongst other things, that *"The government will establish an alternative to the detention of families with minors in detention centres for immigrants (...). The government will invest in the development of specific placement facilities for families with children that are awaiting deportation; facilities that should differ from the current detention centres for immigrants"*⁶³.

As a result of this agreement, the Government established a system of facilities called *"return houses"* where illegal immigration families could stay while they waited to be deported. It is difficult to determine whether this type of facilities falls under the definition of places of deprivation of liberty in the light of the Havana Rules. We thus decided to exclude this type of facilities from the research field.

The so-called "frontier families", that is to say families with children that cannot enter the territory because they do not comply with the requirements and for whom there is no space in the *"return houses"*, may be detained in Zaventem airport and placed in the detention centres 127bis and Caricole⁶⁴.

Finally, the AO may also transfer, 24 hours before their repatriation, families who received an order to leave the territory (hereinafter "OLT") and who are placed in a *return house* to the Zaventem airport detention centre for immigrants 127bis. The legality of this practice is questionable.

1.4.7. Minors deprived of liberty by law enforcement actions

Administrative arrest

An administrative arrest can be defined as *"a measure of constraint imposed by a law enforcement officer that provisionally deprives of the liberty to come and go as pleased"* in the cases and within the terms set out and referred to by the law⁶⁵. An administrative arrest can only be made if it is absolutely necessary, as long

⁵⁹ Act of 12 January 2007 on the reception of asylum-seekers and other type of foreigners, *O.J.B.*, 7 May 2007.

⁶⁰ Articles 1 and 5 of the programme act of 24 December 2002 – (I) (art.479) – Title XIII – Chapter VI – Guardianship of foreign unaccompanied minors, *O.J.B.*, 31 December 2002.

⁶¹ Federal Ombudsman, Investigation Report 2009/2 on the Aliens' Office's management of the operating of detention centres for immigrants, 2009, p.23, § 101.

⁶² Article 41, § 2, subparagraph 1 of the Act of 12 January 2007, *op. cit.* footnote n°59.

⁶³ Government Agreement of 18 March 2008 concluded by CD&V, MR, PS, Open Vld, cdH, p. 37, http://www.miiis.be/sites/default/files/doc/accord_de_gouvernement_18_mars_2008.pdf

⁶⁴ Article 74/9 of the Act of 15 December 1980.

⁶⁵ Act of 5 August 1992 on police proceedings, *O.J.B.*, 22 December 1992.

as there is no other less constraining way for the law enforcement officers to achieve their legitimate purpose and only for administrative police reasons, namely maintaining public order or public security.

An administrative arrest may take place in three other scenarios: if a foreign national does not have valid identity documents entitling them to be in Belgium⁶⁶; if police officers find a mentally ill person that represents a danger for themselves or others or that has escaped from the psychiatric institution where they were placed under observation by a judicial decision; if a person refuses to prove his/her identity or if their identity is questionable.

The arrest takes place under the responsibility and control of the administrative police officer that makes it. If the arrest were to be maintained, the police officer would have to refer back to either the mayor of the commune where the arrest took place or to the Alien's Office, in the case of the Alien Police, as quickly as possible.

Never may the deprivation of liberty be longer than the length required by the circumstances that justify it and in any case it shall not exceed 12 hours or, solely with reference to immigrants without valid documentation entitling them to be in Belgium, 24 hours. When it is a minor that is being arrested, the arrest shall be "*as short as possible*"⁶⁷. Any person that has been arrested may ask that a person they trust be notified.

Judicial arrest

A judicial arrest is the provisional deprivation of the liberty to come go as pleased for the purpose of taking the person arrested before a competent magistrate (Public Prosecutor or investigating judge). The objective of this type of arrest is thus to retain the alleged offenders of a criminal act or offence and to arrest them so that they can be brought to justice⁶⁸. The Act on preventive detention⁶⁹ establishes the procedure in force when it comes to adult judicial arrests. Nevertheless, this Act does not apply to minors except if caught when leaving the scene of the crime⁷⁰.

Only magistrates (Public Prosecutor or investigating judge) may decide to proceed to an arrest, excluding the cases of crimes and offenders caught in flagrante delicto⁷¹. A minor, however, will not be brought before an investigating judge unless there are "*exceptional circumstances and only if absolutely needed*"⁷². The minor will be brought before the juvenile court judge who may take "*care, preservation and education*" measures of up to placing the minor in a closed regime institution within a IPPJ/GI, or, if the minor is a boy over 14 years old, placement in a provisional detention centre for minors (FDC Saint-Hubert in the French-speaking community and FDC Tongres in the Flemish Community).⁷³

The arrest may never exceed 24 hours from the moment in which the effective deprivation of liberty took place, that is to say when the person was no longer free to come and go as pleased. Beyond this threshold, the investigating judge can decide if it is necessary to prolong the arrest of a minor who was transferred to an adult court, and, if it is the case, the judge will issue an arrest warrant. The arrest warrant has a validity of 5 days, when this period of time comes to an end the accused is released, unless the pre-trial chamber decides to prolong the arrest warrant for a one-month period.

In the case that an administrative arrest coincide with a judicial arrest, the length of the deprivation of liberty cannot exceed 24 hours (never 36).

⁶⁶ Act of 15 December 1980 *op. cit.* footnote n° 64.

⁶⁷ ICRC, Article 37b.

⁶⁸ Article 15, 1° and 2° of the Act on police proceedings, *op. cit.* footnote n° 65.

⁶⁹ Act of 20 July 1990 on preventive detention, *O.J.B.*, 14 August 1990.

⁷⁰ Article 36bis of the Act of '65, *op. cit.* footnote n° 24.

⁷¹ In the case of a crime or an offender caught in flagrante delicto, a judicial police officer or a police officer may decide to proceed to an arrest.

⁷² Article 49 al. 2 of the Act of '65, *op. cit.* footnote n° 24.

⁷³ Article 36, 37 §2, 8°, 52, 52 quater of the Act of '65; Act of 1 March 2002, *op. cit.* footnote n° 44.

A person who has been detained enjoys the right to: be informed (in an oral or written form – in a language that the person can understand, with the help of an interpreter if needed) of the reasons for the deprivation of liberty and of its maximum length; benefit from medical assistance; ask that someone they trust be notified -if the person detained is a minor it is compulsory that whoever cares and supervises the child (the father, the mother, the tutor or any other person holding custody) is notified as soon as possible-; have enough drinking water and, depending on the time of the day, have a meal⁷⁴; use adequate sanitation facilities⁷⁵. Law enforcement must comply with the division between men and women, adults and adolescents, and able-bodied and disabled persons; consult a lawyer privately during a judicial arrest before any interrogation by a police officer or a magistrate (Public Prosecutor or investigating judge) takes place –minors cannot waive this right⁷⁶; be represented by a lawyer, for free if the person detained does not have the resource to pay one or if he/she is a minor⁷⁷.

On February 2012 the DGDE and his Flemish counterpart published a report on “Youth and Law Enforcement”⁷⁸. In this report they demonstrate *“the huge lack of understanding that persists between juveniles and police officers and that gives rise to a lack of respect and to violence on both sides”*. The two child ombudsmen enumerate numerous examples of complaints they have received (use of handcuffs, arrests, conditions of detention, hearings and the efforts needed to lodge a complaint) that an imprecise legislation in itself and an application thereof that is subject to interpretation cause.

1.4.8. The other possibilities for the deprivation of liberty of minors

For the sake of completeness, it is necessary to point out that in the Belgian legislation there are other hypothesis in which a child may be deprived of liberty that we will not analyse in detail in this paper. Namely:

a. Children detained with their parents

In Belgium mothers are incarcerated with their children until they attain the age of 3. Currently, there are four detention centres that welcome children of incarcerated mothers: Lantin, Mons, Berkendael, and Bruges⁷⁹.

In the regulation level there is Article 15 §2 of the Act on the principles of prison administration and the legal status of inmates (hereinafter: “Dupont Act”)⁸⁰ state that *“(…) the King decides the prisons or the parts of prisons specifically designed to receive: (...) 3° inmates detained with their child under the age of 3 years”*.

However, this provision of the act has not yet entered into force. The only norms currently in force are articles 111 and 112 of the Royal Decree of 25 May 1965 promulgating the rules of procedure for the detention facilities⁸¹ (hereinafter “RP”) that apply to the *“incarceration of women with children”*.

According to the *European Prison Rules*⁸², *“Infants may stay in prison with a parent only when it is in the best interest of the infants concerned; (...) special provision shall be made for a nursery, staffed by qualified persons, where the infants shall be placed when the parent is involved in activities where the infant cannot be present; special accommodation shall be set aside to protect the welfare of such infants”*.

⁷⁴ Article 33 sexies of the Act on police proceedings, *op. cit.* footnote n°65.

⁷⁵ Article 33 sexies, *op. cit.* n°65.

⁷⁶ Article 2bis §1er of the Act on preventive detention, *op. cit.* footnote n°69.

⁷⁷ Article 1 §1er, 8° de l'AR du 18 décembre 2003 déterminant les conditions de la gratuité totale ou partielle du bénéfice de l'aide juridique de deuxième ligne et de l'assistance judiciaire.

⁷⁸ Opinion of the DGDE «Jeunesse et Police: Recommandations pour un apaisement » (Youth and Law enforcement: recommendations for calming down) together with Bruno VANOBBERGEN, Kinderrechtencommissaris, February 2012.

⁷⁹ The “Masterplan Prisons” plans to establish in the prison of Haren of a special section for detainees with children, however this prison will not be operational, in theory, until 2016.

⁸⁰ Act of 12 January 2005 on the principles of prison administration and the legal status of inmates, *O.J.B.*, 1February 2005.

⁸¹ Royal Decree of 21 May 1965 promulgating the rules of procedure for the detention facilities, *O.J.B.*, 21 May 1965.

⁸² European Prisons Charter of 3 May 2006, Doc. 10922.

The Belgian Federal Ombudsman recommends⁸³ that the Directorate-General for Prisons adopts specific instructions regarding the placement of children that accompany their detained parents. These instructions should take into account the infrastructure standards that the facilities should comply with as well as the daily routine of the imprisoned children. On 26 June 2014 the recommendation had not yet been followed up.

b. Solitary Confinement measures

Both the KRC and the DGDE published reports on the practice of putting children in solitary confinement⁸⁴. In these reports they put into question this practice that greatly infringes the fundamental rights of people. It also highlights the fact that these practices do not constitute an exception and that it happens in all of the living facilities that welcome children.

In this report we will briefly present the framework of the measures taken in IPPJ/GI, provisional placement centres or federal detention centres as well as in psychiatric hospitals, facilities where juveniles may be placed in a closed regime.

- Minors placed in IPPJ/GI (in an open or closed regime), a provisional placement centre or a federal detention centre

This measure of protection and preservation⁸⁵ may only be taken in specific facilities and when the juveniles threaten their safety or that of others, of the staff or to the visitors and it cannot be imposed as punishment⁸⁶. It falls under the competence of the directorate.

In the Flemish Community the Decree of May 2004 specifies that the Internal Rules of every facility have to include the rules of procedure for the temporary solitary confinement measure or the temporary restriction of liberty measure. It also states that these rules have to be transmitted in a clear manner. It must also include details about the layout and the use of rooms for solitary confinement, the register of the solitary confinement measures, the length of the solitary confinement measure and its surveillance. The Internal Rules "Algemene Huisregels" of the GI⁸⁷ does not incorporate who may children in solitary confinement contact for the duration of the measure or the layout of the room. The rules however are supplemented by 3 annexes⁸⁸ specific to the solitary confinement measure and to separation of juveniles that complete the rules by specifying (1) the legal framework and the definitions of the measure, (2) the procedure of the measures and (3) the code of conduct for juveniles before, during and after the measures.

In the French-speaking Community the Decree of 2004 and IPPJs' Code state that, when a juvenile is placed under this measure, the directorate has to notify forthwith the judge handling the case and the juvenile's lawyer. The measure is confirmed by a written report addressed to the juvenile jurisdiction, the juvenile's lawyer and to the competent administration. The measure shall be lifted as soon as the factor that motivated the measure comes to an end. In theory, the length of the measure shall not exceed 24 hours unless the competent judge agrees on an extension that cannot extend beyond three days. Under exceptional

⁸³ Federal Ombudsman, RO 11/09, <http://www.federalombudsman.be/fr/content/ro-1109> (updated on 26 June 2014).

⁸⁴ Kinderrechtencommissariaat (KRC), Checklist "Kinderen en afzondering", May 2006, http://www.kinderrechten.be/IUSR/documents/volwassenen/dossier_afzondering/KRC06_Afzondering_screen.pdf and "Binnenste buiten", April 2010, p. 108-116, <http://www.kinderrechtencommissariaat.be/publications/detail/binnen-ste-buiten>; Délégué Général aux Droits de l'enfant (DGDE), Report on the solitary confinement of Children, February 2012.

⁸⁵ This measure is spelled out on the one hand, in Article 19 of the Decree of 4 March 1991 (on Youth support, *O.J.B.*, 12 June 1991 recently modified through a the Decree of 29 November 2012, *O.J.B.*, 21 Mars 2013) and in Title X of the new Code for IPPJs (Articles 55 to 60 of the Decree of the French-speaking Community on public youth protection institutions referred to in article 19bis of the Decree of 4 March 1991 on youth support of 13 March 2014, *O.J.B.*, 17 July 2014). On the other hand, in Article 28 §3 of the Decree of 7 May 2004 on the status of minors within the complete youth support, of article 10.2 of the Internal Rules "Algemene Huisregels" of GIs and of Chapter IV of the Internal Rules of "De Grubbe" in Everberg (*O.J.B.*, 17 May 2007) of the Flemish Community.

⁸⁶ Article 19 of the Decree of 4 March 1991 *op.cit.* footnote n° 85 ; Article 55 of the Code of IPPJ *op. cit.* footnote n° 107.

⁸⁷ This internal regulation and its annexes are also applicable within the FDC of Everberg.

⁸⁸ http://wvg.vlaanderen.be/jongerenwelzijn/assets/docs/hulp/gi-FDC/isolatie_procedures.pdf;
http://wvg.vlaanderen.be/jongerenwelzijn/assets/docs/hulp/gi-FDC/isolatie_gedragscode.pdf;

circumstances justified by a judge's agreement and only with a physician's prior agreement, the measure may be prolonged.

The total length of the solitary confinement measure shall not under any circumstance exceed 8 days in the French-speaking Community and 5 days in the Flemish Community.

An educational support must be guaranteed for all of the duration of the solitary confinement measure. This measure may not deprive the juvenile of its rights, especially the right to communicate with the outside, to have visits, or to make phone calls. These rights may only be restricted through a reasoned decision of the director justified by the need to preserve order and safety of the institution (and not as a punishment).

Moreover, a register of the solitary confinement measures shall be kept and it must be available for consultation at any time by administration officer, by the DGDE and the KRC and by the juvenile's lawyer. The Directors of the IPPJs must also draft an annual report on the solitary confinement measures that shall be sent to the competent administration and, upon request, to the Ministry.

It is worth pointing out that to date the provisional internal rules for the education section of the FDC of Saint-Hubert differs in several respects to the IPPJs' Code, even though it is submitted to this code. For example in the following provisions:

Article 28

- §1: The measure of solitary confinement cannot be used exclusively as a punishment.
- §2: It does not state that the juvenile's lawyer must be one of the person notified when the measure is taken, neither is he/she stated as one of the persons that shall receive the report. The same happens with the competent administration.
- §4: the length of the measure may not exceed 5 days (not three) and should be reevaluated daily by the directorate committee.

Other than the compliance of the conditions and requirements mentioned for solitary confinement measures, during our visits to the 4 IPPJ/GIs for this research, we were able to observe similar practices that, until recently, were not subject to comply with the information, motivation, established length and follow-up requirements foreseen in articles 55 and *seq.* of the IPPJs' Code and in article 28 § 3 of the Decree of 7 May 2004.

This concerns mainly the intentional and formalized practice, drafted in the internal rules of some facilities⁸⁹, of imposing **systematically that newly-arrived juveniles to a "pass-through" solitary confinement** (in any room, or in a room for solitary confinement). This "pass-through" can last a few hours⁹⁰ (until an appropriate activity to welcome the juvenile starts) or can last up to 24 or 48 hours depending on the sections of certain IPPJ/GI. The aim is to let the juvenile rest for a while and give him the opportunity to start thinking on the reasons for which he/she has been placed in a IPPJ/GI, to look over the internal rules and to be informed of his/her rights and obligations.

It also concerns the **disciplinary practice** (this time as a punishment) of **imposing solitary confinement in** in order to separate the juvenile from the rest of the group during a certain period of time because this juvenile misbehaved and broke the rules⁹¹. This measure is generally taken by an educator or a section chief. The IPPJs' Code entered into force very recently but before that, it was simply impossible to verify the applicability of this practice of deprivation of liberty because there was no monitoring and no register in place. Unfortunately, on the Flemish side no such rules have been established for this matter.

⁸⁹ The IPPJ of St Servais : Specific rules to the Closed Section, the Education Sections and Welcome Section – open ("When you arrive to the IPPJ") ; the FDC of Saint-Hubert: Internal Provisional Rules of the Education Section – closed (article 6, §3).

⁹⁰ IPPJs of Braine-Le-Château and Campus Ruislede.

⁹¹ Practice observed in the IPPJs of Braine-Le-Château and St Servais and in the GI of Mol (De Kempen, campus De Markt : 1 section 1welcome/hallway of the solitary confinement rooms, 1 section orientation, 1 section observation, 4 sections education and 2 sections time-out (boys/girls)).

- *Minors placed in a psychiatric hospital*

Beyond the open or closed character of the residential units for intensive care where minors who committed an ADCO may be placed, these units all have at least one solitary confinement room with or without surveillance cameras, depending on the hospital or the section, and that contains a restraining device (restraining straps for hands, waist and feet) that may be used depending on the circumstances.

The therapeutic quiet (i.e. solitary confinement) measures in a psychiatric hospital can only be considered for medical reasons or to deal with a situation where the juveniles represents a danger to themselves or to a third party. All of the measures that deprive of liberty shall be clearly defined in the hospital's therapeutic project and/or in an attached protocol, as well as in the institution's internal rules; they may only be taken if they can be justified for medical and/or legal reasons and the people directly concerned must have received adequate and accessible information⁹². The measures should last the least possible time. The CHJ Titeca – visited institution for this research- worked very hard (following the CPT visits in 2001 and 2004) and was able to create by November 2001 a “reference document on the solitary confinement measures”⁹³. Since it was published, the document has served as source of inspiration for other residential institutions. Another interesting practice by the CHJ Titeca is the evaluation questionnaire they distribute to juveniles that have been segregated with the aim of allowing them to share their opinion on the way the measure was applied and how they felt.

⁹² Charter established by the working group “*Consultation Santé Mentale et Justice des mineurs*” (Dialogue on Mental Health and Justice for Minors) attached to the agreed collaboration protocol that regulates the interactions between the Belgian judiciary entities and the medical-psychological treatment units.

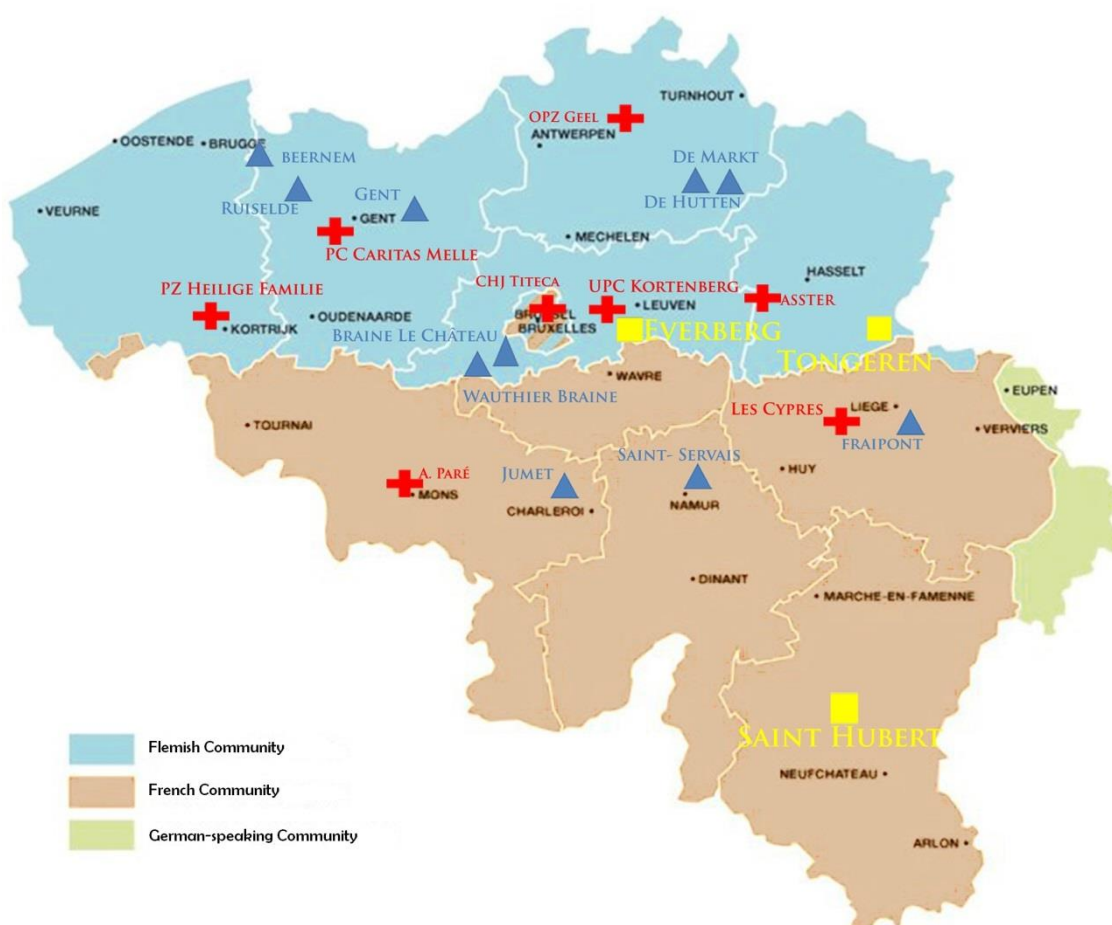
⁹³ Available for download in the DGDE's website : <http://www.dgde.cfwb.be/index.php?id=2592>.

2. THE DIFFERENT TYPES OF PLACES OF DEPRIVATION OF LIBERTY OF MINORS IN BELGIUM

The main two types of institutions that currently detain minors are: The Public (community) Youth Protection Institutions (IPPJ/GI) and the Federal Detention Centres (FDC). On top of these there are the psychiatric units for adolescents; the detention cells in police stations and court building and the immigrant detention facilities where minors might be deprived of liberty. In the following chapter each place of deprivation of liberty for minors will be analysed and their configuration, main characteristics, regimes and duties will be explained.

2.1. THE LOCATION OF DETENTION INSTITUTIONS

- Federal Detention Centres
- ▲ Public Youth Protection Institutions
- + Psychiatric Hospitals



2.2. PUBLIC YOUTH PROTECTION INSTITUTIONS (IPPJ AND GI)

Legal Basis and Regulation

The IPPJ/GIs were created for two purposes: building self-esteem and social reintegration through education. *“The actions of the public youth protection institutions aim at social reintegration of juveniles. These actions favour a restorative approach towards the victim and society”*⁹⁴. On the one hand, the institutions are managed by the **administration of youth support** (hereinafter “DGAJ”) of the French-speaking Community. The latter recently implemented the **“Code of IPPJ”**⁹⁵, that entered into force on 1st May 2014, and in the near future will also enforce a general regulation of IPPJs⁹⁶ that will replace the various texts that exist and are not always coherent. On the other hand, the GI are managed by the **internal and independent agency for youth social welfare** («Jongerenwelzijn») in the Flemish Community which enforces a **general rules code** («Algemene Huisregels»⁹⁷) upon juveniles placed in one of the two Flemish GIs (in the four sections). These rules make the community life and working with other juveniles and/or other coaches and educators much easier. The rules are an overview of the rights, obligations and daily practices of juveniles in a GI.

Location and accommodation capacity (See Annex 3 – Statistics: Table n°2).

There are 9 institutions in Belgium, 5 IPPJs in the French-speaking Community and 4 GI in the Flemish Community; there are none in Brussels⁹⁸ nor in the territory of the German-speaking Community.

The IPPJ/GIs have a total accommodation capacity in the closed sections of **182 places** of which 64 places for boys and 5 for girls in the French-speaking Community and 67 places for boys and 46 places for girls in the Flemish Community.

Infrastructure

The closed institutions (or closed sections of certain institutions) have very strong security measures that are clearly imposed to prevent juveniles from leaving the premises. The entrance doors of the institutions or the access doors to the sections are locked. Officers (from the Community) keep guard patrolling the premises and/or through video surveillance. At night all of the juveniles' rooms are locked and there are regimes that allow for authorised temporary leaves, but they vary from one institution to another. The above-mentioned practices of solitary confinement (*infra* 1.4.8, b. pages 27-29) are also imposed.

Regimes

The IPPJs organise 11 types of care and control of juveniles that offer a variety of 19 educational projects. In this report we will only mention the different types of regimes practised in closed sections⁹⁹: **observation and evaluation, observation and orientation, observation and emotional and interpersonal development, individualising and lastly education in a closed regime.**

⁹⁴ Article 18 of the Decree of 4 March 1991 on youth support, modified by the Decree of 29 November 2012 and articles 2, 7° and 47 of the Flemish Decree on special youth support 7 March 2008.

⁹⁵ Governmental Decree of the French-speaking Community on the code of public youth support institutions referred to in Article 19bis of the Decree of 4/03/1991 on youth support.

⁹⁶ This general regulation should be established –according to the Directorate coordination of IPPJs– on 1st January 2015 at the latest. It will replace the individual regulations of every IPPJ (comments made on 27 June 2014 by the Directorate coordination of IPPJs during the interview made within the research for this report).

⁹⁷ <http://wvg.vlaanderen.be/jongerenwelzijn/assets/docs/hulp/gi-FDC/algemene-huisregels.pdf>.

⁹⁸ The new Minister for Youth support of the Wallonia-Brussels federation wishes to restart the project of establishing an open IPPJ in Brussels, based in a pilot model. The minister gave the responsibility of planning this project to a working group lead by the DGDE. *Le Soir* newspaper, article “Je veux un centre ouvert pour jeunes à Bruxelles” (I want an open centre for juveniles in Brussels), Interview to Minister Rachid Madrane (Socialist Party) on 16 September 2014, page 6.

⁹⁹ For more information on the subject see the 2012 DGAJ report, Report n° 1, June 2014, pages 16 and 17.

As for the GI, they offer 5 modules¹⁰⁰ for educational and therapeutic journeys (regardless of open or closed character of the section) that are applied in all of the GIs¹⁰¹: **the residence; the welcome; the diagnosis; the support, treatment and training and the individual residence journey.**

2.3. THE FEDERAL DETENTION CENTRES (FDC)

The Act of 2002¹⁰² gives the juvenile court judge the power to temporarily place a minor in a Federal Detention Centre. Furthermore, a cooperation agreement made between the federal government and the communities establishes the operational procedures of the centres¹⁰³.

These centres were created to temporarily compensate for the lack of accommodation capacity in closed regime in the different Communities.

Currently there are 3 FDC, in Everberg, Saint-Hubert and Tongres only for boys. These centres are able to accommodate 81 boys in the so called "Education" section and 29 boys in the section for minors who were transferred to an adult court. Because of a lack of places especially for girls, those who are transferred to an adult court might be transferred directly from an IPPJ/GI to a women's prison.

2.3.1. The FDC of "De Grubbe" in Everberg¹⁰⁴

Legal basis and regulation

Following the Act of 1st March 2002 on the provisional placement of minors who committed an ADCO and pursuant to the Royal Decree of the same date, the first FDC in the Flemish Region was established in 2002.

This institution is jointly managed by the federal government and the Flemish Community¹⁰⁵. The federal government is in charge of the internal and external security aspects (surveillance of juvenile delinquents) as well as of the management and maintenance of the institution. The Flemish Community is in charge of the education and protection aspects by providing orientation for juveniles (psycho-medico-social and educational team). In this case the Act of '65 and the 2008 Decree on youth special assistance apply and the agency for youth social welfare (« Jongerenwelzijn ») takes care of the educational project.

The Everberg Act was an "emergency Act" approved in 2002 to compensate for the lack of spaces available in the IPPJs. Due to the devolution of powers towards the communities, the legal framework of the Everberg centre must be put in line with the one from the GI's closed regime of the Flemish Community for the 1st January 2015. Starting from this date the centre shall be managed solely by the Flemish Community.

To date the centre's Internal Rules¹⁰⁶ are applicable. These rules regulate the juveniles' reception, outside contacts, sanctions or solitary confinement measures, daily life, complaints and objections. Probably, the

¹⁰⁰ A module is a homogenous unit of assistance that may be applied to the different living groups where juveniles are placed (reception, support and observation, treatment unit and time-out and rehabilitation unit).

¹⁰¹ Plan for the enforcement of the process "Pedagogische en therapeutische werking in de Gemeenschapsinstellingen voor Bijzondere Jeugdbijstand" approved by the Flemish Welfare Minister, http://wvg.vlaanderen.be/jongerenwelzijn/assets/docs/hulp/gi-FDC/procesimplementatieplan_pedagogische-therapeutische-werking.pdf, pages 40 to 50.

¹⁰² Act of 1st March 2002 on the provisional placement of minors who committed an act deemed to constitute an offence, O.J.B., 1st March 2002.

¹⁰³ Cooperation agreement between the Federal State, the German-speaking Community, the French-speaking Community and the Flemish Community on the closed federal centre for the provisional placement of minor who committed an act deemed to constitute an offence, O.J.B., 11 September 2002.

¹⁰⁴ Unfortunately we were unable to visit this centre for the research because the Directorate denied us access to its institution.

¹⁰⁵ At the outset, there was only one FDC co-managed by the federal government and the 3 communities.

¹⁰⁶ O.J.B., 15 mai 2007.

"Algemene Huisregels" established by the agency "Jongerenwelzijn" that prevail in the GIs of the Flemish Community will be applicable in the future.

Infrastructure and accommodation capacity (See Annex 3 – Statistics: Table n°3).

At the outset the centre was supposed to accommodate 10 juveniles (5 French-speakers and 5 Flemish) but, between 2002 and 2010 the capacity of the centre was increased to accommodate 50 juveniles (24 spaces reserved for the Flemish Community, 24 spaces reserved for the French-speaking Community and 2 spaces for the German-speaking Community); however, in July 2011 the accommodation capacity of this centre was reduced to 40 spaces (all reserved to the Flemish Community)¹⁰⁷ but at the same time the accommodation capacity of the two new centres in Tongres and Saint-Hubert¹⁰⁷ was multiplied, both in the French-Speaking Community and in the Flemish Community.

Regime

The juvenile court judge may place –provisionally– a minor who committed an offence in a FDC for a maximum period of time of 2 months and 5 days provided that prior to the decision the conditions mentioned in point 1.4.3 page 22 are fulfilled. Once this period of time comes to an end, the juvenile court judge shall impose a different measure. Only boys may be placed in the Everberg centre.

The centre is subdivided into 4 sections where 10 living groups are accommodated. Every juvenile will be submitted to the reception regime until his/her first appearance before the judge (no later than 5 days after his/her arrival). After their first appearance, when they come back to the centre, juveniles will be placed in living groups depending on the applicable operating module from those enumerated *supra* in point 2.2 (page 32). During weekdays, juveniles get half a day of classes and half a day of activities.

2.3.2. The FDC of Saint Hubert¹⁰⁸

Legal basis and regulation

The Royal Decree of 22 April 2010¹⁰⁹ concretised the decision to expand, on the French-speaking Community, the capacity to take in minors who committed an ADCO and were *provisionally* placed by the juvenile court judge.

The so-called "Education" section of the FDC is jointly managed by the federal government and the French-speaking Community following the same division of competences as that of the FDC of Everberg. Thus, this section depends on the one hand, on the **IPPJs' Coordination Directorate of the DGAI** of the French-speaking Community when it comes to education and protection aspects. On the other hand, it depends on **General Administration of Detention Centres** (hereinafter "DGPI") **of the Federal Public Service** (hereinafter "SPF") **Justice** when it comes to aspects related to security and infrastructure. Furthermore, this section is subject to the Act of '65 and to the Decree of 4 March 1991. It is also regulated by Internal Rules that enunciate the rights and obligations of the juveniles placed provisionally in this section.

The section for juveniles who were transferred to an adult court (so called section of "Minors transferred to an adult court"), is managed solely by the federal government in the same way as adult detention centres. Therefore, this section depends on the **DGPI of the SPF Justice**. It is subject to the **Act on the principles**

¹⁰⁷ Following the new agreement protocol between the Federal State and the federated entities on the creation of more spaces in IPPJs signed on November 2008 (n° 19348).

¹⁰⁸ Report DG EPI 2011 pages 154-157 ; Report DGEPI 2012 pages 86-87.

¹⁰⁹ O.J.B., 29 April 2010.

of prison administration and the legal status of inmates (hereinafter: "Dupont Act")¹¹⁰ as well as to the royal and ministerial Decrees the Act entails. Moreover, its Internal Rules are inspired on a traditional prison's rules; as a matter of fact, juveniles are referred to as "détenues".

Due to the institutional reform, the jurisdiction over juvenile delinquency will be transferred to the communities; therefore, on the 1st January 2015 at the latest, the competence over the FDC of Saint-Hubert will be transferred to the French-speaking Community. The "Education" section will depend solely upon the **IPPJs' Coordination Directorate of the DGAI of the French-speaking Community**, in the same way as the French-speaking IPPJs. The Code of IPPJs will be applicable for this FDC, as well as general regulation of the IPPJs. As for the so called section of "Minors transferred to an adult court", it will depend on a new administration of the French-speaking Community, namely **the General administration of Courthouses**. The French-speaking Community will have the possibility to adopt new regulation concerning the rules for the transfer of minors to an adult court, the corresponding rules for placing juveniles in a detention centre and the FDC of Saint-Hubert management. The federal government will only hold jurisdiction over the execution of sentences in this section.

Infrastructure and accommodation capacity (See Annex 3 – Statistics: Table n°3)

The FDC may accommodate 50 boys in two strictly separate sections that are subject to different regimes.

- **Minors who have committed an ADCO and are provisionally placed**, according to the Act of 1st March 2002, by a juvenile French-speaking jurisdiction. There are 37 spaces in the so called "Education" section. On the day we carried out our visit, the section was full.
- **Minors that have been transferred to an adult jurisdiction** based in the French-speaking region, the German-speaking region or in the bilingual region of Brussels-Capital following proceedings in French. There are 13 spaces in this section, the so called section of "*Minors transferred to an adult court*". On the day we carried out our visit, there were only 8 spaces occupied.

As for infrastructure, both of the juvenile sections have the same lay-out that is equal to that of a prison (6 meter tall fence, barbed wire, surveillance cameras, differed openings and closings of the doors which are operated by agents from the prison administration from a surveillance room, solitary confinement rooms, strictly monitored movements and military-like discipline). It resembles so much a prison that in the so called "Education" section cells are referred to as rooms but in the section of "*Minors transferred to an adult court*" juveniles are referred to as détenues.

The so called "Education" section contains 3 units that may only accept boys between the ages of 14 and 18 for a maximum period of time of 2 months and 5 days. The section for the so called "dessaisis" contains only one unit that may accommodate up to 13 boys between the ages of 16 and 23 maximum.

As for the staff, the so called "Education" section's staffs includes educators, psycho-social workers and supervisory personnel; however, the staff of the section of the so called "*Minors transferred to an adult court*" includes almost exclusively uniformed prison officers whose priority is first and foremost maintaining security and discipline.

Regime

Within the so called "Education" section, the educational project managed by the French-speaking Community is very largely inspired by the one from the Everberg Centre (this is also applicable in Tongres to the 4 juveniles from Everberg – see below the chapter on the GCF of Tongres).

Within the section for the so called "*Minors transferred to an adult court*", the DGDE disclosed in its 2012 report specific to juveniles who were transferred to an adult court that "*the incarceration conditions on this*

¹¹⁰ Act on the principles of 2005, *op. cit.* footnote n°80.

specific section are more strict than in a detention centre for adults".¹¹¹ A clear priority is given without a doubt to security over an inexistent educational project in this section, except for the activities organised on a voluntary but regular basis by the Detainee's support Service (hereinafter "DAS"). The DAS intervenes since 2011 on the basis of an agreement reached by the Ministry of Justice and the French-speaking Community. Before their intervention, juveniles spent 22 hours out of 24 in their rooms watching TV or smoking, they were allowed to spend 1 hour in the morning and 1 hour in the evening in the inner courtyard. There was only one job available accomplished by 1 juvenile as a servant; no other jobs are offered to the other juveniles.

2.3.3. The FDC of Tongres¹¹²

Legal Basis and regulation

The Royal Decree of 12 November 2009¹¹³ concretised the establishment of the FDC of Tongres in the building that used to house an adult detention centre that was closed due to unsanitary conditions. Later on it housed a museum. The FDC was created to ease the crowding of the FDC of Everberg of minors who committed an ADCO and were provisionally placed there under the Act of 1st March 2002.

The FDC of Tongres operates in almost exactly the same way as the FDC of Saint-Hubert: the so-called "education" section is jointly managed by the federal government and the Flemish Community following exactly the same division of competences. The Act of '65 and the 2008 Decree on youth special assistance are applied and the agency for youth social welfare («Jongerenwelzijn») takes care of the educational project. The other two sections for the so-called "*Minors transferred to an adult court*" and "*first-time offenders*" are managed by the DGPI of the SPF Justice; the Dupont Act as well as its royal and ministerial Decrees are applied; the strategic plan for detainees' assistance of the Flemish Community of 8 December 2000¹¹⁴ and the section's Internal Rules (established by the federal part) are also applied.

Due to the devolution of powers towards the communities, the legal framework of the FDC Tongres centre will, like the one from the Everberg centre, be put in line with the GI's closed regime of the Flemish Community framework for the 1st January 2015. In theory, the first-time offenders section should be transferred to the upcoming prison of Haren (once it has been built).

Infrastructure and accommodation capacity (See Annex 3 – Statistics: Table n°3).

At the beginning, the FDC of Tongres had the capacity to accommodate 45 Dutch-speaking juveniles in 35 cells. Since 8 January 2013,¹¹⁵ the centre is divided in 3 separate sections and can only accommodate 20 minors who have committed an ADCO. The cells are divided the following way:

- 4 cells are reserved for minors that, pursuant to the Act of 1st March 2002, were provisionally placed in the Everberg centre and this one was full. During our visit, there was only one juvenile that fell into this category in the section, the rest of the cells were empty.
- 16 cells are reserved for minors who were transferred to an adult court in a Flemish juvenile jurisdiction. During our visit there were 19 juveniles divided in 16 cells in this section. As a matter of fact when juveniles reach 18 years of age, they may be compelled to share his/her cell with a cell-mate.

¹¹¹ DGDE, "*Quel avenir pour les jeunes Minors transferred to an adult court*" (What does the future hold for juveniles who were transferred to an adult jurisdiction), Belgium, November 2012, page 72.

¹¹² DGEPI Report 2011 pages 162-165 ; DGEPI Report 2012 pages 90-91.

¹¹³ O.J.B., 18 November 2009 modified by Royal Decree of 8 January 2013, O.J.B., 15 January 2013.

¹¹⁴ <http://www4wvg.vlaanderen.be/wvg/welzijnensamenleving/hulpaangedetineerden/documentatie/Documents/strategischplanhulpdienstverleningaangedetineerden.pdf>.

¹¹⁵ Royal Decree of 8 January 2013 modifying the Royal Decree of 12 November 2009 that created a federal detention centre for minors who committed an act deemed to constitute an offence, O.J.B., 15 January 2013.

- The 14 remaining cells are henceforth reserved to first-time offenders; that is to say, to young adults that have to serve a prison sentence for the first time in their lives. During our visit 25 young male adults between the ages of 18 and 24 were detained in co-confinement in the 14 cells of this section.

As for infrastructure, both of the sections for minors have the same lay-out because they are located in the same hallway. The detention centre is, just as the FDC of Saint-Hubert, laid-out in the same way as a prison is.

Contrary to the Everberg centre, there are no educators working in the Federal Detention centre of Tongres.

Regime

In the event of overcrowding in the Everberg detention centre, the 4 juveniles provisionally placed in the Tongres centre for a maximum period of time of 2 months and 5 days will be subject to the same regime as the one applied in the Everberg detention centre.

The juveniles who were transferred to an adult jurisdiction are for their part subject to the same prison regime, based on a security only approach, that in the FDC of Saint-Hubert.

Due to the devolution of powers towards the communities and to the massive amount of prison officers that quit their jobs to go and work for adult prisons, the activities organised for juveniles (culinary and sporting activities) were reduced to nothing. Moreover, it appears that the juveniles provisionally transferred from the Everberg detention centre are subject to prison logic instead of protection logic.

It is worth pointing out that in principle minors detained in the federal detention centres of Tongres or Saint-Hubert should be transferred to an IPPJ as soon as a place in one of these institutions becomes available.

2.3.4. The Residential units for minors within psychiatric hospitals: units UIC/ADCO or UIC/ADCO-PES-PUO

Legal basis and regulation

Since 2003, a **pilot project of the SPF Public Health** allowed for the development of treatment for juveniles under legal proceedings suffering from a psychiatric disorder (commonly called FOR K treatment)¹¹⁶. These hospital care programs aim at improving the juveniles' life style, enabling social reintegration, promoting collaboration with floating support structures, the justice system and IPPJs and contributing to reduce the chances of repeating an offence¹¹⁷.

The units we visited during this research applied a set of **Internal Rules** that stipulated the rules related to daily life and specific provisions related to the general principles for the organisation of care in a psychiatric residential medical environment within the context of compulsory treatments. These rules thoroughly respect the values of the ICRC. At every unit caregivers present, hand-out and explain these rules to patients (in the FOR-K unit of Geel they are only given as a brochure) preferably before their admission or at the latest during the admission process. Furthermore, in the CHJ Titeca the rules are displayed where patients, family members and other visitors (lawyers, trustworthy persons, legal representatives, magistrates, medical inspectors, etc.) may see them.

¹¹⁶ Addendum to the protocol of 8 December 2008, §3: «Le service de psychiatrie juvénile doit être compris ici comme les projets pilotes FOR-K» (The juvenile psychiatric service must be understood as the pilot projects FOR-K).

¹¹⁷ M. Charles "L'enfermement des mineurs: état des lieux" (Overview of the detention of Minors), 2007 report.

Infrastructure and Accommodation Capacity – See Annex 3 – Statistics: Tables n°8.

A total of **7 UIC-ADCO units** –residential units for intensive care for minors, former FOR K beds (for children) - were created, offering an accommodation capacity of **76 available beds in Belgium**. These units are closed sections, within specialised hospitals (1 in Brussels, 4 in Flanders and 2 in Wallonia), intended for juvenile delinquents suffering from severe psychological disorders. They are separated from the units intended for adults.

Young girls that are subject to placement on these units either because they committed an ADCO or because they have been PUO, in the Flemish Community may be placed in: the FOR-K unit of the Geel's psychiatric care hospital or in the mixed (boys and girls) section of the university psychiatric centre in Kortenberg. In the French-speaking Community they may be placed in: the K/UIC unit in Cypres, Liège, or in the unit for adolescents in the UTA¹¹⁸ in Mons that implements an open or closed regime depending on the legal framework or young girl's medical situation (ADCO or problematic education situation – hereinafter "PES"). In the near future, a new unit will be able to accommodate young girls in Brussels (in Fond'Roy). Currently there is no unit in Brussels that is able to do it.

Regime

The UIC accommodate adolescent boys between the ages of 12 and 18 on the basis of a judicial order issued by the Family and Youth Court referring necessarily to a submission of a case of an ADCO to the court.

Since 2007, other intensive care units were created to receive not only juveniles suffering from a psychiatric problem or who committed an ADCO but also to accommodate juvenile delinquents subject to other types of measures (PES) or placed under the Act of 1990 (put under observation – hereinafter: PUO); however, the beds are preferably allocated to minors who committed an ADCO.

2.4. THE PLACES OF DEPRIVATION OF LIBERTY FOR IMMIGRANTS

2.4.1. Detention Centres for Immigrants

Legal basis and regulation

Article 74/8 § 1 subparagraph 1 of the Act of 15 December 1980¹¹⁹ refers to Detention Centres for Immigrants and the Royal Decree of 2 August 2002 established the regime and the operating rules thereof¹²⁰.

There are two types of centres:

- **The INAD centres** are located outside the Schengen area in the regional airports or in the Brussels National Airport and are recognised as border posts for the Schengen area. The extra-Schengen area INAD regional centres are specifically intended to prevent aliens that have been denied access to the territory because they didn't fulfil the conditions for entry or stay from crossing the border. The Brussels Airport INAD centre may, on top of the already mentioned cases, accommodate other

¹¹⁸ The unit contains 3 beds. The period of stay is of maximum 15 days, renewable once. The unit provides accommodation for young girls experiencing a crisis between the ages of 12 and 18.

¹¹⁹ Act of 15 December 1980 *op. cit.* footnote n°64.

¹²⁰ Royal Decree of 2 August 2002 establishing the regulation and operating rules applicable to places located in the Belgian territory, managed by the Aliens' Office, where aliens are detained, placed at the disposal of the authorities or maintained. All of this under the provisions stated in article 74/78, § 1 of the Act of 15 December 1980 on the access to the territory, stay, establishment or removal of aliens, *O.J.B.*, 12 September 2002.

categories of aliens that are awaiting the enforcement of their removal. There are INAD centres in the six Belgian airports that are located in a Schengen border (namely in Deurne, Ostende, Wevelgem, Biersele, Gosselies et Zaventem);

- **The Immigrant Detention Centres located within the Belgian territory**, namely: the Repatriation Centre 127bis of Steenokkerzeel (CR 127bis), the Transit Centre 127 in Melsbroek (T127) and the Centres for Illegal Aliens of Merksplas (CIM), Bruges (CIB) and Vottem (CIV).

The aliens that may be detained in these centres are:

- Those who tried to cross the border (airports & ports / INAD Centres) without the required documentation (passport or visa);
- Asylum-seekers whose applications for asylum must be examined by another European State (Dublin Regulation);
- Unsuccessful asylum-seekers
- Illegal immigrants
- Up until 2008, unaccompanied foreign minors (UFM) and families with children

Infrastructure

These centres may schematically be divided into three categories¹²¹:

- The INAD centre that puts together men, women and sometimes even families in only one living group. The population is divided only during sleeping and personal hygiene periods. The division is made amongst men and women and doesn't preserve family unity. During the day detainees are relatively free to do what they please;
- The centre 127bis and the CIV, where the population is divided into different wings. There is an almost complete separation of the different groups of inhabitants. Within each wing, the group regime is relatively flexible and allows inhabitants move more or less freely in that wing that is supervised by a central control station;
- The CIB and the CIM, where the inhabitants are divided into different airtight living units; however, within these units a strict group regime is imposed. In this way, every inhabitant of the same unit must get up, shower, eat, spend time in the recreation area, go for a walk and go to bed at fixed schedules and all together. All the group's movements are supervised by security officers that lock the doors of the places where the inhabitants are;

Regime

- "INAD" Centres: "The detention conditions are in practice very difficult: the limited size of the premises is aggravated by the fact that detainees will only get out of the centre to take a flight back (or to be transferred to the centre 127 if they apply for asylum or, but it rarely happens, to enter the Belgian territory), that no window may be opened and all of the air flows only through the air conditioning systems. Detainees have strong feelings of incomprehension and of being treated unfairly..."¹²²
- Immigrant Detention Centres: The facilities, originally conceived as provisional, are not adequate to offer its inhabitants standards of living consistent with human dignity: they are deteriorated and unsanitary, their size is very limited and on top of that visits are not allowed. This situation may not only constitute a

¹²¹ Federal Ombudsman, Summary of the 2009/2 Investigative Report on «the operation of the immigrant detention centres managed by the Immigration Office », p. II.

¹²² "Le centre fermé INAD" (INAD Immigrant Detention Centre), interview with Caroline Stainier and Katleen Goris from the CECLR (Centre for Equal Opportunities and the Fight against Racism), *Migration magazines*, 18 October 2010.

violation of article 3 of the ECHR, it may also be a breach of the European Union directive on minimum standards on the reception of applicants for asylum (hereinafter: the "Reception" directive).

2.5. THE PLACES OF DEPRIVATION OF LIBERTY LINKED TO POLICE ACTION

2.5.1. Police stations' cells

Legal basis and regulation

Numerous police stations today have "cells" reserved for minors; however, some are not yet equipped¹²³. When there are none available, the directives for the police service regarding minors are that minors may not be detained in the same cell as an adult.

In its response to the CPT report of 2009¹²⁴, the Belgian government expressed concern to "build premises specially designed for minors within the main police stations (and courthouses) of the country" but it also said "that they were unable to accomplish this task in the immediate future because substantial means were required to do so". There is no available information on any project for the construction or organization of such premises within the police stations or court buildings.

Infrastructure and Accommodation Capacity

In 2007 the Belgian government approved a Royal Decree that establishes minimum norms for detention conditions in the police facilities¹²⁵. It is possible to deduce from article 1, 6° that minors can only be deprived of liberty in facilities defined as "a specially designed infrastructure for the surveillance of one or more minors". Article 4 states that these facilities must always be separated from other detention facilities. As for technical aspects, article 13 specifies that cells must have a size of at least 5 m² and must be equipped with a desk anchored to the ground and with a door able to resist an attack but that doesn't resemble a cell door. There cannot be any fences. Furniture must resist attacks. Nevertheless, there is no mention of what is to be done when minors must spend the night in the police station, kept in facilities without a bed, or when there are no facilities specifically designed for minors.

During our research for this report, we were unable to visit the Brussels-Ixelles' surveillance facilities for minors, despite having submitted several requests to the chief of the police area. The reason for denying us access was that "the cells are almost always occupied"... Much to our regret, we were also unable to meet the head of the police force of this area, any police officer thereof nor the Family and Youth Department.

Regime

Given that there is no specific regulation, minors detained (on administrative or judicial basis) that are placed in surveillance facilities or, failing that, in an adult cell are subject to the same rules that are applied to adults deprived of liberty; that is to say, to the Royal Decree of 14 September 2007 as well as the Act of '65 regarding the applicable provisional measures.

¹²³ There are no figures available neither in the AIG nor in the permanent commission for local police forces.

¹²⁴ CPT/Inf (2011) 7, Response of the Belgian government to the CPT's report on its visits from 28 September to 7 October 2009, published on 22 February 2011.

¹²⁵ Royal Decree of 14 September 2007 on minimum rules, on the establishment and on the use of the detention facilities by the police forces, O.J.B., 16 October 2007; modified by the Royal Decree of 5 November 2013, O.J.B., 22 November 2013.

2.5.2. Holding cell facilities in court buildings

Legal Basis and Regulation

Minors who have been arrested or previously placed and that are going to appear before a magistrate (Public Prosecutor, investigating judge or juvenile court judge), are deprived of liberty –while waiting for their hearing- in a holding cell facility within the court building. In theory the minor is only detained there for a few hours, but in practice he/she might spend the whole day locked up waiting for the decision from the magistrate in charge of his/her case.

In this respect, the CPT, in its 2009 report¹²⁶, recommend Belgium “*establish legal norms for the conditions of detention in the judiciary facilities similar to those applied to the conditions of detention in police facilities*”. The Belgian government responded “*reiterating its will to adopt in its legislation the existing general and qualitative norms as well as the security norms for those buildings (including buildings that could house holding cell facilities and or waiting premises for minors)*”. To date, these guarantees have not yet been extended to include the judiciary facilities. Additionally, not all of these facilities have separate cells for minors and adults.

Infrastructure and Accommodation Capacity

In the course of this research we were unable to carry out visits to the waiting cells located in the basement of the Brussels Courthouse. This building houses since 2007 the Public Prosecutor's office, the Council Chamber clerk's office, the examining magistrate clerk's office, the Family and Youth Court, the investigating judges offices, the forensic scientists, the assistance to victims service and the criminal mediation. The holding cells for minors are clearly separated from the holding cells for adults. There doesn't seem to be any opportunity for minors to cross paths with adults in the hall ways nor in the lifts. There are 5 holding cells for minors (2 for individual detention and 3 for co-detention, one of which is reserved for girls). The cells have one bed or bench without a mattress or blackest (for security and sanitary reasons). There is only one separate toilet available for all minors, girls and boys alike. Upon their arrival, minors receive a 33cl bottle of water and a waffle.

* * *

Therefore, there are:

- 182 places in closed regime within the 5 French-speaking IPPJs and the 4 Dutch-speaking GIs;
- 81 places for provisional placement within the 3 FDC of the country;
- 29 places for minor who were transferred to adult court within the FDC of Saint-Hubert and Tongres;
- 76 beds within the UIC/ADCO units and 40 beds within the UIC/ADCO-PES-PUO units;

That is to say a total of **408 countable places for the deprivation of liberty**, to which it should be added the places in the police stations' cells, in the court buildings' cells, and those in the immigrant detention centres –uncountable- which is an extraordinarily high figure for a small country like Belgium (and it does not even take into consideration the place in an open regime in the IPPJs/GIs, children incarcerated with their mothers, solitary confinement measures or the *return houses*).

¹²⁶ CPT/Inf (2010) 24, CPT Report on its visit to Belgium from 28 September to 7 October, published on 23 July 2010 (paragraph 26).

D. National mechanisms for monitoring and processing complaints from minors deprived of liberty

1. ESTABLISHMENT OF A NATIONAL INSTITUTE FOR HUMAN RIGHTS (HEREINAFTER "NIHR")

Since 1993 the UN has asked all of its member states to establish a National Institute for Human Rights, independent from the executive branch.

In 2011, during the Universal Periodic Review of the United Nations Human Rights Council, Belgium agreed to the so often formulated recommendation of establishing such an institution. Nevertheless, the federal, community and regional governments linked the negotiations on the establishment of a NIHR to the reform of the *Centre for Equal Opportunities and Against Racism*, and to that of the *Institute for Gender Equality*. To date, in the policy statements at the communities, regional and federal level nothing has been said about this! Moreover, its scope of intervention on child rights still has to be defined.

As part of its campaign "*Put Human Rights at the Top of the Political Priorities*"¹²⁷ of March 2014 Amnesty International (hereinafter "AI") highlighted the need to establish this institution, which should benefit from an **independent status** and, in order to fill the existing gaps in protecting and promoting human rights in Belgium, it should also have a **broad mandate** and **strong legal competences**. According to AI, the NIHR could also act as National Preventive Mechanism (hereinafter "NPM") that would be given the *inspection mission and the advisory function* as stated in the OPCAT. To date Belgium still hasn't ratified this protocol, mainly due to the complexity of the countries institutions which precisely hampers the establishment of one or several NPMs.

RECOMMENDATIONS

- ✓ Ratify the OPCAT and set up a National Prevention Mechanism.
- ✓ Establish a NIHR independent from the executive branch.
- ✓ Clearly define the scope of action of the NIHR in the children's rights field

2. THE OMBUDSMEN FOR CHILDREN'S RIGHTS

2.1. THE GENERAL DELEGATE OF THE FRENCH SPEAKING COMMUNITY FOR CHILDREN'S RIGHTS¹²⁸

a. *External monitoring mission*

Legal basis

The DGDE is an institution of the French-speaking Community¹²⁹ established in 1991 and subject of a 2002 Decree of the Government of the French-speaking Community. The current DGDE, Bernard Devos, is one of the experts involved in the project "Children's Rights Behind Bars".

¹²⁷ See Amnesty International, 18 March 2014, campaign "*Mettre les droits humains au centre des priorités politiques*" (Put Human Rights at the Top of the Political Priorities), The National Institute for Human Rights, <http://www.amnestyinternational.be/doc/agir-2009/nos-campagnes/elections-2014/article/l-institut-national-des-droits-de-l-homme>.

¹²⁸ <http://www.dgde.cfwb.be/>.

¹²⁹ Decree of 20 June 2002 establishing a DGDE of the French-speaking Community, *O.J.B.*, 19 July 2002, modified by a decree of 7 December 2007, *O.J.B.*, 6 February 2008.

Mandate / Composition

The DGDE is appointed and acts under the authority of the Government of the French-speaking Community, after a public call for candidates and with the Parliament's consent¹³⁰; nevertheless, article 6 of the 2002 Decree states that the DGDE benefits from "the necessary freedom of action and expression to carry out his mission", although the DGDE "is bound by the duty of confidentiality that it entails. As such, the DGDE acts independently and can't be relieved from its duties for actions committed during the exercise of its mission." Thirteen agents of the Ministry of the French-speaking Community are made available for the DGDE. He is in charge of the staff made available to him/her and, three months after being appointed, has to submit to the Government for approval a draft of the Internal Rules.

Mission

The DGDE's mission is to safeguard the rights and interests of the child. He/she accomplishes the mission of **promoting and informing** but also of **monitoring that legislation concerning children is properly applied**; he/she presents to the competent authorities on the matter of children any **proposal** with the aim of **adapting regulations** in order to guarantee a more complete and effective protection of child rights, he/she must also submit the necessary **recommendations** on the subject; he/she welcomes **information, complaints, or mediation requests** on infringements made to the rights or interests of the child from any interested natural or legal person; lastly, he/she carries out, upon request from the Council, **the investigations on the operation of the administrative services** of the French-speaking Community concerned by this mission¹³¹. Nevertheless, the current DGDE has never performed this function.

Its monitoring mission is therefore carried out in practice at several levels (at a legislative and regulations level, at an administrative and individual level as well as a national and international level) and several ways (promotion work; information; awareness raising; advisory, recommendation and questioning the authorities roles; processing complaints and requests for mediation; investigative role; networking) concerning all the places of deprivation of liberty for children: the IPPJs, the FDCs, the healthcare centres or hospital centres housing UICs, police stations and court buildings, immigrants detention centres.

Powers / Means at its disposal

To be able to accomplish the mission, the DGDE has significant means at its disposal; for example, he/she has free access during normal working hours to all of the buildings, rooms and information necessary to the fulfilment of its mission, except the information disclosed under medical confidentiality or while accomplishing the role of necessary-confidant, etc.¹³²

Reports / Follow-up

Every year, on the anniversary of the ICRC (20 November), the DGDE addresses simultaneously the government and the parliament, as well as the federal ministers concerned (of Justice, of the Interior, of Social Affairs), and presents a report establishing a balance of its annual activities. The report is published in the DGDE's website and a printed version is distributed to a certain number of people or institutions specifically identified, including the CPT. Additionally, the report systematically generates debates in the parliamentary commission.

¹³⁰ The Government is also competent for the renewal as well as the early termination of his/her mandate, prior consent of the Parliament.

¹³¹ Article 3, 1° to 6° of the Decree of 20 June 2002.

¹³² See Article 4 of the Decree of 2002.

Collaborations / Synergies

The DGDE is also a member of the following bodies¹³³, within which he/she may directly or indirectly fulfil its monitoring mission:

- the *Consultative Committee for juvenile magistrates, youth support councillors and directors, the administration and services* holding the mission of guaranteeing consultation and collaboration between the authorities giving the mandate and all of the youth support services;
- the *Youth support Community Council*, a thinktank with the general competence to deliver opinions and proposals on all matters regarding youth support or youth protection – for example, recently, the new IPPJs' Code;
- the *Follow-up Committee for the Detainee's Assistance Service working in the section of juveniles of the federal detention centre of Saint-Hubert who were transferred to an adult jurisdiction*, its objective is to provide an external view of the DAS in order to give the best possible reception to this juveniles.
- the *Working Group* “ “ whose mission is to reunite the mental health institutions and the representatives of the judiciary world in order to guarantee an improved collaboration between them during the implementation of therapeutic project For K/UIC.

The DGDE holds for the being the presidency of the *European Network of Ombudsman for Children* (hereinafter “ENOC”)¹³⁴. It is also a member of the *Permanent Consultation for Belgian Ombudsmen* (hereinafter “CPMO”), a network that brings together all of the ombudsmen of Belgium (currently there are 26).

Additionally, the DGDE has a longstanding relationship of collaboration and synergy building with its Flemish counterpart, the KRC. The DGDE has established associations for the fulfilment of certain researches and studies and/or to issue common recommendations when dealing with a federal issue or when it is interesting for both Communities. Both institutions jointly drafted the alternative report on the independent institutions that was submitted in the CRC pre-sessions on February 2010¹³⁵. The DGDE maintains the same type of collaborative relationship with the Federal Ombudsmen.

Good practices

For the fulfilment of its mission, the DGDE has **significant means** at its disposal, such as broad power of investigation and questioning the public authorities. This gives the DGDE a strong moral authority to attain its missions.

The office of DGDE is **incompatible with any other office**, it may **manage its budget in whichever way he/she sees fit**¹³⁶ and he/she may **nominate and revoke the members of staff** made available to him/her by the Ministry of the Civil Service.

He maintains **numerous collaborative relationships** and forges **synergies** with an extensive panel of bodies (public, private, associative, internal, external, independent, etc.) that may be linked to child rights.

The DGDE fulfils its missions with a lot of **flexibility and plasticity**; this allows him/her to win the trust of its stakeholders during interventions that are not seen as too formal or intrusive. As a result, it seems the DGDE arrives to constructive solutions based on dialogue rather than confrontation.

¹³³ DGDE, 2012-2013 Report, pages 59 et seq.

¹³⁴ For further information about ENOC, visit the website <http://www2.ombudsmen.org/>.

¹³⁵ http://www.dgde.cfwb.be/index.php?id=dgde_detail&tx_ttnews%5Bpointer%5D=36&tx_ttnews%5BbackPid%5D=208&tx_ttnews%5Btt_news%5D=283&cHash=8687c5e91d88fcaa677ab92f31109796.

¹³⁶ Within certain limits, for example the DGDE cannot hire staff (it depends on the administration for that), if he/she wanted to publish a paper it would need to submit a request for financing to the administration.

Obstacles / Difficulties

Our visits to the places of deprivation liberty for children and the interviews and exchanges we had with the DGDE office brought to light the fulfilment of **monitoring mission** of this office is **spread out in time**. As a matter of fact, on the course of this mandate only two “surprise” visits have been carried out (in July 2014 to the IPPJ of Braine le Château and in September 2014 to the FDC of Saint-Hubert). No written report was published following these visits.

The “scheduled” visits are carried out depending on the opportunities, in a case by case basis; therefore, they are not systematic or even regular and reports are not necessarily subject to the drafting of a report. Generally, they are carried out after a juvenile's request caught particularly the attention of the DGDE or after receiving a series of complaints about the same problems in a specific place. Furthermore, the DGDE's office carries out periodically activities or targeted researches within the different places of deprivation of liberty; this gives the office the opportunity to fulfil in parallel its monitoring mission. The DGDE's office confessed in this respect that they find it more pertinent to fulfil its monitoring mission in this way, especially to maintain a trusting environment and good collaboration with the directors of the institutions.

Moreover, the DGDE's office recognised, when asked on the **impact and follow-up of its recommendations** made in the different reports of its activities, that they did not have at their disposal a tool to evaluate these nor any specific method of follow-up. They can only count on the list of parliamentary questions that talk about the recommendations they issued or on the fact that they are regularly invited to take part in debates, studies, working groups, etc., organized by the competent authorities and dealing with matters regarding child rights in the French-speaking Community. Nevertheless, the DGDE's advisory capacity has allowed it to influence laws and regulations, for example when article 53 of the Act of '65 was abolished. This article gave juvenile court judges the possibility of placing minors in prison (generally with adults) for a maximum period of time of 15 days.

Additionally, it is worth pointing out that despite of the progressed made with the 2002 and 2007 Decrees the current system does not yet **fully guarantee the appearance of independence** of the DGDE. As a matter of fact the DGDE is nominated, and may be revoked, by the executive branch of the French-speaking Community as an agent at its service. Parliament consent is needed to do that and the DGDE cannot be dismissed on the basis of acts committed during the fulfilment of its mission; however, article 6 explicitly states that the DGDE is placed under the authority of the executive branch, which therefore can influence the DGDE especially when granting a budget at means at its disposal (including: staff, material, infrastructure, etc.). It would be preferable, and certainly more in keeping with international standards, to place this institution under the complete control of the Parliament¹³⁷; even though –as it was the case for its Flemish counterpart- this does not necessarily guarantee complete independence. This issue will be discussed further on.

RECOMMENDATIONS

- ✓ Continue to strengthen and further develop collaborations and synergies with its national and international counterparts as well as with the bodies intervening in all aspects regarding child rights.
- ✓ Continue to implement its missions with flexibility and plasticity while at the same time systematising certain practices (visits-reports-recommendations-follow-up) with the aim of guaranteeing more effectiveness in their implementation.
- ✓ Formalise or even systematise the visits to places of deprivation of liberty for children.
- ✓ Draft a reference document with monitoring criteria to comply with when carrying out the visits.
- ✓ Design a follow-up method for its recommendations so as to be able to better evaluate their impact.
- ✓ Strengthen the safeguard of the DGDE's independence namely by placing it under the Parliament's authority.

¹³⁷ Th. Moreau and B. Van Keirsbilck, “La fonction de Délégué général aux droits de L'Enfant en Communauté française au regard de la Convention relative aux droits de l'enfant” (The role of the DGDE for the French-speaking Community in respect to the Convention on the rights of the Child), J.D.J., n°269, November 2007.

b. Complaint processing mission

In its 2012-2013 report¹³⁸, the DGDE reiterates that for several years now juveniles who have been placed in IPPJs or in the FDC of Saint-Hubert have come to him with complaints about sanction imposed to a certain minor, the behaviour of one of the staff members or of the Directorate. This will be discussed further on in the section on IPPJs and the FDC of Saint Hubert. Over the past years a significant amount complaints and questions concerning the relationship between juveniles and the police have been lodged upon the DGDE and its Flemish homologue. Both of the bodies published a joint opinion in February 2012¹³⁹ where they issued recommendations in that sense. These recommendations will be discussed in the section on the specific report on minor's complaints against police officers.

Legal basis

Article 6 of the Decree of 19 December 2002 on the DGDE state that *"the information, complaints or request for mediation [...] are examined and processed by the ombudsman who, following articles 29 and 30 of the Code of the Criminal Procedure, may decide the steps to be takes after carrying out, if necessary, an investigation."*

Implementation / Procedure

In practice, every minor of age or any person representing the interests of a minor (a parent or a professional) may contact the DGDE's office through their website, their email address, their free of charge telephone number, by posting a letter or personally visiting the office in Brussels. All of the juveniles deprived of liberty may contact him an unlimited number of times and for free.

Every request is processed by a staff member in charge of a specific domain. A file is opened for every request. Secondly, requests pertaining to more specialised and/or more competent services (lawyers, competent authorities, services within the civil society) are reoriented. After all of this process, the DGDE ends up taking care of about 1 000 requests a year. The requests are processed on a case by case basis following the appropriate methods depending on the circumstances and on the greater or lesser investigative measures depending on the case. In that sense, collaborations are developed with certain services with the aim of joining efforts to arrive to a successful solution of the requests.

Follow-up

An opinion is not systematically given for each request submitted but that does not mean that adequate solutions are not provided to solve the problems denounced. In any case, the DGDE does not have any powers of enforcement or decision.

Good practices

The amount of complaints lodged and processed by the DGDE are a testament –in general terms- to the use that juveniles and their representatives make of the established mechanism when problems related to the rights of the child arise. (1156 in 2011-2012; 1064 in 2010-2011; 1072 in 2009-2010) – See Annex 3 – Statistics, Table n° 8.

¹³⁸ DGDE, 2012-2013 Report, page 39.

¹³⁹ *"Jeunesse et Police, Recommandations pour un apaisement"* (Youth and law enforcement, Recommendations for an appeasement), DGDE's opinion in collaboration with Bruno Vanobbergen, Kinderrechtencommissaris (KRC).

Obstacles / Difficulties

The **DGDE's reputation varies depending on the place**. Within the FDC of Saint-Hubert (so-called "Education" section) and within the IPPJ of Brain le Château, the DGDE figure is almost unanimously known and recognised by juveniles who generally identify the DGDE as the contact person when problems related to their detention arise. Conversely its figure is almost completely unknown for girls in the IPPJ of St Servais and for boys in the closed section of the adolescent unit of the CHJ Titeca. It must be pointed out that there is **a lack of clear and permanently available information** on the DGDE's services, its role and its contact information **at the disposal of minors deprived of liberty**; as evidenced by extremely low amount (2.34% in 2011-2012; 1.5% in 2009-2010)¹⁴⁰ of complaints linked to detention.

An example of a good practice is the brochure, drafted by the SDJ initiative, currently being distributed amongst minors who were transferred to an adult court detained in the FDC of Saint-Hubert. This brochure enumerates all of the services that may help the detainees, including the DGDE.

Lastly, it is regrettable that **under Belgian law DGDE does not have the possibility to take legal action in the cases of collective actions**.

RECOMMENDATIONS

- ✓ Continue to implement its missions with flexibility and plasticity while making certain practises systematic so that the best possible efficiency is guaranteed during their implementation.
- ✓ Improve the quality and accessibility of information concerning its services, its role and its contact information amongst minors in all possible places of deprivation of liberty.
- ✓ Polish all references to the types of complaints and information requests so that the statistics on the complaints and requests reference document are more targeted and show clearly, for example, which problems are related to interactions of juveniles with the police, which are related to the conditions of deprivation of liberty, etc.
- ✓ Research the possibility of introducing in the future legal provisions that allow associations whose social object is the defence of fundamental rights to take legal actions in order to safeguard those rights in a collective manner.

2.2. FLEMISH COMMUNITY COMMISSIONER FOR CHILDREN'S RIGHTS (KINDERRECHTENCOMMISSARIS / KRC)

a. External monitoring mission

Legal basis

The Commission for Children's Rights is a Flemish Community that was created in 1997 by a decree from the Flemish Parliament.¹⁴¹

Mandate / Composition

The institution benefits from a large degree of freedom to fulfil in complete independence its mission of defending Children's rights, defined as follows (Article): *"The Commissioner defends the rights and interests*

¹⁴⁰ See Annex 3 – Statistics, Table n°9.

¹⁴¹ Flemish Decree of 15 July 1997 establishing a Commission for Children's rights and instituting the function of Commissioner for Children's Rights, *O.J.B.*, 7 October 1997; modified by the Decrees of 31 January 2003, *O.J.B.*, 13 February 2003 and of 9 November 2011, *O.J.B.*, 10 December 2012.

of the child. For that purpose: 1° the commissioner ensures that the Convention is respected; 2° guarantees the follow-up, analysis and evaluation of children's living conditions; 3° acts as an advocate for the rights, interests and needs of children."

The KRC is appointed by the Flemish Parliament after a public call for candidates done on a comparative selection basis. Bruno Vanobbergen has been the KRC since 2009. He fulfils his missions with the collaboration of multidisciplinary team of 12 advisory members. Within 6 months after its nomination the Commissioner presents a draft of Internal Rules that, after approval by the Flemish Parliament, is published in Belgium's Official Journal. For matters directly related to its operating, the Commission may determine its priorities and the means to achieve them on its own. These means are managed with complete independence and transparency by the institution.

Mission

In order to fulfil its mission, the KRC focuses on the following two pillars:

- **Providing** the Flemish Parliament, the Flemish Government, the administrations and agencies and the international or foreign authorities with **every proposal aimed at protecting the rights and the interests of children;**
- **Inquiring into individual complaints and ensuring mediation provided by the Complaints Service** and made available to children and juveniles (along with anyone representing them)

The Commissioner monitors every place of deprivation of liberty for children as well as all of the authorities that depend on these places. The Royal Decree of January 2013¹⁴² on the FDC of Tongres explicitly states that the KRC has henceforth access to the centre. In the centre he/she may meet the minors individually or in groups. During the visits, the commissioner is accompanied by the centre's director or by a staff member that the latter has designated.

Powers / Means at its disposal

Article 6, 1° of the Decree gives the KRC the power to: "carry out enquiries over any aspect from the Convention on its own initiative or upon request from the Flemish Parliament."

Reports / Follow-up

Generally, the KRC drafts a report addressed to the Flemish Parliament on its annual activities and makes it public. The report includes numerous propositions and recommendations for policymakers (on children's rights) and takes a stand in sensible matters that are being debated.

The Commissioner transmits its reports to the federal authorities so that they can take it into account when drafting the quinquennial report for the CRC. As it was already mentioned, the KRC and the DGDE jointly wrote the alternative report on the independent institutions submitted in the CRC pre-sessions on February 2010.¹⁴³

Collaborations / Synergies

The advisory Committee "De Spiegel" supports the KRC in achieving its missions. It is made up of Flemish parliamentary representatives and representatives of different social and scientific fields.

¹⁴² Royal Decree of 8 January 2013 modifying the Royal Decree of 12 November 2009 establishing a federal detention centre for minors who have committed an act deemed to constitute an offence, *O.J.B.*, 15 January 2013.

¹⁴³ *Op. cit.* footnote n° 136.

The KRC is also a member of the following bodies¹⁴⁴, within which he/she may directly or indirectly fulfil its monitoring mission:

- *Actively participates in the meetings of the different Flemish Parliamentary Commissions and tries to interpret and represent at its best children's and juvenile's voices,*
- *It is a member of the Directive Committee of "De Kracht van je Stem", an educational service of the Flemish Parliament,*
- *It works closely with the DGDE, the Federal Ombudsmen and the Flemish Ombudsman with whom it discusses the complaints it has received,*
- *It works as a para-parliamentary institution within the House of Representatives; therefore, it works with the General Secretariat of the Flemish Parliament.*

Good practices

The Flemish Parliament proposes a new (decree) regulation on external monitoring and external treatment (or rather, independent) of complaints within the youth, children and their families welfare and assistance sector, including children and juveniles deprived of liberty¹⁴⁵. The idea would be to draw on the Dutch system and on the Surveillance Commissions for adults and establish a **Special Surveillance Commission** chaired by the KRC that would be made up of independent members, including the commissioners. The special commission would have the task of carrying out monthly visits to the facilities where there may be children and juveniles deprived of liberty. The commissioners would draft a report every month and address it to the Commission and the KRC as well as to the "Zorginspectie" agency (see *infra*, section D, point 4.1.2, page 62 and following). In an opinion issued in January 2014¹⁴⁶, the KRC gave a positive response to those propositions and enumerated the conditions that would help the implementation of such external mechanisms. The KRC also provided suggestions to better adjust the Consultative Committee's note. The agency "Jongerenwelzijn" and the Flemish directors of the GIs and the FDCs in the Flemish Community also positively welcomed this idea.¹⁴⁷

Measuring the concrete impact of the KRC's annual report recommendations is difficult; however, his advisory role introduced certain topics in the political agenda and influenced certain laws or regulations, for instance those concerning juvenile delinquency and especially problems related to detained juveniles (for instance, the establishment of the agencies "Onderwijs- en Zorginspectie" (Inspectorate of Education and Inspectorate of Care)).

Moreover, the current system guarantees a **complete independence of the Commission** as a para-parliamentary institution.

Lastly, the commissioner and its employees **regularly** carry out **monitoring visits** (individually or not) -in order to fulfil its monitoring mission- of the places of deprivation of liberty for minors. Since he took up the post (in 2009), Bruno Vanobbergen carries out one visit every year to the FDC of Tongres, he has visited twice the FDC of Everberg, twice the GI of Mol and also twice the GI of Ruiselede and Beernem.

Obstacles / Difficulties

The only real difficulty that the KRC has encountered was the interpretation of some of its ideas (through its reports) as political messages when it was not the case. The KRC found a way to deal with the problem that allowed it to keep his stance and integrate it as a *modus vivendi*.

¹⁴⁴ Kinderrechtencommissariaat, Annual report 2012-2013, "Kinderen en jongeren vallen tussen de plooiën", pages 12 to 14.

¹⁴⁵ Concept note for new regulation on external control and external handling of complaints on help and assistance to children and young people and their families, Flemish Parliament, <http://docs.vlaamsparlement.be/docs/stukken/2013-2014/g2312-1.pdf>.

¹⁴⁶ Advice of the Kinderrechtencommissariaat (KRC), "Kind(errechten)vriendelijke toezicht- en klachtenmechanismen", 27 January 2014.

¹⁴⁷ For further information, visit: <http://docs.vlaamsparlement.be/docs/stukken/2013-2014/g2312-2.pdf>.

RECOMMENDATIONS

- ✓ Continue to strengthen and further develop collaborations and synergies with the advisory committee "De Spiegel", with its counterparts as well as with the bodies and policies that could intervene in the field of children's rights
- ✓ Draft a reference document with monitoring criteria to comply with when carrying out the visits
- ✓ Design a follow-up method for its recommendations so as to be able to better evaluate their impact
- ✓ Establish the special surveillance commission and provide it with a completely independent external monitoring mission

b. Complaints processing mission

Legal basis

Article 6, 2° of the Decree of 1997 states that the KRC is empowered to "**review any complaint concerning the non-compliance with the Convention and, as far as possible, transmit it to the institutions.**"

The KRC established a special complaints service, **the "Klachtenlijn"** (the complaints line) for that purposes. Initially it is a hotline.

Implementation / Procedure

Children, juveniles and any other person interested may contact by telephone the staff members of the Commission. Complaints may also be submitted via email, through their website, by posting a letter or personally visiting the commission's office in Brussels.

The Commission's mission is to **review the complaints**, to act as **a ombudsman**, if necessary, to **draft the complaint for the frontline complaint service** and lastly to adjudicate by **providing an opinion** on the complaints received.

In 2012-2013¹⁴⁸ the Commissioner was contacted 969 times. 150, out of the 969 requests, came from the youth specialised assistance sector. It must be pointed out that preferred means of communication is the hotline. In 2012-2013 the Commission also received complaints from juveniles placed in GIs or detained in FDCs. These complaints dealt mainly with the institutions policies, the use and sanctions imposed and individual problems with educators.¹⁴⁹

Follow-up

When KRC receives a request identified as a complaint and considered admissible, it must systematically provide a reasoned opinion to the complainant.

Good practices

In the framework of the above-mentioned note of December 2013¹⁵⁰, it also mentioned that **a new Complaints Office** should be established in order to process complaints in a completely autonomous and independent manner.

¹⁴⁸ Kinderrechtencommissariaat, Annual report 2012-2013, *op.cit.* footnote 145, pages 16 to 18.

¹⁴⁹ Kinderrechtencommissariaat, Annual report 2012-2013, *op.cit.* footnote 145, page 69.

¹⁵⁰ Concept note for new regulation on external control and external handling of complaints on help and assistance to children and young people and their families, Flemish Parliament, <http://docs.vlaamsparlament.be/docs/stukken/2013-2014/g2312-1.pdf>.

Obstacles / Difficulties

In practise, juveniles placed in a GI or FDC don't really know the KRC despite of it establishing as a priority to provide an accessible service to juveniles. Few of them have already heard about it and even fewer are those who have resorted to the complaint system established by the Commissioner (via telephone or mail). Nevertheless, the existence of this institution is reminded in every reception brochure given to juveniles when they arrive to a facility. Juveniles have the right to contact the Commissioner at any time and for free. Two main reasons explain this lack of awareness: firstly, in Flanders there is an internal autonomous agency "Jongerenwelzijn". It is a hotline available in a certain time frame (the number can easily be found in the agency's website), the "Jo-Lijn" (see *infra* point 4.1.2., b. page 64). Secondly, few children and juveniles that know about the Commissioner make the effort of getting in touch with him/her, either because they are afraid of consequences it may have for their placement situation or because they are demoralised and don't think it is going to change anything.

RECOMMENDATIONS

- ✓ Improve the quality and accesibility of information concerning its services (distinguishing them from other existing services such as the Jo-Lijn), its role and its contact information amongst minors in all possible places of deprivation of liberty.
- ✓ Visit more frequently these facilities in order to establish a direct contact with juveniles living there.
- ✓ Place a mailbox and a telephone in every section of these facilities to persuade juveniles to contact the KRC.

3. THE FEDERAL, COMMUNITY AND REGIONAL OMBUDSMEN

3.1. THE FEDERAL OMBUDSMAN

a. External Monitoring Mission

Legal basis

The federal ombudsman function was established by the organic Law of 22 March 1995¹⁵¹.

Mandate / Composition

The federal ombudsman is an independent and impartial institution that reviews complaints concerning acts committed by federal administrative authorities or its operating. The institution is made up of: two ombudsmen, one French-speaker (Catherine De Bruecker) and one Dutch-speaker (Guido Herman), who act collectively; one director; one front office in charge of the reception of complaints and 3 back offices (taxation, migration-asylum-detention, social affairs). The ombudsmen are appointed by the House of Representatives for a mandate of 6 years after a public call for candidates. Within the limits of their remit, the ombudsmen do not receive instruction from anyone and they themselves appoint the staff that is going to work with them. They cannot be relieved from their duties for actions committed during the exercise of their mission. The ombudsmen establish Internal Rules that are approved by the House of Representatives. The Federal Ombudsmen have a budget of their own at their disposal (as endowments of the general expenditures State budget).

¹⁵¹ Modified by the Act of 5 February 2011, *O.J.B.*, 23 March 2001; the Act of 11 February 2004, *O.J.B.*, 29 March 2004; the Act of 23 May 2007, *O.J.B.*, 20 June 2007; and by the Act of 20 January 2014, *O.J.B.*, 3 February 2014, err. *O.J.B.*, 13 February 2014.

Missions

The Federal Ombudsmen fulfil several missions:

- They review the complaints submitted by citizens on the acts or the operating of the federal administrative authorities;
- They carry out enquiries on the operating of the federal administrative services upon request of the House of Representatives;
- They submit recommendation based on their observations during the two above-mentioned missions;
- They report to the Parliament;
- They review the claims of suspected violations of the integrity within the federal administration.

Powers / Means at their disposal

They do not have any automatic powers but the powers they hold for achieving their missions are broadly defined¹⁵² (the right to visit, communication of all the documents and useful information, the right to listen any concerned person, possibility to waiver professional secrecy, experts assistance).

Reports / Follow-up

Within their specific monitoring mission the Federal Ombudsmen draft several types of reports: (1) the *annual activities reports* and the *intermediate reports* that are sent, presented and debated in the House of Representatives. These reports include recommendations for the administration and/or for the Parliament. (2) The *investigative reports* drafted upon request from the House of Representatives and on an ad hoc basis aimed at analysing the operating of the federal administrative services. E.g. *Enquiry on the operating of closed and open centres managed by the Aliens' Office*¹⁵³.

The ombudsmen may be granted a hearing in the House at any moment either upon their request or upon request by the House.

As for the follow-up of the recommendations made by the Federal Ombudsmen, there are 2 provided measures:

- Meetings with throughout the year with the different concerned administrations in order to get an update on the implementation of the recommendations they received
- A summary of the previously submitted recommendations and their status (pending or finished) in the framework of the Federal Ombudsmen report.

A study on the efficiency of the Federal Ombudsmen recommendations is going to be carried out soon.

Collaborations / Synergies

The Federal Ombudsmen collaborate with the DGDE and the KRC¹⁵⁴, with who they are in regular contact to carry out common visits, for working groups, for the recommendations made in conjunction. Moreover, the Federal Ombudsmen are members of the CPMO along with the 25 other ombudsmen of the country.

¹⁵² Article 11 of the Act of 22 March 1995, *O.J.B.*, 7 April 1995.

¹⁵³ June 2009 - <http://www.mediateurfederal.be/sites/1070.b.fedimbo.belgium.be/files/auditCF2008-FR.pdf>.

¹⁵⁴ See common report drafted by these 3 ombudsmen about the open return centre of Holsbeek in the report of activities 2012-2013 of the DGDE, pages 37 and 38; and their collaboration in relation to the reception of foreign families of European origin (Roma people, etc.) or UFM.

Good practices

The Federal Ombudsmen do not hold any initiative or enforcement powers yet they monitor effectively and efficiently by using the flexible powers and mechanisms at their disposal. The double follow-up method for their recommendations puts the administration under pressure to face its responsibilities because it is put under a certain parliamentary pressure.

There are numerous safeguards that guarantee the institution's independence, autonomy and impartiality which reinforce the credibility of its interventions and recommendations.

Obstacles and difficulties

Investigations are carried out upon the House's request; this means that the Federal Ombudsmen cannot automatically demand a follow-up on their own initiative. Nevertheless, they may ask for a hearing before the House and request a follow-up for past enquiries when justified.

RECOMMENDATIONS

- ✓ Continue with the follow-up work of the submitted recommendations and draw on the soon to be published study to develop new follow-up methods complementary to those that are already being implemented.
- ✓ Continue to develop its collaboration with the ombudsmen on children's rights in order to guarantee transversal monitoring activities within the framework of children's rights.

b. Complaints processing mission

Legal Basis

The Federal Ombudsmen are only competent to process complaints concerning the federal administrations, except for those concerning the communal, provincial, regional and community administrations, as well as those concerning courts and tribunals.¹⁵⁵ The Federal Ombudsmen do not provide mediations between private individuals. Any natural (Belgian or foreign, minor or adult, staying legally or illegally in the country) or legal person, or any de facto association may approach them.

In respect of our study, the Federal Ombudspersons are competent to process complaints submitted against:

- **The Alien's Office** on anything concerning the deprivation of liberty of foreign minors in immigrant detention centres or *return houses*.
- **The prisons' general administration** on anything concerning the deprivation of liberty for minors who transferred to an adult jurisdiction and are incarcerated in federal detention centres (St Hubert and Tongres) until the 1 January 2015. And also complaints concerning the execution of sentences pronounced against minors who were transferred to an adult court and children detained in prison with their mothers.

In 2013 this office received 5 242¹⁵⁶ complaints mainly for the taxation and migration-asylum sectors. Only 20 to 25 complaints dealt with the deprivation of liberty sector, and they were primarily submitted by adults.¹⁵⁷

¹⁵⁵ Article 1 of the Act of 22 March 1995 establishing the Federal Ombudsmen, *op.cit.* footnote n°153.

¹⁵⁶ Federal Ombudsmen, 2013 Annual Report, Part III, A. General Figure III/3°;

http://www.federaalombudsman.be/sites/1070.b.fedimbo.belgium.be/files/rapport_annuel_-_jaarverslag_-_2013_0.pdf.

¹⁵⁷ Statements made during the interview of 15 September 2014 with the director of the Federal Ombudsmen's office.

Implementation / Procedure

A complaint to the Federal Ombudsmen may be lodged on the internet via, via email, on the telephone¹⁵⁸ or personally at the main office or one of the provincial offices during their office hours.

If the complaint is admissible and there is no immediate solution, a thorough investigation may be envisaged; the ombudsmen submit proposals for the civil servant managing the administration concerned, and, if necessary, recommendations to the competent Minister. These recommendations are incorporated in the Federal Ombudsmen's reports.

Good practices

The ombudsmen may only be approached for a complaint or upon request of the House of Representatives; however, the Federal Ombudsmen may **extend the scope of investigation to a larger sphere** if they deem it necessary.

Obstacles and difficulties

The lack of information on the role of the ombudsmen is obvious. If we add to this the lack of eagerness of some institutions to put the information brochures at the users' disposal, it is easily understandable why children very rarely use this complaint mechanism.¹⁵⁹

For example, minors who were transferred to an adult jurisdiction-a matter that up until 1 July 2014 fell under the competence of the DGPI- have never submitted a complaint or request for information to the Federal ombudsperson due to the lack of information on this mechanism and its terms and conditions; this lack of information also explains the fact that the surveillance commissions of the two federal detention centres have never collaborated with the federal ombudsman nor have they ever transferred complaints from children transferred to an adult jurisdiction.

RECOMMENDATIONS

- ✓ Develop awareness and improve the mechanism's accessibility, especially for minors deprived of liberty.
- ✓ Design a specific section on children's rights in the new federal ombudsmen's website that should be accessible in 2015, in a language and following methods that children may understand.
- ✓ Polish the complaints reference system so that the statics show the number of complaints submitted by or for children.

For this report we had to settle for briefly mentioning the figures and the job the community and regional ombudsmen because we were unable to carry out a full research on these ombudsmen.

3.2. THE FLEMISH OMBUDSMAN (« DE VLAAMSE OMBUDSMAN »)

Legal Basis

The Flemish Ombudsman service was established in the Flemish Community with the Flemish Parliament by Decree in 1998.¹⁶⁰ The current Ombudsman is Bart Weekers who is also a member of the CPMO.

¹⁵⁸ Henceforth, for the request or complaint to be admitted, the telephone call has to be accompanied of additional information transmitted in written.

¹⁵⁹ Statements made during the interview of 15 September 2014 with the director of the Federal Ombudsmen's office.

Mission

Article 3 of the Decree state that: “*The Flemish Ombudsman has the mission to (1°) **review complaints concerning the acts and the operating of the administrative authorities of the Flemish Community and of the Flemish Region, and to act an ombudsman;** (2°) to serve as bridge by transferring cases to other competent authorities provided that it does not concern a complaint; (3°), [...] to **provide proposals and recommendations to improve the administrative authorities service of the Flemish Community and of the Flemish Region, and to be accountable as stated in articles 16, § 2, and 18.***”

It also states that “*The Flemish Ombudsman may fulfil its mission in respect to other administrative authorities when the latter are in charge by decrees or regulations of a mission that falls within the competence of the Flemish Community or the Flemish Region*”. (the GIs, the FDC of Everberg and the “Everberg” section of the FDC Tongres, as well as the UIC/FOR K sections of the psychiatric hospitals in Flanders).

Report / Follow-up

The Flemish Ombudsman publishes an annual report in its website. The report includes the number of submitted complaints concerning the fields of Social Support, Public Health and Family in the Flemish Community that are processed by the agency “*Jongerenwelzijn*” and specifically by the “*Jo-Lijn*” (see *infra*, point 4.1.2, a and b, pages 62 and following and Annex 3 – Statistics table n° 13¹⁶¹).

Good practices

The Flemish Ombudsman is always at the minors’ disposal. When a complaint is admissible and that it is processed by the Flemish Ombudsman, he/she will arrange for a meeting with the juvenile in his/her office if it is possible, if not, the Ombudsman will personally go visit the juvenile where he/she is placed.

Obstacles / Difficulties

Juveniles are not at all aware of the existence of a Flemish Ombudsman. The only time that this institution is referred to is when the “Jo-Lijn” or the KRC submit an opinion after processing a complaint and the institution is listed a possible external remedies body.

RECOMMENDATIONS

- ✓ Reinforce the Flemish Ombudsman's visibility by largely distributing more targeted communications and clearer information on its job, its operations and its competences in respect to the Social Assistance, Public Health, and Family administration.
- ✓ Make sure that this mechanism is listed as one of the external remedies mechanisms in the information given to juveniles deprived of liberty.

¹⁶⁰ Flemish Decree of 7 July 1998 establishing the Flemish ombudsman service, *O.J.B.*, 25 August 1998.

¹⁶¹ Flemish Ombudsman, «*Eerstelijnsrapport klachtenmanagement werkjaar 2013*», KLM-annual report 2013 Policy Domain WV

3.3. THE WALLOON OMBUDSMAN

Legal Basis

At first there were two different institutions, one ombudsman for the Walloon Region¹⁶² and one ombudsman for the French-speaking Community.¹⁶³ Since 2011¹⁶⁴ the Walloon Ombudsman is competent for a common service for the 2 entities. The current Ombudsman is Marc Bertrand and he is also a member of the CPMO.

Mission

The role of the Walloon Ombudsman is to **assist any person experiencing difficulties with an administration from Wallonia or from the Wallonia-Brussels Federation**. As far as this research is concerned, the Walloon Ombudsman is competent for processing requests concerning the services of the **General Administration for Youth support**.

The Walloon Ombudsman is independent from any public authority and fulfils its mission in an impartial way; it is even autonomous from the Government and the Administration. His/her mission is to listen, advise, get in touch with whoever may be necessary to solve a problem and monitor the case all the way through the end; all of these for free.

Implementation / Procedure

Any request to the Ombudsman may be submitted in written (by email, post or fax), orally (either in one of the local offices or in the main office) or on the internet (via an online form or email).

Powers / Means at its disposal

The Walloon Ombudsman may:

- Personally carry out a visit to see the situation for him/herself;
- To summon and listen the concerned parties;
- Demand any document or information that he/she considers useful (the Administration may not deny him/her access to any type of information, even if it is considered confidential);
- Require mandatory deadline for the administrative to reply.

The Ombudsman's team is bound by professional secrecy.

If a conflict does not reach conciliation, the Ombudsman will bring the two parties face to face.

When the Ombudsman finds a complaint justified, he/she will provide recommendations:

- To solve the problem submitted to him/her;
- That aim at improving the operations of the public service;
- Or suggesting the modification of legislative or regulatory texts.

¹⁶² Decree of the Walloon Region of 22 December 1994 establishing the institution of the Ombudsman of the Walloon Region, *O.J.B.*, 19 January 2005.

¹⁶³ Decree of the French Community of 20 June 2002 on the establishment of the office of the Ombudsman of the French Community, *O.J.B.*, 19 July 2002.

¹⁶⁴ Cooperation agreement of 3 February 2011 between the French Community and the Walloon Region on the establishment of a joint mediation service to the French Community and the Walloon Region, *O.J.B.*, 15 September 2011.

Good practices

When a complaint is deemed admissible, an acknowledgement of receipt is delivered to the complainant. The acknowledgement of receipt includes an ID and a password that give the complainant the opportunity to follow the evolution of its case in a **platform for administrative transparency**.

Obstacles / Difficulties

None of the people we met with (administration, directors, staff and minors) mentioned the existence of this mechanism and none of the reference texts (1991 Decree, IPPJs' Code, specific regulations for the IPPJs and for the "Education" section of the FDC of Saint-Hubert) mention the figure of the Walloon Ombudsman as a complaint mechanism available to children or to their parents. Moreover, the Walloon Ombudsman deplores the following circumstances: **"the lack of awareness of his existence and its mission, even within the General Administration for Youth support"** and the tendency of the councillors and directors of the Youth support to entrench themselves behind the professional secrecy or their independence in order to avoid replying to his questions.

4. MONITORING AND COMPLAINTS MECHANISMS SPECIFIC TO THE PLACES OF DEPRIVATION OF LIBERTY FOR MINORS

4.1. PUBLIC (COMMUNITY) YOUTH PROTECTION INSTITUTIONS

4.1.1. The Directorate for the Coordination of the IPPJs in the French-speaking Community

a. Internal monitoring mission

Legal basis

The Law of '65¹⁶⁵, the decree of 4 March 1991¹⁶⁶ and the new IPPJs' Code¹⁶⁷ (article 80) provide that the Directorate for the Coordination of IPPJs (hereinafter "the Directorate") is responsible for the supervision of pedagogical and organizational coordination of IPPJs (and for the so-called "Education" section of the FDC of Saint-Hubert).

Mandate / Composition

These functions include **verifying the implementation and compliance with the regulations applicable to IPPJs**, a task that can be likened to a function of monitoring and internal inspection. It is also specified in the new IPPJs' Code that *"this monitoring is carried out in particular through a regular presence on the ground"* (article 80, paragraph 2).

The management team consists of four people, including a director, two collaborators and a secretary¹⁶⁸.

¹⁶⁵ Act of 65', *op.cit.* footnote n°24.

¹⁶⁶ Decree of 4 March 1991 on youth support, *O.J.B.*, 17 July 2014, *op.cit.* footnote n°31.

¹⁶⁷ Code for IPPJs, *op.cit.* footnote n°31.

¹⁶⁸ DGAJ, Report of the youth assistance n°1, year 2012, publication June 2014, page 114.

Mission

In practice, the Directorate carries out *inspections on its own initiative* with regard to general aspects and *spontaneous inspections* in response to a complaint in more specific and targeted areas.

Report / Follow-up

The Directorate must submit an assessment report every 3 years. In addition, a chapter specific to the coordination and inspection of IPPJs must be included in the annual report of the DGAJ.

A report is also written systematically each time the management implements its spontaneous inspections mission (Article 78 IPPJs' Code). It is addressed to the Youth Support Ministry of the French-speaking Community, however it is not published.

Cooperation and synergies

The Directorate for the Coordination of IPPJs maintains relations with the DGDE in the framework of the exchange of information during the processing of complaints or on when the DGDE carries out thematic studies.

Obstacles / Difficulties

Apart from the compliance aspects of the regulation following the entry into force of the new IPPJs' Code, as well as regarding the consultation work which is carried out for several months with the directors of the institutions and a delegation of educators for the purpose of drafting the general regulation of IPPJs, the Directorate for the Coordination of IPPJs **does not seem to effectively implement its mission of internal monitoring**. Published reports do not mention this and it is clear from our visits that the directors and staff of the IPPJs admit on the one hand that they are not subject to monitoring and assessments within the performance of their duties except for their hierarchical relationship with the Directorate. On the other hand, that they rarely meet the Directorate for the Coordination of IPPJs. This is due to the fact¹⁶⁹ that **the team** is somewhat **restricted** in terms of the extent of co-ordination, monitoring, evaluation and inspection to be implemented for 5 IPPJs and the so-called «Education» section of the FDC Saint-Hubert in which no fewer than 670 full-time employees are working.

RECOMMENDATIONS

- ✓ Implementing an effective external monitoring mechanism specific to IPPJ.
- ✓ Organizing systematic inspections at regular intervals within the 5 IPPJ and the FDC of Saint-Hubert resulting in periodic reports.
- ✓ Strengthening the team of the Directorate for the coordination of IPPJs by entrusting the inspection and monitoring missions to a person who is not in charge of the coordination of IPPJs.
- ✓ Systematically including a component on the inspection and monitoring of the IPPJs in the reports of the Service of Assistance to Young People.
- ✓ Ensuring the publication of the annual activities and statistical reports on a more regular basis than every three years.

¹⁶⁹ Based on an interview with the Directorate for Coordination of IPPJs on June 27, 2014.

b. Complaints processing mission

Legal basis

TITLE III of the IPPJs' Code « *The right of inquiry, the right to lodge an appeal or a complaint with the IPPJ and with other authorities* »¹⁷⁰ formally addresses a deficiency.

As to the specific regulations of IPPJs that are applicable as long as the General Regulation of IPPJs is not in force (announced for 1 January 2015), only the regulations of the so-called «Education» section of FDC Saint-Hubert and the IPPJ St Servais devote a chapter or a specific section to the right of complaint or appeal with internal or external authorities. In other regulations, this right can only be deduced from different provisions usually inserted under sanctions, but they are not easily accessible and understandable for young people.

It may also be noted that the various above-mentioned regulations all mention the contact information for the DGDE at the end of the document (see *supra*, 2.1., a., b. page 43) and SDJ (see *infra* 4.2.2., v. page 75), and in a footnote provide a brief explanation on the role of each of these bodies in a language that is not necessarily understood by minors.

Implementation / Procedure & Follow-up

Article 81 of the IPPJs' Code details the right of the minor, his/her family and his/her relatives to complain to the competent authority (the Directorate for the Coordination of IPPJs) in that it states that it "(...) makes a decision within a reasonable time and in any case within ten working days when the complaint was lodged by the minors themselves during their custody. The general direction of the Service of Assistance to Young People or a person delegated for this purpose can meet juveniles in the context of its investigations. In this framework for action, visits to the young in IPPJs are not limited either in number or in their duration." It is not clear whether a reasoned written decision shall be communicated to the complainant or if it will be noted in the minor's record.

Good practices

Within IPPJs and the so-called "Education" section of the FDC Saint-Hubert, there exists a practice of "**gathering information from the minors**". This is actually an anonymous questionnaire given to young people after they have been at the institution for some time (a month in Saint-Hubert, at the end of the IPPJ custody in Braine le Château and St Servais) in which they are asked to rate how they have lived their stay. The questions refer quite widely on all aspects of the placement and the way to formulate answers can allow for different types of expressions (assessment in the qualitative form of a multiple choice with 3 lines to write comments; a large space left open to write or express one's answer in the form of a drawing) that allow freedom for young people to question the management of the institution on certain practices that would not be respectful of their rights.

However, they would need to know their rights first ...and feel that this document will actually be read and taken into consideration, something that many of the minors we interviewed put into question. The management of the Institutions attest to the fact that juveniles often fail to answer the questionnaire. Another reason is probably to be found in the timing, since the questionnaire is submitted at the end of the placement and at this point, it loses its meaning.

Nevertheless, the use and concrete consequences of these questionnaires are not specified, either in-house or at the level of the Directorate for coordination of IPPJs. It is worth noting that this practice, until then informal, has been laid down in the new IPPJ's Code under article 79 in the chapter dedicated to the youth participation. It is stated that modalities and analysis 'must enable a structured communication and reflection on the issues raised by young people.

¹⁷⁰ Article 10 of the IPPJs' Code, *op.cit.* footnote n°31.

Obstacles / Difficulties

The Directorate for the Coordination of the IPPJs claims that no direct complaint from a child has ever reached them. However, it added that this did not prevent it from having to deal with complaints in favour of children and led it to carry out spontaneous inspections and investigations that have resulted in concrete measures against offenders¹⁷¹. However, this reflects the **total lack of accessibility** of the only formal mechanism in place until the entry into force of the new IPPJs' Code.

On new complaint procedures established by the IPPJs' Code, the DGDE notes in his latest report¹⁷² that several minors shared "their fears about the **lack of impartiality of the Direction** in situation involving a staff member who would be judge and jury at the same time" and, *a fortiori*, when the direction is a stake.

The DGDE also regrets that the **procedure for processing complaints** by the management of the institution on the one hand and by the competent authorities on the other hand is not **described more specifically** and differentiated as to the nature of complaints lodged with an "authority". On the other hand, the DGDE regrets that no **actual external appeal** is provided to enable the minor to challenge a sanction taken against him/her or complain about the attitude of a member of the IPPJs' staff.

There is no provision anywhere for a register of complaints to be kept by the management of the institutions.

RECOMMENDATIONS

- ✓ Duly informing young people deprived of liberty within IPPJs, in a language they understand, of their right to complain and appeal with respect to all the authorities that handle their complaints (DGDE, management of the institution, the competent authorities, the Walloon Ombudsman).
- ✓ Including and specifying in the General Regulation of IPPJs the right to ask questions, to complain and to lodge an appeal with the IPPJs and with authorities other than IPPJs.
- ✓ The management of the various institutions should provide a complaints' register that is communicated to the Authorities at regular intervals.
- ✓ Strengthening the team of the Directorate for the Coordination of IPPJs entrusted with the mission of handling minors' complaints as well as complaints from their family or relatives to a person separate from the one in charge of the coordination of IPPJs.
- ✓ Systematically including a section on the processing of complaints to the administration by young people, their families or their relatives under Article 4 of the 1991 Decree and Article 81 of the IPPJs' Code.
- ✓ Harmonizing the questionnaire for all IPPJs and FDC Saint-Hubert so that it includes a section on the conditions of deprivation of liberty and respect for the rights of young people.
- ✓ Consistently and at an appropriate time submitting the questionnaire to all young people who are placed in an IPPJ or FDC institution.
- ✓ Regularly and internally evaluating the content and communicating the results of this assessment to the administration so that it can truly ponder on the issues raised by the minors.

¹⁷¹ Comments collected on June 24, 2014, during the meeting with the Directorate for the Coordination of the IPPJs.

¹⁷² DGDE, Annual Report 2012-2013, pages 38 and 39.

4.1.2. The Internal Independent Care Inspectorate Agency of the Flemish Community («Zorginspectie »)

a. Internal monitoring mission

Legal basis

The Care Inspectorate («Zorginspectie »)¹⁷³ is an independent internal agency of the Flemish Community that falls within the competence of the Social Support, Public Health and Family. It was established by Decree of the Flemish Government of 26 March 2004.¹⁷⁴

Mandate / Composition

The Inspectorate can conduct its inspections in public institutions of the Flemish Community in which children and young people are likely to be deprived of their liberty (the GIs and the educators of the FDCs of Everberg and Tongres). These inspections focus on the application of the regulations in force for these structures in order to contribute to improving the quality of services, the allocation of public resources and the preparation and assessment of the Social Support, Public Health and Family policy (Article 2).

Articles 5 and 9 of the decree state that: "In carrying out its missions and tasks, the agency acts on behalf of the corporate entity, the Flemish Community" and that "it falls under the hierarchical authority of the Minister". Therefore, it is difficult to consider it as totally independent, even though it does a great job and inspections are apparently objectively and impartially conducted.

Mission

Unfortunately, we cannot say that this agency acts as a real monitoring mechanism for the respect of children's rights. Its mission is in fact confined to conducting inspections to ensure the proper application of decrees that are in force with regard to Welfare, Public Health and Family¹⁷⁵ in the Special Youth Care sector («Bijzondere jeugdzorg »).

The Inspectorate conducted the first inspections in GI institutions (De Kempen and De Zande) and within the educational team of the FDC Everberg in the spring of 2012. The next visits are planned for 2015.

Report / Follow-up

Following the visits made in 2012, the inspectors sent a report to each institution and they gave them ample time to respond. A summary report was then produced on the basis of significant documents, reports of institutions' visits and interviews. This comprehensive report has been sent to the agency "Jongerenwelzijn"¹⁷⁶ and later presented to the institution for the purpose of implementing the recommendations. This report is also published on the website of the Inspectorate.

¹⁷³ Flemish Government Decree of 24 September 2010 changing the name of the internal independent agency «InspectieWelzijn, Volkgezondheid en Gezin» in the internal independent agency «Zorginspectie» (Care Inspectorate), O.J.B., 21 October 2010.

¹⁷⁴ Order of the Flemish Government of 26 March 2004 establishing an internal independent agency «Zorginspectie», <http://codex.vlaanderen.be/Portals/Codex/documenten/1012923.html>.

¹⁷⁵ Decree concerning the status of minors with regard to the integral assistance to young people of 7 May 2004 («Decreet betreffende de rechtspositie van de minderjarige in de integrale jeugdhulp»), O.J.B., 4 October 2004 and Decree of 1 June 2001 granting the right to lodge a complaint with the authorities («Klachtdecreet»), O.J.B., 17 July 2001.

¹⁷⁶ The agency «Jongerenwelzijn» will decide whether there are consequences with regard to the authorization, the approval or the granting of subsidies to inspected public institutions.

Cooperation / Synergies

The Inspectorate is working together with the "Jo-Lijn" (Hotline for young people) with regard to receiving the complaints. The Jo-Line can in this case ask the Inspectorate to conduct an on-site visit in order to carry out an investigation the results of which would be communicated to the complainant.

When the Inspectorate handles a complaint it should mention in its reply the *Flemish Ombudsman* as a possible way of appeal and send him an annual report of the complaints it has dealt with.¹⁷⁷

The Inspectorate maintains no formal cooperation with the KRC because it operates under the control of the executive power but the exchange of best practices and information or answers to questions, are possible during an inspection or in the processing of a complaint.

Good practices

The inspection carried out in 2012 included a **special survey** on the right to information and clear communication, the right to participation, the right of complaint, the right to contact and the right to privacy and humane treatment. In this framework, directors, staff, counsellors and young people in custody were surveyed to determine the extent to which children's rights were guaranteed during their stay in the youth custody centre. Recommendations were made in this regard. The agency's conclusions highlight that young people feel they are sufficiently informed upon arrival about the rules and their rights and that educators are accessible and responsive.

At this stage it is **difficult** for the Inspectorate **to assess the impact of its recommendations** since the first inspections took place in 2012 and the next are planned for 2015. Moreover, the "Jongerenwelzijn" agency is in charge of the follow-up of inspections. Up to now, **inspections are perceived positively** by the institutions themselves and the staff (management) was very welcoming and cooperative.

Obstacles / Difficulties

The Inspectorate only carries out periodic spot inspections. It cannot ensure regular monitoring within these institutions because it lacks the manpower to do so.

The Inspectorate also insists on the need to establish a neutral and internal procedure that would ensure the handling of complaints and clarification of the educational framework for solitary confinement upon arrival of the minors to the facility. It does **not offer a complaint handling mechanism** since it refers the complainant to the "Jo-Lijn". In some cases, a complaint handled by the "Jo-Lijn" could lead to an inspection by the Inspectorate.

RECOMMENDATIONS

- ✓ Encourage cooperation between the Inspectorate and the KRC in order to create synergies between them in the implementation of their respective control missions.
- ✓ In cooperation with the "Jongerenwelzijn" agency, develop a follow-up system for the recommendations that were given in its reports in order to regularly assess their impact.
- ✓ Implement a clear internal complaint mechanism that is accessible to young people who are deprived of their liberty in public institutions for youth protection (GI and FDC).

¹⁷⁷ Decree of 1 June 2001, *O.J.B.*, 17 July 2001.

b. Complaints processing mission - The "Jo-Lijn"

Legal basis

Article 8 of the Decree of the Flemish government of 24 October 2008¹⁷⁸ provides that the internal autonomous agency "Jongerenwelzijn" has an obligation to deal with complaints that are made by children/young people.

Implementation / Procedure

To carry out this task, the agency "Jongerenwelzijn" has created a special service in 2011: the "Jo-Lijn" (Hot Line for young people), a free telephone helpline that children, young people and parents can call in order to ask any questions regarding special assistance to youth and to obtain information, advice or to lodge a complaint about the operation of services for special assistance to youth.

Young people in custody in an institution of the Flemish Community (regardless of the regime: open as well as closed) receive information about the "Jo-Lijn" and the KRC upon arrival.

Follow-up

The number of complaints received in 2013¹⁷⁹ is quite low since it only amounts to 71. These can be processed differently. They will be stored or redirected to other appropriate services. Complaints will, in the future, be less formally processed by the "Jo-Lijn" because of existing treatment alternatives.

The minor who feels that the response received from the "Jo-Lijn" does not satisfy him/her, may also contact the Flemish Ombudsman ("Vlaamse Ombudsman") - (see *supra* section D. 3.2., on page 55).

Good practices

The minors who are in custody in public institutions in the Flemish Community (GI and FDC) seem to be sufficiently informed about the external complaints mechanisms. Moreover the complainants view positively the "Jo-Lijn", it helps to facilitate the discussion between the persons concerned (minors and members of the staff of the GI).

Obstacles / Difficulties

12 out of the 30 juveniles interviewed, including 4 minors sent to an adult court (Flemish Community) know the "Jo-Lijn". Yet many of them have told us they had not used it when attempting to make a complaint. The reasons mentioned were: some do not dare to ask the staff to call the "Jo-Lijn" (mainly for fear of being overheard), others have heard that a letter/phone call to the "Jo-Lijn" had no impact (contrary to what the Director of GI of Kempenin Mol told us. He assured us that when the "Jo-Lijn" is contacted by the minor and when an investigation is conducted, the response is automatically communicated to the minor). Finally, a young girl told us that she wanted to call the line but an educator had dissuaded her from doing so.

¹⁷⁸ Decree of the Flemish government of 24 October 2008 implementing the Decree of 7 March 2008 on the special youth support and the Framework Decree for administrative policies of 18 July 2003, *O.J.B.*, 2 March 2009.

¹⁷⁹ Flemish ombudsman, «*Eerstelijnsrapport klachtenmanagement werkjaar 2013*», KLM-annual report 2013, Policy Domain WVG.

RECOMMENDATIONS

- ✓ Improving the quality of information about the different external complaints mechanisms that minors who are in custody in GI or FDC can use so that they are more effective.
- ✓ Facilitating access to the Hot Line "Jo-Lijn" and educate staff in GI and FDC so that they facilitate access to this mechanism.

4.1.3. The other monitoring mechanisms

i. The DGDE and the KRC

Legal Basis

The IPPJs' Code¹⁸⁰ and the Royal Decrees to set up the FDC of Saint-Hubert and the FDC of Tongres¹⁸¹ refer to the rights and powers of the DGDE and the KRC, including that of unlimited access to facilities (accompanied by the director) and the right of the minors to freely contact them at any time; all the specific and provisional regulations, IPPJ/GI and the so-called "Education" section of FDCs welcome brochures mention these mechanisms, their contact information and explain their role¹⁸².

We refer you to sections 2.1., a. and 2.2., a. (pages 43 and 48) for more details about their monitoring competences as well as for the recommendations made in order to increase their effectiveness and impact.

ii. The Parliamentarians

Legal basis

The IPPJs' Code and the Royal Decree¹⁸³ to set up the FDC of Saint-Hubert explicitly accord parliamentarians' unlimited visitation rights while the minors are granted the right to contact them free of charge. No such provision is included in the Royal Decree establishing the FDC Tongres, nor in the Flemish Decree of 7 March 2008.

Obstacles / Difficulties

However, from our interviews we learned that few parliamentarians have made use of this right of access - and thus their monitoring power- in recent years to the point that none of them were mentioned to us.

It should be noted that neither the Law of 65 nor the Decree of 1991, or the Decree of 2008 mention this parliamentary visitation right regarding IPPJs. In the Royal Decree cited above no procedure is mentioned with regard to visits by the DGDE.

The practical and legal gaps are enormous in this area so this mechanism is completely ineffective and inefficient.

¹⁸⁰ IPPJs' Code, *op.cit.* footnote n° 31.

¹⁸¹ *Op.cit.* footnotes n°110 and 114.

¹⁸² See point 3.3.2., A and B.

¹⁸³ Article 5§2, *op.cit.* footnote n°113.

RECOMMENDATIONS

- ✓ Calling upon the federal, regional and community parliamentarians who are responsible for Justice and Youth support to use their visiting rights in all places where minors are held in custody.
- ✓ Establish a best practice repository to comply with during visits.
- ✓ Develop a method to conduct a follow-up of these visits in order to better measure their impact.
- ✓ Legislate in order to extend the right of parliamentarians to visit all places of deprivation of liberty for juveniles and to clarify the scope of the powers conferred on them in this context.

iii. The Juvenile Court Judge

Legal basis

The law of '65 provides that the judge has a visiting right (1) if the placement of the minor exceeds 15 days in a closed section of an IPPJ/GI and (2) twice a year in case of minors in custody under one of the measures provided for in Article 37, 3 and 4 (ADCO). At the time of such visits a report on the minor's situation must be addressed to the competent Community authorities. The IPPJs' Code also grants the minor the right to receive unlimited visits and the right to contact the judge free of charge and unlimited in time and duration.

The juvenile court judge also carries out a monitoring mission in the context of the solitary confinement of minors - (See *infra* point section C, point 1.4.8., b., pages 28 and 29).

The Flemish Decree of 7 March 2008¹⁸⁴ provides that the advisor to the social service of the juvenile court (not the juvenile court judge himself) is mandated to pay regular visits to the minors placed in institutions.

Mission

On these occasions he carries out a **monitoring mission**. Besides these two cases of visits, the juvenile court judge/the counsellor can also specifically monitor during the briefings at which he is routinely invited to review the custody measure he has ordered to be applied to the minor.

Obstacles / Difficulties

However, in practice these types of monitoring are exercised sporadically (depending on each judge/counsellor), and, as far as we know, do not ever lead to a report on the conditions of detention of juveniles addressed to the competent authorities.

RECOMMENDATIONS

- ✓ Make judges aware of the importance of effectively carrying out their monitoring mission in all places where they might place a minor under a closed regime.

iv. The lawyers

Legal basis

The Decree of 1991 and the IPPJs' Code give minors the right to unlimited communication with their lawyer. All the specific and provisional regulations, welcome brochures of IPPJs/GIs and the so-called "Education" sections of the FDCs also grant minors the right to unlimited communication with their lawyers (free of charges) by mail or by phone and the right to demand as many visits as they want.

¹⁸⁴ *Op.cit.* footnote n°47.

Moreover the IPPJs' Code gives lawyers a real monitoring power in several respects: unlimited visiting rights intime and number, consultation of the minor's judicial record upon request; the communication of a copy of the medical and psychological reports and social study and observation or guidance established by the multidisciplinary IPPJ team; in the context of solitary confinement measures, lawyers are immediately advised of any action taken with regard to their client, they receive the written report on the decision and must be notified of any request for extension of the measure. They also have the right to inspect the register of solitary confinement measures.

Such provisions unfortunately were not found in the Flemish Community and it is therefore not possible to say that a monitoring mission such as the one described above exists. The 2004 Decree of the Flemish Community does not explicitly address the role of the lawyer, it states in Article 24 that the minor has the right to be assisted by a person who meets certain conditions (in particular being bound by professional secrecy) and such persons have a duty to justify themselves every time they act in that capacity. Moreover the Internal Rules "*Algemene Huisregels*" of the GIs confirm the minor's right to consult a lawyer at any time, even when subjected to a solitary confinement measure.

Mission

All these provisions (in the French-speaking Community) give lawyers a real monitoring mission coupled with fairly broad powers regarding the information to which they have access in order to implement this monitoring. Alerted of certain facts by their clients or during visits, they may report any incident or violation to the proper authorities (direction of the institution, competent administration, DGDE, KRC, Jo-Lijn, Juvenile Court Judges, Prosecutor's Office, police) on behalf of their client.

Obstacles / Difficulties

Almost unanimously the minors surveyed said that they do not contact their lawyer in case of a violation of their rights in the framework of their deprivation of liberty. To them, the lawyer is confined to a purely procedural role; he is very difficult to reach (by phone or in person – not many lawyers make personal visits) outside the fixed hearings and their preparation, "*it would not do any good.*" Consequently, although lawyers should be the confidential and trusted advisors of minors deprived of their liberty and when they could exercise a real monitoring mission in the context of deprivation of liberty of their clients, they fail -for reasons probably justified by the system of legal aid- to play a crucial role in the defence of children's rights.

RECOMMENDATIONS

- ✓ Making lawyers aware of the important role they play in monitoring the rights of children deprived of their liberty in the framework of the conditions of their confinement.
- ✓ Improving the conditions of second line legal aid so that lawyers are decently compensated for the services they perform as part of their intervention pro deo.

For the record, the IPPJs' Code accords unlimited visiting rights and unlimited communication to consular officials and the diplomatic corps of the country of origin of the minor, and to the guardian if the minor is an unaccompanied foreign minor as well as to SDJ (see *infra*, point 4.2.2.v., pages 75-76).

4.1.4. The other complaints mechanisms

i. The directors of institutions

Article 10 of the IPPJs' Code provides in this regard that "(...) *the minor can also contact the Director of the IPPJ or the person exercising the management function, about any matter and any decision that concerns*

him personally and for any negative sanction taken against him/her." This request must be made in writing and delivered without delay in a sealed envelope by a member of the teaching staff to the management. In practice, complaint forms should therefore soon be made available to young people as well as envelopes (which was not the case during the visits we conducted). The Directorate provides a written reasoned reply within 48 hours of receipt of the request.

ii. The DGDE and the KRC

See section 2.1., b. and 2.2., b (pages 47 and 51) related to the missions of the DGDE and of the KRC with regards to the treatment of complaints lodged by minors deprived of their liberty as well as the recommendations formulated in this regard.

iii. The Flemish and Walloon ombudspersons

See section 3.2 and 3.3 (pages 55-57) related to the missions of the Flemish and Walloon Ombudsmen with regards to the treatment of complaints lodged by minors deprived of their liberty as well as the recommendations formulated in this regard.

iv. Informal mechanisms

Young people who feel they have a reason to complain can informally and verbally complain to educators, section heads, custodial staff or members of the PMS team.

Obstacles/difficulties

However, nothing guarantees that the people these minors spoke with will process the complaint. Young people therefore mostly tend to consider that "*it is useless to complain*," "*it will not change anything*" in a world where "*the adult decides and dictates its law*" without taking into account their voices or their views.

When an assessment system exists and it implies that "*the negative assessments have a direct influence on the regime of leisure trips and holidays*"¹⁸⁵, it deters young people to claim their rights. For example, when a teacher decides to hold a minor in his/her room because the teacher believes that he/she has not complied with the rules, the latter often considers it better to wait until the end of the penalty rather than challenge it right away, even if he/she does not agree with this decision.

RECOMMENDATIONS

- ✓ Duly inform, in a child-friendly language, juveniles deprived of liberty in IPPJ and GI about their right to lodge complaints before competent authorities (DGDE/KRC, institution's direction, competent administration, ombudsmen...)
- ✓ Provide and detail, in the IPPJ's internal rules and the GI's "*Algemene Huisregels*", in one hand, the right to lodge complaint through internal remedies and, on the other hand, before external bodies"

¹⁸⁵ Regulation «Service Education Service » IPPJ of Braine le Château, S Letter, Appraisal System, pages 13-14.

4.2. MONITORING THE SO-CALLED "MINORS TRANSFERRED TO AN ADULT COURT" SECTIONS OF THE FEDERAL DETENTION CENTRES (FDC)

4.2.1. Central Council of Prison Supervision and the Monitoring Commissions

a. External monitoring mission

Legal basis

Article 20 of the Dupont Act¹⁸⁶ provides that "... independent supervision of prisons and the treatment of detainees are exercised by the Central Council of Prison Supervision (hereinafter called "CCSP") and by the Monitoring Commissions." CCSP and the Monitoring Commissions were created and established within each prison by Royal Decree¹⁸⁷. The Dupont Act devotes Chapter IV to "supervision", but its articles have not yet entered into force.

To date, a Monitoring Commission was established with the FDC Saint-Hubert and CFG Tongres.¹⁸⁸

Mandate / Composition

The CCSP is composed of a maximum of 10 members, appointed and dismissed by the Minister of Justice, including a president and a vice president from a different linguistic group. Among the members there must be at least one magistrate, one lawyer, one doctor and one criminologist. A member of the CCSP may not belong to a Monitoring Commission (and *viceversa*).

Each Monitoring Commission is made up of minimum 6 members and maximum 10, including at least one magistrate, one lawyer and one doctor. They are appointed for a term of 4 years by the Minister of Justice upon proposal from the CCSP.

Missions

In addition to the **overall mission of independent monitoring of prisons and the treatment of the detainees** (-a priori- **independent external monitoring of the prison administration**), shared by the CCSP and the Monitoring Committees, the CCSP's mission is to submit opinions to the Ministry of Justice, either *ex officio* or at the request of the latter on the execution of sentences and custodial measures; coordinate and oversee the operation of the monitoring committees.

The Monitoring Commissions have a crucial role to play, being the only supervisory bodies within the walls of the so-called "minors sent to an adult court" sections of the FDCs. Their mission therefore primarily consists in being privileged observers of the prison world; to submit advice to the CCSP, either *ex officio* or at the request of the latter, to provide information and formulate proposals deemed appropriate.

The exercise of their tasks contributes to a better functioning of prisons. Commission members always strive to try to provide a solution to major incidents, in consultation with management, the central government and the Central Council.

¹⁸⁶ Act on the Principles of 12 January 2005, *opcit.* footnote n° 80.

¹⁸⁷ Royal Decree of 4 April 2003 amending the Royal Decree of 21 May 1965 on the general regulations of penal institutions (hereinafter called «RG»), also amended by the Royal Decree of 29 September 2005, *O.J.B.*, 27 October 2006.

¹⁸⁸ Ministerial Order regarding Monitoring Commissions of Saint-Hubert and Tongres of 5 November 2012, *O.J.B.*, 13 November 2012.

Powers / Means at their disposal

As part of the exercise of their supervisory duties, the CCSP and the Monitoring Committees have *"the right to monitor on site, unless otherwise provided by law, all the books and documents relating to the prison and, if the prisoner has given his written consent, all documents containing individual information about him. They also have the right to enter into direct contact with prisoners without supervision."* In practice, it is noted that only the commissioners who are physicians have access to the medical records of detainees but they are not in any case allowed to carry out a medical examination.

The CCSP is supposed to meet at least once a month. If the Minister of Justice (or its representative) attends meetings, it is he who presides.

A member of the Monitoring Commission visits at least once a week the centre to ensure that the rules applicable to detainees are respected by management, staff and employees. He/she can talk to anyone he/she deems useful. The Director of the institution and the chairman of the Monitoring Commission meet once a month and whenever circumstances require it.

Reports / Follow-up

The CCSP is supposed to prepare an annual report for the Justice Minister on the operation of the Monitoring Commissions and their findings on everything regarding the treatment of detainees and compliance with the rules.

The Monitoring Commissions prepare an annual report (in the form of a standardized questionnaire) submitting their opinions, findings and proposals.

These monitoring bodies therefore do not actively interfere in the prison management policy at the local or central level. But their concerns (advice, findings and proposals) are reported to the Minister of Justice and these advices should -in an ideal world- be formulated on aspects of the management of prison matters.

Good practices

These will be specifically targeted in the practical analysis of the functioning of the two Monitoring Committees of Saint-Hubert and Tongres.

Obstacles / Difficulties

Certain provisions of the Dupont Act and the Royal Decree of 2003 are in conflict with each other and undermine its effectiveness as well as the **independent nature** of the CCSP and the Monitoring Commissions. In this regard, the Federal Ombudsperson stated in his 2010 report¹⁸⁹ that "by granting the power of appointment of the supervisory authorities, the determination of their rules of procedures and means to the Minister of Justice, the Executive power had total control over the monitoring process in prisons". Beyond this issue, the CCSP also highlights in its last report¹⁹⁰ a series of facts which result, according to its authors, from a real 'desire to prevent the CCSP from being totally independent'.

In this regard, the federal Ombudsman also noted in his 2010 report that "by granting the power of appointment of the supervisory authorities, the determination of their rules of procedure and means to the Minister of Justice, is the Executive who is familiar with the intensity of control over prisons". Beyond the regulatory contradiction, CPSC is in addition, in its latest report, a series of facts which result, according to its authors, a real 'desire to prevent the CPSC to be totally independent'.

¹⁸⁹ Federal Ombudsman, 2010 report, page 134.

¹⁹⁰ Central Council of Prison Supervision, 2008-2010 report, page 10.

The CCSP and the Monitoring Commissions are not sufficiently recognized by the authorities for whom they are supposed to play an advisory role.¹⁹¹ These bodies also bemoan the **lack of human, financial and material means** essential to its operation (no budget for office supplies, lack of compensation and costs that would be associated with the training). This also has a huge impact on the turnover of councillors and commissioners.

Moreover **difficulties** emerge with regard to the **cooperation between the CCSP and the Monitoring Committees**, since the CCSP –which also does not have any means- does not systematically act upon the advices of the Commissions and does not necessarily transmit these advices.

The latest report from the CCSP was written **4 years ago** and covered the period 2008-2010. Since then, no individual report has been published by the local commissions, specifically with regard to the matter that concerns us and no report on the FDC Saint-Hubert and FDC Tongres has been published; which seriously undermines not only the effectiveness of the mechanisms and their transparency, but also their credibility.

Note that despite our different requests made in this direction and underpinned by the communication of a series of specific questions to the current President of the CCSP, we obtained (at the time of finalizing this report) no appointment in order to get a clearer and more practical view of the effective operation of the mechanism.

RECOMMENDATIONS

- ✓ Strengthening the autonomy and independence of the CCSP and the Monitoring Commissions by placing them directly under the authority and control of Parliament.
- ✓ Repealing the Royal Decree of April, 4, 2003 and implementing the Decrees of Articles 20 to 34 of the Dupont Act.
- ✓ Creating Complaints Commissions and an appeal board to entrust them with an external and independent mission for the processing of prisoners' complaints.
- ✓ Providing the CCSP and the Monitoring Commissions with human and financial resources and sufficient material to carry out their duties properly, efficiently and professionally
- ✓ Preparing and publishing reports, if not annually, biennially on the situation in prisons and particularly in the FDC Saint-Hubert and Tongres where juveniles are deprived of their liberty under the procedure of juvenile transfer to an adult court.
- ✓ Maintaining the mandate of the Monitoring Commissions of Saint Hubert and Tongres in respect of so-called "juveniles transferred to an adult court" sections despite the devolution of powers on these matters to the Communities.

b. Complaints processing mission

Legal basis

The tasks assigned to the CCSP and to the Monitoring Commissions under the provisions of the Dupont Act go well beyond the general mission of monitoring conferred by the RG (general regulations of penal institutions). Indeed, they entrust them with a **mission to handle the complaints** of prisoners. Thus, pursuant to Article 28, each Monitoring Commission must set up a **Complaints Commission** responsible for dealing with complaints from prisoners. **An Appeal Board** will be established within the Central Council. Since these provisions are not yet in force, this complaint handling mechanism is not yet effective.

¹⁹¹ Central Council of prison Supervision, Report 2008-2010, page 49.

Good practices

In the meantime, the Monitoring Commissions have developed a practice to informally collect complaints and demands of juvenile detainees through **mailboxes** of which only members of the Commission have the key. The mailboxes are opened, on average, once a week.

Inmates may contact the Monitoring Commission in writing upon their request or through others within the section (e.g. SAD, SDJ, nurse, chaplain, etc.)

Requests are usually handled on a case by case basis and lead at least to a meeting with the young inmate and if necessary to an interview with the management and/or staff concerned by the request or complaint.

Obstacles / Difficulties

Pending the entry into force of the provisions of the Dupont Act, the handling of complaints by the Monitoring Commissions has no binding force. The outcome of conciliation attempts by the Monitoring Commissions depends largely on the quality of the relations that the commissioners have with the staff of the sections as well as with the management.

i. The Monitoring Commission of the FDC of Saint-Hubert

Legal basis

Installed in the adult prison of Saint-Hubert, the Monitoring Commission of St.Hubert's mandate was expanded to the so-called "juveniles transferred to an adult court" section in 2012¹⁹². Its work, however, has only really started in mid-January 2013. This Commission consists of 10 members but it fluctuates due to resignations. Two commissioners are specifically assigned to the so-called "juveniles transferred to an adult court" sections.

Good practices

The Commission visits the premises at least once a week, at the initiative of 2 of its members. New inmates are systematically met as well as prisoners who have reached out to the Commission through the mailbox or orally, the register of sanctions is consulted, regular visits are conducted in all the places that can accommodate prisoners, their records are regularly reviewed and a monthly report is prepared and sent to the Direction of the Section. This section is contacted once a month. During the meeting, the observations and findings of Commissioners and requests of prisoners are addressed in order to find a remedy.

The Monitoring Commission of St.Hubert maintains **close links** with the SAD and the SDJ with whom the Committee has worked on the design of the brochure "*Detention Issues*", with the chaplain (when she was still there), with the nurse and of course with the DGDE to whom they send certain complaints, or to whom they report recurring issues that deserve further consideration.

Obstacles / Difficulties

The **budget** of the Monitoring Commission is so limited that it does not allow it to set up some devices to listen to what the young people have to say in a way that suits their way of communicating (e.g., a telephone line). **The relationship between the Commission of Saint-Hubert and the CCSP** is no longer in place nor effective. Finally, the **future of the Commission** is somewhat uncertain regarding the mission it exercises specifically for minors who are transferred to an adult court of the FDC of Saint-Hubert in the framework of the devolution of powers to the Communities.

¹⁹² Ministerial Order of 5 November 2012, *op.cit.* footnote n°188.

ii. The Monitoring Commission of the FDC of Tongres

Legal basis

The same 2012 Ministerial Order establishes a Monitoring Commission with the closed Federal Centre for minors of Tongres. Originally, only one commissioner belonging to the Monitoring Commission of the prison of Hasselt had been seconded to visit the so-called "juveniles transferred to an adult court" section of the FDC of Tongres. Since then, she chairs the Commission of Tongres and is surrounded by 4 members (one doctor, one lawyer, the director of a psychiatric centre and one legal expert) and a secretary.

Good practices

The Commission is really active since October 2013. Its members meet every month and visit the section once or twice a month, especially to open the mailbox.

The **mailbox** is located at the entrance to the outer court and the Commissioner is the only one to hold the key. Young people can therefore easily post their messages. The Commission receives on average 3 -4 messages per month. It sometimes happens that there is nothing for a month. When a message is received, it is analysed and the Commissioner will hold talks in his/her room with the sender.

The Commissioner prepares a **report at the end of the month**. Interviews with management are included therein, and the action taken on individual discussions with young people.

The Monitoring Commission of Tongres maintains close ties with the KRC whom it accompanied when he visited the CFC of Tongres.

Obstacles / Difficulties

In practice, young people are afraid to post messages in the mailbox of the commission because they are afraid of being seen by the guards.

The future of Monitoring Commission of Tongres in the framework of devolution of powers towards the communities is also uncertain. Like the Commission of Saint-Hubert it would like to be maintained beyond 2015 and see its powers increase as part of the entry into force of the relevant provisions of the Dupont Act. To date, its expertise in processing complaints is reduced to conciliation with management and/or staff members concerned, without decision-making power and even more so—without any possibility to lodge an appeal.

RECOMMENDATIONS

- ✓ Providing the Monitoring Commissions with human and financial resources and sufficient material to carry out their duties properly, efficiently and professionally.
- ✓ Developing synergies between the Monitoring Commissions through regular exchanges on their practices (differentiated with respect to the specific target audience with which they have to interact in the framework of the so-called "minors transferred to an adult court" sections) and their methods of operation.
- ✓ Developing a best practice repository so that visits are conducted in the most efficient, effective and responsive way as possible.
- ✓ Strengthening relations and cooperation with the CCSP.
- ✓ Continuing to develop cooperation and synergies with other active players in the so-called "Minors transferred to an adult court" sections and to the benefit of those minors.
- ✓ Creating the Complaints Commissions and the appeal board referred to in articles 23 and 28 of the Dupont Act and developing a complaints procedure accessible and adapted to minors who are transferred to an adult court.
- ✓ Systematically preparing reports about the visits and maintaining a register of prisoners' complaints.
- ✓ Maintaining the role of the Monitoring Commission of Saint Hubert and Tongres with regard to the so-called "Minors transferred to an adult court" sections despite the devolution of power towards the Communities.

4.2.2. The other monitoring mechanisms

i. The DGDE / The KRC

The monitoring role of these two children ombudsmen as discussed under section 2.1., a. and 2.2., a. (pages 43 and 48) extend to the so-called "Minors transferred to an adult court" section.

The DGDE is undoubtedly best known for monitoring children's rights in the FDC of Saint-Hubert. The internal rules of the section provide that if the detainee is a minor, he consistently receives the contact information of the DGDE upon his arrival. Children refer to him spontaneously and they do not hesitate to call or write. As already mentioned above (see *supra* section C, 2.2.1.) the DGDE has written a substantial report and has researched on juveniles transferred to an adult court¹⁹³ in 2012. He also made a surprise visit last September.

Although the KRC visits each year the equivalent section of the FDC Tongres, the contacts we have had with the minors of the section allow us to deduce that they do not know this figure.

ii. The Federal Ombudsman

We refer you to section 3.1., a. (page 52) related to the monitoring missions of the Federal Ombudsman with regards to the so-called "Minors transferred to an adult court" section as well as to the recommendations made in this context.

¹⁹³ DGDE, « *Quel avenir pour les jeunes dessaisis* », November 2012.

iii. The Parliamentarians

Legal basis

The Dupont Act gives parliamentarians (federal, community and regional) the right to prison visits (including the so-called "Minors transferred to an adult court" sections of the FDC) on the condition that they prove their capacity. A special permission from the Minister is required to enter an occupied living space or liaise with specific detainees. These visitors are accompanied by the director or a staff member designated by him.

Obstacles / Difficulties

In the same way as for IPPJs, few parliamentarians have made use of this right to access the so-called "Minors transferred to an adult court" section -and thus their monitoring power- in recent years to the point that none of them were mentioned to us.

We refer you, in this regard, to the recommendations made under section 4.1.3., ii. (page 65).

iv. The lawyers

Legal basis

The Dupont Act grants lawyers the right to visit detainees who consult them or whose interests they defend¹⁹⁴.

Obstacles/Difficulties

In the same way as for IPPJs, lawyers do not appear to make use of their right to visit the so-called "Minors transferred to an adult court" section which prevents them from conducting a real monitoring of the respect of their client's rights.

We would like to refer in this regard to the recommendations made under point 4.1.3., iv. (page 66).

v. The Service Droit des Jeunes (Juvenile's rights service)

The Service Droit des Jeunes (hereinafter "SDJ"), created in 1978, is approved and subsidized by the Youth Support Ministry of the French-speaking Community in particular as a specialized service for legal aid. This social service provides social and legal assistance.

SDJ informs young inmates about their rights in relation to their detention (conduct of the proceedings, disciplinary sanctions, the role of counsel, right to trips outside the centre during detention, etc.). Upon request of young prisoners the SDJ can assist them with the implementation of their rights of defence during their detention and during proceedings. As such, SDJ fulfils an **informal monitoring mission**.

Informative notes addressed to young people and their families are also published on its website¹⁹⁵ so that they can better understand their rights particularly in the context of deprivation of liberty.

¹⁹⁴ Royal Decree of 8 April 2011 determining the effective date and implementation of various provisions of titles III and V of the Act on principles of 12 January 2005.

¹⁹⁵ See the notes concerning Support and Protection of young people here: http://www.sdj.be/publications/?id_mot=6.

Good practices

The SDJ is an external service, free of charge for young people. It can therefore collect requests and complaints from minors and take the initiative to transmit them to the appropriate person (DGDE, lawyers, Federal Ombudsman, etc.) and/or advise and guide the minor in the steps he/she should take in order to enforce his/her rights. SDJ workers are bound by professional secrecy.

The SDJ of Arlon, given its proximity to the FDC of Saint-Hubert, cooperates with the SAD (see *infra*) to inform and assist the minors "transferred to an adult court" through the brochure "*Detention Questions*" which is the result of their joint work.

An office is now organized once a week at the FDC Saint-Hubert for detainees to contact via a message.

vi. Detainee's Support Service (SAD)

This service¹⁹⁶ carries out an **informal and indirect monitoring mission** through activities with inmates in the section. It is an observer of the operation of the section and the conditions of detention of minors.

Good practices

The weekly meetings to which the service is invited on the same level as the staff of the centre are an opportunity given to SAD to discuss some of the difficulties encountered by young prisoners.

Obstacles / Difficulties

However, given that SAD is authorized to implement its activities based on a Memorandum of Understanding between the Ministry of Justice and the French-speaking Community, we deduce from the comments gathered during the interview we had with the director of the service¹⁹⁷ that it is not always easy to question the management on some facts reported by the minors.

At the FDC of Tongres the centre's social teams (members of the SPF Justice) and the agency "*Jongerenwelzijn*" fulfil this role within the section called "Minors transferred to an adult court".

RECOMMENDATIONS

- ✓ Allowing the SAD to maintain its services for young detainees in the section called "Minors transferred to an adult court" of FDC Saint-Hubert in the framework of the communitisation of the section
- ✓ Pursuing the cooperation developed between the SAD and the SDJ, the Monitoring Commission, the DGDE and the staff of the section.

4.2.3. The other mechanisms for processing complaints

i. The prison management

Legal basis

The Internal Rules of the section called "Minors transferred to an adult court" of the FDC of Saint-Hubert provide in the section on disciplinary sanctions that "*The prisoner is subject to disciplinary actions shall at*

¹⁹⁶ See point 3.2.3. concerning the Federal Detention Centre and particularly the centre of Saint-Hubert.

¹⁹⁷ Interview of 23 June 2014 with Mrs. C. Dethier.

least once a week be visited by the director and a medical officer, who shall ensure the status of the detainee and check if he/she has no complaints or comments to make."

It is also stipulated under the provisions for his reception that *"The detainee may contact the Director and other internal services (SPS, medical service...) by sending a message form available on request to the section officer"*.

It would seem that such message forms can also be used in the FDC of Tongres in order to call on the management. However, not having met the Federal Director and not having received the Internal Regulations, we cannot confirm this.

Good practices

We have seen in practice that young people often use these **message forms** that are available to them not only to make a request (phone, pocket money, cafeteria, an appointment with the social worker or psychologist, etc.) but also to address the management and/or get an appointment with the latter. The advantage of these cards is that they can be written in the simplest form, without motivation, by simply specifying to whom they should be addressed. Specifically, they slip them under the door of the cell at night before 9pm and they are sent to the proper authorities by the prison officials. This same practice occurs in the so-called "Education" section FDC of Saint-Hubert where minors use them as well.

Obstacles / Difficulties

The use of these message forms encounters two major obstacles. First, the management has no formal obligation to respond. According to the management it ensures, however -depending on its availability- to monitor these messages through a cell visit. As for the action taken on the complaint of the young on this occasion, it will be treated on a case by case basis. Second, one can easily imagine that having to entrust the message to a person whose behaviour may precisely be the subject of the complaint, and who is the person who has to send it to the proper authorities may legitimately raise fears that this card would never reach its destination. This has also been confirmed to us by minors we interviewed. Finally, there is no register of message sheets let alone a register of complaints filed with the direction so no follow-up is ensured.

RECOMMENDATIONS

- ✓ Providing a formal internal complaints mechanism in the internal regulations with a clearly established procedure accessible to young people deprived of liberty in the so-called "Minors transferred to an adult court" sections of the FDCs.
- ✓ Creating a registry of requests via message forms and a register of complaints so that the follow-up given to it can be monitored regularly.
- ✓ Entrusting the collection of the message forms to a neutral person or provide a clear mechanism for submitting records messages in a mailbox located in a place guaranteeing the confidentiality of the deposit.

ii. The DGDE and the KRC

See section 2.1., b. and 2.2., b (pages 47 and 51) related to the missions of the DGDE and of the KRC with regards to the treatment of complaints lodged by minors deprived of their liberty as well as the recommendations formulated in this regard.

iii. The Federal Ombudsman

See section 3.1., b. (pages 54 and 55) related to the competence of the Federal Ombudsman with regards to the treatment of complaints lodged by minors deprived of their liberty as well as the recommendations formulated in this regard.

4.3. MONITORING OF THE UNITS FOR ADOLESCENTS IN THE PSYCHIATRIC HOSPITALS (UIC)

4.3.1. The Public Prosecutor, the juvenile court judge for the minors for the place of the service and the inspecting doctors of the Federal Service of Public Health.

a. Monitoring mission

Legal basis

In accordance with the Act of 26 June 1990¹⁹⁸, monitoring compliance with this Act in psychiatric services, including in the K/UIC units for adolescents is exercised by the **Public Prosecutor** and the **judge of the place of the service**, as well as the **doctors inspectors** designated for this purpose by the competent authorities. These authorities of the regional governments are the following:

- In Flanders: The agencies “Zorg en Gezondheid” (“Care and Health”) ¹⁹⁹ and “Zorginspectie” (the “Care Inspectorate”) ²⁰⁰
- In the Walloon Region – The Direction of hospital care (“La Direction des soins hospitaliers”)
- In Brussels – Directorate of support services for the development of the decision of the Common Community Commission.

4.3.2. The other monitoring mechanisms

i. The DGDE and the KRC

The monitoring role of these two children ombudsmen as discussed under section 2.1., a. and 2.2., a. (pages 43 and 48) extend to the adolescent care units (ForK /UIC) in psychiatric hospitals.

Reports – Follow-up

In their annual reports, the DGDE and the KRC devote a chapter to issues relating to health and make recommendations for adapting current regulations to the federal authorities²⁰¹, the Community authorities, the regions, the provinces, the municipalities or any institution under the direct control of these authorities.

They can also carry out investigations and/or write reports on certain themes (e.g. in February 2012, the DGDE published a report on detaining children in solitary confinement²⁰² in the framework of compulsory care). The KRC also approved this report.

¹⁹⁸ Act of 26 June 1990 on the protection of mentally ill persons, *op.cit.* footnote n° 56.

¹⁹⁹ <http://www.zorg-en-gezondheid.be/>.

²⁰⁰ <http://www.zorginspectie.be/>.

²⁰¹ Memorandum 2014 of the Commissioner for the Rights of the Child (KRC):

<http://www.kinderrechtencommissariaat.be/publications/detail/memorandum-kinderrechtencommissariaat>, p. 21.

Good practices

The DGDE has also conducted a study in consultation with the CHJ.Titeca and the working group "Mental Health and Juvenile Justice" on recommendations²⁰³ for security and solitary confinement measures concerning children and adolescents.

The DGDE also participates in the working group "Children and Youth Psychiatry" which emerged from the platform for the Mental Health dialogue of the Brussels-Capital Region. This group performs a comprehensive process of reflection on very problematic situations examined in consultation with the various potential stakeholders.

Obstacles / Difficulties

It seems that no visits to units K/UIC have ever been conducted in the French-speaking Community and Brussels that would result in a report to provide specific recommendations on the conditions in which juveniles are deprived of liberty within these units. The KRC has meanwhile conducted two visits to the following hospitals: UIC section "Patio" of the PZHeilige Familie Kortrijkand the psychiatric hospital "Bethanië" of Zoersel. However, he states that these are mainly due to the good will of the institution itself for lack of a clear and explicit mandate.

As this is an area at the intersection between the federal authority (public health, patient rights), regional (mental health) and community (youth support) authorities, the monitoring mandate of these two bodies respectively within the French-speaking Community and the Flemish Community is not universally recognized. In this respect, our interviews in the CHJ Titeca explicitly revealed certain reluctance to visits or investigations that the DGDE could conduct based on his monitoring mission and an alleged lack of expertise in relation to the specialized area of mental health sector which is known for being extremely complex and protected by professional secrecy.

Therefore it is not surprising that the figure of the ombudsman in child law is absolutely unknown to young people except those who previously have gone through the system of youth support and/or youth protection.

RECOMMENDATIONS

- ✓ Maintaining current cooperation and developing others between the Ombudsman for children's rights and the consultations and working groups linking mental health and children's rights
- ✓ Conducting regular monitoring visits (announced or not) in units of psychiatric hospitals where minors are likely to be placed
- ✓ Educating staff and management of psychiatric hospitals where minors are likely to be placed on the missions of the Ombudsman for children's rights and the constructive role that an external monitoring body may have to play
- ✓ Improving the quality of information on the role of the Ombudsman for children's rights for example through an explanatory folder given to young people at the time of their admission

²⁰² DGDE, Report on the solitary confinement of children, February 2012, can be downloaded here on the website of the DGDE: <http://www.dgde.cfwb.be/index.php?id=2592>.

²⁰³ *Ibidem.*, pages 21 -27.

4.3.3. The Ombudsman (for complaints) of the Consultation Platform for mental health

a. Complaints processing missions

Legal basis

Under the 2002 law on patient rights²⁰⁴, any patient who receives health care from a professional practitioner has *the right to consult a competent mediation service and to lodge a complaint with that service*.

There is a Federal Commission "Patient Rights" at the Ministry of Social Affairs, Public Health and Environment, with the particular task of assessing the operation of the mediation function and of providing advice in this regard²⁰⁵. A mediation service is also created within this Commission with jurisdiction to refer the complaints of patients to ombudsmen or, failing that, to directly handle the complaints.

Missions

Each patient is entitled to formulate questions, comments or complaints regarding the care provided by a professional health practitioner to a mediation service whose missions are: the *prevention* of questions and complaints through the promotion of communication between the patient and the professional practitioner; *mediation* in case of complaints in order to reach a solution; *information* given to the patient about alternative handling of his complaint in the absence of a solution through mediation; *information* about the organization, operation and rules of the mediation process; *making recommendations* to prevent the repetition of failures that can lead to complaints. The ombudsman is impartial and neutral. The provision of services of the ombudsman is free of charge.

The Ombudsman's duties are strictly limited to the law on patient's rights and to the particular care relationship between a healthcare professional²⁰⁶ and the patient. In practice this means that complaints relating to conditions of deprivation of liberty itself (excluding healthcare), complaints about the staff that do not fall under the category of health professionals²⁰⁷ (educators, psychologists²⁰⁸, social workers, staff and management for example) are excluded from the jurisdiction of ombudsmen for complaints and will be referred to a competent service, i.e. a lawyer; doctors-inspectors of the Federal Department of Health; the legal department of a Health Fund; the police or the Prosecutor's Office. In practice, however, it turns out that the ombudsman can open a dialogue with stakeholders to try to resolve the dispute informally before formally redirecting the patient to other services.

Implementation

The methods of intervention of the Ombudsman for complaints vary from case to case, depending on the patient's request, the nature of the complaint and the state of mind of the patient. The ombudsman does not decide on the admissibility of a complaint. To deal with all complaints, he may use different modes of action: simply listening, offering support, director indirect mediation or reporting.

²⁰⁴ Chapter III, articles 5 to 11bis of the Act of 22 August 2002 regarding patients' rights, *O.J.B.*, 26 September 2002.

²⁰⁵ Article 16 of the Act of 2002.

²⁰⁶ Royal Decree n° 78 of 10 November 1967 regarding the exercise of health care professions, *O.J.B.*, 14 November 1967.

²⁰⁷ Doctors (general practitioners and specialists including psychiatrists), dentists, physiotherapists, midwives, nurses, care assistants, paramedics (pharmaco-technical assistants, dieticians, occupational therapists, speech therapists, audiologists and audiciens, orthoptists, medical laboratory technologists, medical imaging technologists medical, surgical truss makers, orthotists and prosthetists, podiatrists), pharmacists.

²⁰⁸ As from 1st January 2016, clinical psychologists will be included among the health professionals following the entry into force of the Act of 4 April 2014 regulating the profession of mental healthcare and amending the Royal Decree No. 78 of 10 November 1967 on the practice of professions in health care, *O.J.B.*, 20 May 2014.

Specifically, the complaints ombudsman is present in the various institutions under his jurisdiction through hotlines. The ombudsman of Geel hospital is based permanently within the institution. The different units also have mailboxes in which written complaints can be put²⁰⁹.

Follow-up

Each ombudsman opens an **anonymous file** for each complaint. He writes the following reports:

- a **concise annual report** per institution for the attention of the Federal Commission of Patient's Rights. The Federal Mediation Service then **summarizes the ombudsmen's reports** and notice may be given to the Federal Department of Health. A copy of the report sent to the Federal Commission of Patients' Rights is transmitted to the management of the institutions concerned with an addendum of detailed and specific comments.
- a **report** to the Consultation Platform for Mental Health under which he works.

Good practices

In most cases when the Ombudsman's intervention is sought the problem that gave rise to the complaint will be solved or at least the tension between the protagonists will be eased.

Obstacles / Difficulties

The limited scope of their intervention within the parameters defined by the rights under the 2002 Act-to the exclusion of other fundamental rights-and the relationship between a healthcare professional and a patient;

The limited visibility and accessibility given to the function in some institutions (no mention in the internal regulations, misinformed hotlines, inaccessible office, inconveniently placed mail boxes, etc.)

The very marginal number of complaints from minors. There are no statistics available in this regard but this unanimous finding among different ombudsmen of complaints resulted in a study that will soon be published.

The minors' status with regard to lodging a complaint on their own, in the absence of consent of their legal representatives.

RECOMMENDATIONS

- ✓ Promoting the dissemination of information on the role of the ombudsman and on how to get in touch with him through the addition within the internal rules of a section on complaints mechanisms available to patients and / or distribution of a folder explaining the role and functions of the mechanisms available to them.
- ✓ Improving the visibility and accessibility of the mechanism, for example through the permanent display in a place visible by patients, the times and places where they can contact the ombudsman, informing the patients of the existence and location of the mailbox and of the hours and days the mailbox will be emptied.
- ✓ Building trust between the ombudsman and the health professionals and between him and the patients, especially minors by making himself even more accessible and by conducting dialogue sessions and awareness sessions.

²⁰⁹ Only stumbling block, at the hospital of Geel we have noticed that this mailbox was placed outside the Unit FOR-K. The 2 minors we interviewed had never heard about the mailbox or the ombudsman for complaints.

4.3.4. The other complaints mechanisms

i. Informal complaint mechanisms

At the outset, it is important to emphasize that the **informal practices** clearly seem to take precedence over the formal practices with regard to lodging complaints. Indeed, young people most likely will talk to the people around them as part of their daily monitoring rather than to outsiders whom they don't know anyway as we will see later.

Therefore the first people to whom young people turn to are their mentors, their psychologist or their psychiatrist, and the institution's management staff during their visits to the units. Young people can also call upon their advisors (Flemish Community)²¹⁰, or their lawyer, whom they can call free of charge upon request.

Good practices

An interesting practice in the hospitals J. Titeca and Geel consists in a **round table conversation** (once a week) during the daily meeting where young people are encouraged to discuss a problem that affects the living conditions in the unit. This practice allows young people to express themselves and caregivers to be aware of the difficulties they might encounter in the course of their confinement and to find a remedy where possible. Another new practice at CHJ. Titeca consists in giving an **assessment questionnaire to young people who have been subject to a measure of solitary confinement** so that they can give their opinion about the conditions under which such measures were applied and about their experiences of the measure.

Finally, in Geel, the young persons may on their own initiative request to hold a discussion meeting when they want to consult with their counsel, their lawyer and the case-manager in charge of their case within the unit of the hospital.²¹¹

Obstacles / difficulties

In general, young people tend not to involve their lawyer regarding the conditions of their confinement. Informally confiding in members of staff has advantages in terms of trust and dialogue but it can also have negative effects. Indeed, the response to the problem shall always depend on the good will, availability or means of the person to whom the young confided who moreover does not have a specific mandate to address a claim or complaint. Furthermore, in a medical setting, they are bound by confidentiality, which could prevent them from disclosing the information they have learned under penalty of disciplinary action, except as permitted by law.

ii. The Management of the institution

On a formal or informal basis and depending on the terms and conditions prescribed in the internal regulations of each institution, the Directorate will be requested to act upon a complaint of a patient (minor).

²¹⁰ Article 21 of the Flemish Decree of 7 March 2008: The counsellor in the Flemish Community is a social worker attached to the social service of the juvenile court. Each young person may be assisted by a consultant who will follow-up on him.

²¹¹ Three case-managers working within the Unit FOR-K of the psychiatric hospital of Geel. Each of them is responsible for the management of 3-4 individual cases of young persons who reside in the unit.

iii. The DGDE and the KRC

See section 2.1., b. and 2.2., b (pages 47 and 51) related to the missions of the DGDE and of the KRC with regards to the treatment of complaints lodged by minors deprived of their liberty as well as the recommendations formulated in this regard

iv. The Order of Physicians

If a patient (minor) is believed to be a victim of the actions of a doctor, he can lodge a complaint with the Provincial Council to which the doctor is accountable. The Council, however, limits itself to providing information on the status of the handling of the complaint. The possible disciplinary action is not communicated.

v. The monitoring and inspection services of the Communities and Regions

In Flanders – The agency «Zorg en Gezondheid» («Care and Health »)²¹²

This agency monitors whether authorized or subsidized structures and organizations handle their complaints usually via the complaints mediation service assigned to the institution. Patients who have not received any response to their request or who prefer not to complain directly to the structure or organization can address their complaints to the agency by phone or by email.

In the Walloon Region – «La Direction des soins hospitaliers» (The Directorate of Hospital Care)²¹³

The Directorate of Hospital Care in Wallonia always responds to complaints submitted to it. Any complaint should be lodged in writing and signed and the details of the complainant should be mentioned in the mail. The anonymity of the complainant is always guaranteed except of course when the Inspecting Doctor has to conduct hearings (doctors, nurses) or has to consult an individual file. With few exceptions, every complaint is investigated on site by the inspector in charge of monitoring the establishment. Hearings of the complainants and/or witnesses are sometimes required as well as a review of administrative, financial and/or medical records, is often necessary to clarify the often complex situation. Once the complaint has been processed, the complainant receives a letter informing him of the findings of the inspection.

In Brussels – The Directorate of support services for the development of the decision of the Common Community Commission

No specific complaint procedure appears to be provided as part of the operation of the inspectorate of the COCOM.

RECOMMENDATIONS

- ✓ Making lawyers aware of the important role they play in monitoring the rights of children deprived of their liberty not only in the framework of the procedure but also in the framework of the conditions under which this detention takes place.
- ✓ Maintaining and developing a space for dialogue between health care providers and young people to foster a climate of confidence for better conflict prevention, leading to participation of the minors and encouraging them to express themselves in a positive and constructive manner in the form of recommendations rather than complaints.
- ✓ Always providing formal guarantees offering young people alternatives to this informal dialogue if it does not lead to an adequate solution of the problem.

²¹² <http://www.zorg-en-gezondheid.be>.

²¹³ <http://socialsante.wallonie.be/?q=sante/soins-hospitaliers/dispositifs/etablissements-psychiatriques>.

4.4. CELLS FOR MINORS LOCATED IN POLICE STATIONS AND IN BUILDINGS BELONGING TO THE DEPARTMENT OF JUSTICE

The police are monitored in many ways by many different institutions which without being exhaustive, are the following:

1. *formal general monitoring bodies*, namely administrative control (the appropriate Ministers and colleges); judicial review (Courts and Tribunals assisted by the Office of the Public Prosecutor); Parliamentary monitoring (Parliamentary Commissions, Committee P)
2. *informal monitoring bodies* such as trade unions, scientists, lawyers, the press, etc.
3. *internal hierarchical monitoring within the police force particularly with regard to ethics, procedures and penalties for discipline, etc.*
4. *external hierarchical monitoring that can sometimes overlap more of the above areas*: General Inspectorate of the Police (hereinafter "AIG")

We will focus here on the two main control bodies, namely Committee P and the AIG.

4.4.1. Standing Police Monitoring Committee

a. External monitoring mission

Legal basis

Created by the organic act of 18 July 1991²¹⁴ to equip the Federal Parliament with an **external monitoring body on the police**, the Standing Police Monitoring Committee (hereinafter "Committee P") has 5 staff members, including a chairman and a vice-chairman, appointed by the House of Representatives for a term of 6 years renewable. These form the standing committee and act collectively.

Mandate

Committee P has to monitor the "*protection of the rights that the constitution and the law provide to the citizens*" but also "*the coordination and effectiveness*"²¹⁵ of the police and other public monitoring and inspection services.

Mission

Committee P performs an **observatory function** of police services for the benefit of the Federal Parliament and the benefit of all citizens. To this end, on the initiative or at the request of the authorities it conducts **investigations** of police activities and methods, under the control of the Standing Committee. In this context, its means of investigation are very broadly defined²¹⁶. It formulates *recommendations* contained in *thematic reports* submitted to the authorities and partly published in its **annual reports**. It also publishes supplementary reports on issues that have given rise to specific monitoring surveys. Particularly concerning minors, two investigations are under way: one on drugs checks in schools and the other concerning relations between the police and vulnerable people including minors.

Its Investigation Service also participates, under the control of the judiciary, in **judicial inquiries** when police officers are suspected²¹⁷. It also examines **complaints and denunciations of citizens**.

²¹⁴ Organic act of 18 July 1991 regarding the monitoring of the police and intelligence services and the Coordinating Body for the analysis of the menace, *O.J.B.*, 26 July 1991.

²¹⁵ Article 2 of the Act of 18 April 1991.

²¹⁶ Article 9 of the Act of 18 April 1991.

²¹⁷ Article 15 al.2 and 16 al.3 and 4 of the Act of 18 April 1991, *op.cit.* footnote n° 216.

The Standing Committee P finally provides **legal opinion** on certain aspects of policing including the handling of complaints (before ruling on their merits). Among the opinions issued in 2012, some focused on the following themes: fetching a minor in school, the meaning of the concepts of torture and inhuman and degrading treatment, the problem of the police and minors in a national and international context.²¹⁸

Follow-up / Reports

In addition to its annual reports and upon the Government's request and with the approval of Parliament, Committee P also regularly **contributes to the preparation of periodic written reports to various international monitoring bodies** in execution of the obligations contained in international conventions on the protection of human rights to which the Belgian State is a party²¹⁹.

Good practices

The Committee seems very open to all initiatives to further communication and cooperation with civil society and especially with the DGDE and the KRC (See the Report on Youth and the Police and with the Centre for Equal Opportunities²²⁰, with the League of Human Rights and other actors likely to receive information relating to any police malfunctioning.²²¹

Obstacles / Difficulties

Committee P is criticized by many international bodies for **its lack of independence and objectivity**, particularly with regard to the composition of its Investigation Service (police or persons seconded from police services monitoring the work of active police officers); in this context, the UN Committee against Torture and for Human Rights has long been advocating that Belgium should take "*adequate measures to ensure the independence of Committee P through its reorganization.*"²²² For its part, the Committee P believes that its independence and neutrality guarantees are met to the extent that its investigative service is monitored by three permanent members (civilians and neutral appointed by Parliament, and that Committee P is democratically monitored by Parliament and that the recruitment process is strict. The fact that half of the team is made up by police officers is regarded by the Committee as an asset.

RECOMMENDATIONS

- ✓ Enhancing the appearance of independence of Committee P by providing more concrete evidence of its externality and objectivity in the context of the checks and complaints.
- ✓ Strengthening the cooperation between Committee P and actors of civil society in order to enable a rapprochement between citizens and the police and giving information to the Committee to improve the functioning of the police.

b. Complaint processing mission - The Investigating Department, section «complaints »

In Committee P, the "Complaints" section of the Investigation Department is responsible for the receipt, analysis and processing of complaints and denunciations, as well as the use of information obtained from various authorities and police forces concerning the intervention of the Police.

²¹⁸ Annual report 2012 of Committee P, page 84.

²¹⁹ The European Committee for the Prevention of Torture and inhuman or degrading treatment or punishment (CPT), the UN Committee against Torture (CAT), the United Nations Human Rights Committee, the European Commission against Racism and Intolerance (ECRI) and the United Nations Committee on the Elimination of Racial Discrimination (CERD).

²²⁰ At whose initiative they now form a working group bringing together other bodies for the defence of fundamental rights.

²²¹ Comments taken from the conversation between the research team and Ms. D. REYNDERS on 14 August 2014.

²²² Committee against torture, Final Observations of the Committee against torture: Belgium, January, 19, 2009, CAT/C/BEL/CO/2, § 11.

Mission

As part of the investigation of complaints and denunciations of citizens, Committee P does not perform a *mediation function* and was not created to solve individual problems of the complainants in relation to the police. Rather, it handles complaints to treat *the systemic cause of a particular problem* that emerges through a complaint. This is particularly reflected in the fact that there is not a single individual file of a complainant but a file containing several complaints relating to the same event addressed by different people.²²³

Implementation / Procedure

Any citizen involved in the police intervention, may file a complaint (by completing a form - online or at the reception desk of Committee P), denounce a factor transmit any information to the Committee P, including minors without them being represented by a parent or legal representative. A letter will be sent to him in return and a possible interview with a Commissioner will be sought. The complainant will receive the findings of the investigation in general terms.²²⁴ The Committee may also prepare an investigative report to the attention of the authorities.

Table n° 10 in annex 3 to the report shows the most frequently mentioned issues by those who file a complaint with the Standing Committee P. Table n° 11 in annex 3 shows that the files in which this type of problem is present tend to increase, but mostly that nearly one out five complaint files relate in whole or in part to the violence/aggressive attitude of police officers towards citizens. It is however not possible to know how many complaints have been filed by minors.

Follow-up

The Investigating Department itself only handles 4% of the files. These cases are then investigated under the authority of the Standing Committee. The other cases are either not followed up because they are clearly unfounded or the cases are transferred.²²⁵

Complaints of tortious acts are transferred to the judicial authorities (prosecutor or investigating judge)²²⁶ – 10 % of the files in 2012²²⁷ – who may request either the Committee P or the AIG²²⁸ to conduct criminal investigations, under their authority and with due regard to the principle of professional secrecy.

Individual complaints which- a priori- are not likely to be a malfunction, negligence or serious personal misconduct (i.e. non-tortious acts or disciplinary matters) are transferred to police forces for separate handling-22% of cases in 2012²²⁹.

Complaints that may lead to a mediation or that are within the special competence of AIG are transferred to the Directorate for individual investigations and/or to the decentralised bodies. There is no reference to the percentage of complaints transferred by Committee P to AIG in the 2012 report. However one knows that some 700 complaints were handled directly by the AIG in 2012²³⁰.

²²³ Annual report 2012 of the Standing Police Monitoring Committee, page 76, 10.1.

²²⁴ Article 10 al.8 of the Act of 18 July 1991.

²²⁵ Annual report 2012 of the Standing Police Monitoring Committee page 78, 10.4.

²²⁶ Pursuant to either article 29 of the Code of Criminal Procedure, or article 22 of the organic Act of 18 July 1991.

²²⁷ Annual report 2012 of the Standing Police Monitoring Committee, page 78, 10.4.

²²⁸ A ministerial directive of 22 September 2011 organizes the distribution of tasks in matters of judicial police for offenses involving police officers; the principles of subsidiarity and specialty are regulated by the circular letter COL2/ 2002 of the Board of Attorneys General containing the ministerial directive organizing the distribution of tasks, collaboration, coordination and integration between the local police and the federal police regarding judicial police missions.

²²⁹ Annual report 2012 of the Standing Police Monitoring Committee, page 78, 10.4.

²³⁰ Annual report 2012 of the Standing Police Monitoring Committee to the House of Representatives and the Senate of Belgium, 18 December 2013, Doc 53 3259/001 (Chamber), 5-2422/1 (Senate) pages 14 and 15.

In accordance with the law all complaints lodged directly with the police service are brought to the attention of Committee P to enable it to ensure its monitoring function. A complaint filed with the Committee P does not suspend the administrative or judicial proceedings. Committee P cannot interfere in a judicial proceeding. Committee P is not a court of appeal against court decisions. Committee P does not exercise direct jurisdiction in disciplinary cases against police officers.

4.4.2. The General Inspectorate of the federal and local police

a. Internal monitoring mission

Legal basis

The General Inspectorate of the federal and local police (hereinafter "AIG") is a governmental department which is under the authority of the Ministers of Interior and Justice²³¹. It is an independent monitoring body of the police services under the Executive and, by definition, has an **administrative monitoring mission** (internal). AIG consists of the Inspector General, 2 deputy inspectors, an inspection service, a service for individual investigations, a service for the status of decentralized inspection posts and a secretariat.

Mission

The primary mission of the AIG is to **inspect the operation of the federal police and local police and to examine its effectiveness**, in particular the application of the laws, regulations, orders, instructions and directives, and norms and standards. Any inspection mission is conducted in strict accordance with the provisions of the Integrated Police Act²³² which gives AIG members a general and permanent right of inspection. AIG either acts on its own initiative or by order of the Minister of Justice or Interior or at the request of the judicial and administrative authorities, especially mayors, governors, the Attorney General, the Federal Prosecutor, the Prosecutors and the Federal Police Council, each within their respective jurisdictions.

Follow-up

The AIG submits the results of its inspections to the Ministers of Interior and Justice, to the authority that has contacted it and, where the inspection concerns a local police force, also to the mayors of that location. These authorities can also take corrective action as necessary following in this, as appropriate, the recommendations of the AIG.

The AIG publishes an annual report and specific reports based on their inspections.

Obstacles / Difficulties

AIG is not truly independent²³³ because the Ministers (Interior and Justice) decide on the policy to be followed AIG²³⁴ and IAG investigators are seconded from their regular police services²³⁵, where they subsequently may have to return to²³⁶.

²³¹ Act of 15 May 2007, O.J.B., 15 June 2007, article 3.

²³² Act of 7 December 1998 establishing a comprehensive police service, structured on two levels, O.J.B., 5 January 1999.

²³³ EU, advice of July, 4, 2001, preceding the RD of 20 July 2001, O.J.B., 18 August 2011 quoted by M. BEYS. «Quels droits face à la police – Manuel juridique et pratique» (Which rights facing the police - legal and practical manual), Ed. Couleur Livres, 2014, Chapter 17: Réagir en cas d'abus de la police, III. Se poser les bonnes questions avant une plainte éventuelle (React in case of police abuse, III. Ask the right questions before a possible complaint), n° 534, page 523.

²³⁴ Act of 15 May 2007, O.J.B., 15 June 2007, article 3.

²³⁵ Act of 15 May 2007, O.J.B., 15 June 2007, article 4§3.

²³⁶ M. BEYS, *op.cit.* footnote n°235, page 523, n°534.

It is also quite striking to note that the words minor, young person or child do not appear even once in the annual reports from 2009 to 2012 and that knowing that the inspection has for some time been monitoring police cells in all the police stations in the country, no answer could be given to the question of how many police are equipped with cells for minors...

RECOMMENDATIONS

- ✓ Including minors and respect for the rights of children across the board in its investigative and monitoring work.

b. Complaint processing mission - The Directorate for individual investigations of the AIG

One of AIG's missions is to deal with clearly substantiated complaints or reports that may be submitted by any person or legal body who believes that a police department or one of its members did not act in accordance with its mission or its code of conduct.

Implementation / Procedure

In practice a complaint may be made in writing to AIG's headquarters or to one of the 5 decentralized offices. If the complaint is found to be inadmissible or unfounded, no further action will be taken; otherwise, contact is made with the complainant. Except in special cases (e.g. when a criminal offense is committed by the police), AIG will promptly inform the staff member or department concerned as well as the Commissioner-General and the Corps Head of the existence of a complaint or denunciation. The complainant is notified in writing that his complaint or denunciation is being examined. An investigation of the complaint is then conducted.

For facts that cannot be classified as crimes, the mediation process can be applied with the express agreement of the parties. If the mediation results in a favourable outcome, an agreement will be signed excluding subsequent appeal (administrative or disciplinary). If unsuccessful, a traditional investigation will be conducted.

The individual investigations department can also conduct criminal investigations under the authority and direction of the judicial authorities. As mentioned above, there is a division of labour between the Committee P's Investigation Services and the directorate of individual investigations and the decentralized offices of AIG²³⁷. The distribution of tasks, distinction being made between the type of investigations assigned "priority" to AIG and investigations "mainly to do" by the Investigation Department of Committee P is the subject of Table n°12, Annex 3.

Follow-up

Once the investigation has been carried out the service communicates the results of its investigation to the commissioner general or to the corps head concerned as well as to the service or staff member concerned. The findings are also reported in writing to the complainant in general terms. If the complainant asked to remain anonymous, his identity will not be disclosed to the police officer concerned. Otherwise, the latter will have access to the complete file and is allowed to ask for a copy of the file.

Obstacles and difficulties

In practice nothing is done to facilitate access by minors (deprived of liberty) to the various existing complaints mechanisms, they have no information on how to file a complaint, or on the competent bodies or the processing of complaints. Committee P recognizes that much work remains to be done at this level. One of its permanent members "expresses concern about the fragmentation of responsibilities between different

²³⁷ Pursuant to the Ministerial Directive of 22 September 2011 and the previously quoted circular letter COL2/2002.

monitoring services that creates, among others, misunderstanding among the population. (...)Some no longer dare to complain." Moreover, "Committee P does not maintain structural contacts with AIG so that there is no agreement on the ground about the working method".²³⁸ *"We have no information exchange and it undermines the effectiveness of the missions of each one".*²³⁹

In his opinion of February 2012 on the relationship between minors and police, the DGDE notes that "in the words of experienced professionals, refusal to act upon a complaint against a police officer is frequently mentioned by young people who lodge a complaint and many of them state that they are discouraged in advance and therefore attempt no further action. Moreover, it seems that young people do not know whom to turn to(...)We must also highlight the fact that different points of the legislation and the application of it remain unclear and subject to interpretation on (...)the use of handcuffs, arrests, detention conditions, hearings, the steps to take to file a complaint."

Therefore one can easily draw two conclusions: the first on the complexity of the mechanisms with distributions of tasks that are not easily understood and even less by minors; and the second on the very accessible nature of these mechanisms by minors-evidenced by the lack of specific statistics on complaints lodged by minors potentially due to a very low number of complaints from minors and the current lack of consideration for this particularly vulnerable public and especially when the minor is in a situation of deprivation of liberty.

4.4.3. The other complaint processing mechanisms

Any minor who feels that his rights were violated by one or more police agents during his arrest, his confinement in a cell (at the police station or in the court house) and/or in connection with transfers to or from the placement ordered by the judge, has several complaint options that can be cumulative: the minor can lodge a complaint with Committee P, with AIG, with the internal monitoring services of the police force, directly with a police station, with the judicial authorities (with the Prosecutor's Office, by filing a civil action with the investigating judge or by initiating court proceedings before the Criminal Court against the member(s) of the police force concerned). The choice of options to be implemented will depend mainly on the type of abuses committed and the damages incurred and the complainant's expectations in terms of repair, personal or disciplinary sanction²⁴⁰. The minor will often have to be represented by a lawyer particularly in the context of judicial proceedings.

i. Internal Monitoring Service of the police corps

Mission

Every police force (each local police area and the federal police) has an internal monitoring service²⁴¹ which is responsible amongst other matters, for the handling of complaints and statements²⁴² against police officers of that particular police station. The work of these services is regularly monitored by Committee P.

Implementation / Procedure

In principle, each police district has to appoint a complaints coordinator. Failing that, the commanding officer will coordinate the complaints. A complaint (or statement) may be made in writing, by phone or email and will lead to an acknowledgment and a confirmation of the complaint within 7 days. In case of serious offenses

²³⁸ Annual report 2012 of the Standing Police Monitoring Committee to the House of Representatives and the Senate of Belgium, December, 18, 2013, Doc 53 3259/001 (Chamber), 5-2422/1 (Senate) pages 13 and 14.

²³⁹ Comments taken from the conversation between the research team and Ms. D. REYNDERS on 14 August 2014.

²⁴⁰ M. BEYS, op.cit. footnote n° 235, n° 490, pages 474.

²⁴¹ Circular letter CP3 of March, 29, 2011 regarding the internal monitoring system of the integrated police, structured on two levels, O.J.B., 21 April 2011.

²⁴² A witness statement regarding an abuse by a police officer of which one is not a victim.

(criminal or disciplinary offense), the complaint will be transferred to the Prosecutors Office or to the disciplinary authority. A statement of the complaint will always be forwarded to the AIG and Committee P who may eventually decide to handle the complaint themselves²⁴³.

Follow-up

Within seven 7 days of the closing of the investigation, the police officer or the service concerned and the complainant are notified of the results of the investigation. The complainant has the possibility to refer the complaint to Committee P or to the AIG in case of disagreement as to the results of the investigation. Another possibility in case of dissatisfaction is to write to the Mayor (as president of the police zone) or to the police corps (the mayors of the police zone), which has authority over the police²⁴⁴.

RECOMMENDATIONS

- ✓ Facilitating the access to complaint mechanisms vis-à-vis the most vulnerable segments of the population such as juvenile detainees.
- ✓ Clarifying the division of powers between the various complaint mechanisms so that citizens (especially minors) know whom to address their complaints to, in what circumstances and under what procedure.
- ✓ Creating structural links between these different mechanisms so that complaints transfers are conducted in complete transparency and according to a clearly established procedure.
- ✓ Providing a more comprehensive view of the complaints filed by citizens through more complete and readable statistics on the total number of complaints (all services) and distinguishing between the type of complaint, the body that conducted the processing and the status of the complainants (major or minor, free or deprived of liberty).

4.5. THE IMMIGRANT DETENTION CENTRES AND THE "RETURN HOUSES"

4.5.1. Non-governmental organizations / citizen's vigilance

a. External monitoring mission

Legal Basis

The Royal Decree of 2 August 2002²⁴⁵ provides that "*The Minister or the Director-General (of the Immigration Office, hereinafter the "OE") can give the right to visit one or more centres to other institutions, organizations or individuals than those referred to in Articles 43 and 44, for the period and the conditions he determines.*" For accredited NGOs, a request for permission to visit must be made 24 hours in advance to the director of the centre that one wants to visit.

Mandate

There are two types of visits:

- **The Non-accredited organizations** (or "citizens groups") are de facto associations dedicated to militant activities (*Getting the voice out*, the CRER). They visit prisoners just like family visits. The actions carried out by these associations vary from the organization of demonstrations outside detention centers to encouraging public awareness of the situation of the detainees and carrying out actions to prevent forced evictions by mobilizing the passengers of flights scheduled for deportation.

²⁴³ Royal Decree of 20 July 2001, articles 32 and 33; Act of 18 July 1991, article 14bis

²⁴⁴ M. BEYS, *op.cit.* footnote n° 235, pages 526 à 528, n° 538 à 541.

²⁴⁵ Article 45 of the Royal Decree of 2 August 2002, *op.cit.* footnote n° 121.

- **The Organizations accredited by the Immigration Office** are non-profit organizations whose discretionary certification ensures more or less skill by organization and its purpose. Some of these organizations do not effectively use accreditation (e.g. the Red Cross), while others use it (such as of NGOs belonging to the TRANSIT Group: the SESO, Caritas International, Jesuit Refugee Service, CIRE, the League of Human Rights, Assistance to Displaced Persons, VWV). The freedom of movement of NGOs in immigrant detention centres (the room for manoeuvre given to them) varies from one centre to another and depends on the general conditions of access established by the Director General of the Immigration Office.

Mission

The accredited Organizations are responsible for ensuring that detainees in immigrant detention centres have access to legal aid and respect for their rights (detention conditions, medical care, and disciplinary regime). **The TRANSIT group** coordinates the activities of these NGOs through information exchange and cooperation.

Follow-up / Reports

These monitoring bodies may write reports with statistics and other observations on the operation and the conditions of detention in immigrant detention centres. TRANSIT group also ensures the follow-up of visits by contacting the Immigration Authority to discuss specific issues.

Obstacles/ Difficulties

The Immigration Office tends to confine the work of NGOs to individual access. The visiting organizations may not, therefore, meet the persons whose name is shown on a well-defined list beforehand. In practice, the direction of the Immigration Office limits the authorizations for visits given to NGOs to two personal accreditations to those who request it²⁴⁶. Moreover, they cannot effectively exercise an advocacy activity without the risk of losing their visiting right. Thus, the watch word to date seems to be "*do not denounce too much in order to be able to continue to work*".

The Immigration Office, moreover, tends to manipulate these organizations by curbing their room for manoeuvre while claiming to promote full transparency and a real desire for improvement. Moreover "*some uncertainty persists about the possibilities of meeting any detainee. Thus, the centres of Bruges and Merksplas require visitors to communicate in advance the names of prisoners they want to meet while those of Vottem, Melsbroeck and Steenokkerzeel give visitors the freedom to meet inmates who wish to be visited on condition that the detainee is not subjected to a disciplinary solitary confinement*"²⁴⁷. The mandate of the ONGs and the extent of their competence therefore suffer from a notorious legal vacuum.

RECOMMENDATIONS

- ✓ Regulating the procedures for granting and withdrawing NGOs visit authorizations in immigrant detention centres, independently of the Immigration Office.
- ✓ Ensuring that the flexibility of NGOs is much wider than at present particularly in the context of its interviews with detainees, regardless of the willingness of center directors.
- ✓ Strengthening the follow-up and transparency of visits by NGOs through reports issued by the group TRANSIT for all the visiting NGOs, and giving these reports to the directions of the centers and the Immigration Office and also publishing the reports.

²⁴⁶ B. DE BOECKE, CIRE (coordination and initiatives for refugees and immigrants), «*Quel contrôle démocratique sur les centres fermés?*» (What democratic control on the closed centres?), Migration Magazines, 18 October 2010.

²⁴⁷ B. DE BOECKE, CIRE, *ibidem*. footnote 248.

4.5.2. The Federal Ombudsman²⁴⁸

a. External monitoring mission

Legal basis

The Federal Ombudsman²⁴⁹ has a right to visit the immigrant detention centres and the *return houses*²⁵⁰ in order to conduct investigations on their operation at the request of the House of Representatives.

Mission

On February 28, 2008, the House of Representatives approved the request of the College of Federal Ombudsmen *to conduct investigations on the operation of the closed centers managed by the Immigration Office and make recommendations and report to the House of Representatives*. As part of this investigation, the conditions in which the occupants are detained, the quality of the assistance given to them, the respect for their human rights and the proper execution of the mission entrusted to the centres were examined.

Powers – Cooperations-synergies

Many bodies and resource people were solicited as part of this investigation both within civil society²⁵¹ as on the level of the authorities²⁵². The methodical approach of the investigation was also assessed by a steering committee composed of different multidisciplinary experts, also invited to comment on the draft report.²⁵³

Follow-up / Reports

A report²⁵⁴ with details of the methodology adopted by the Federal Ombudsmen and their recommendations was published and sent to various centres and members of the House of Representatives. The Minister of the Interior was also informed. This 2009 report particularly fuelled ECHR judgments rendered in the context of cases relating to the detention of juveniles in detention centres (see *below, point 2, 2.8., The ECHR Jurisprudence*)

Good practices / Difficulties

Ombudsmen have broad powers and an extensive right of consultation as part of the investigations they conduct.

However it is regrettable that the lack of the power of initiative prevents federal ombudsmen to regularly conduct this type of investigation. In this case, the "*return houses*" which had only just been established (in October 2008) were therefore not included in the 2009 report and have, to date, not yet been the subject of an investigation request from the House of Representatives.

²⁴⁸ See section D. 3.1., page 52 for more development on this subject.

²⁴⁹ Royal Decree of 2 August 2002, *op.cit.* footnote n° 121.

²⁵⁰ Article 1, 1° of the Act of 22 March 1995 creating the federal ombudsmen, *op.cit.* footnote n° 153.

²⁵¹ Investigative report 2009/2 on «*the operation of the immigrant detention centres managed by the Immigration Office*», page 2 and annex I, page 241: CIRE, the NGO "Vluchtelingenwerk Flanders" (VWV), the Service of the regional delegate for the Benelux and the European Institutions of the UNHCR, the CPT (European Committee for the prevention of torture), Doctors without Borders, the KRC, the DGDE, the Centre for Equal Opportunities and the Fight against Racism, The Order of the French and German bars and the Order of the Flemish bar, the NGO "Beweging voor kinderen zonder papieren" (Movement for children without documents), the NGO Doctors of the World and the Committee of Vigilance in social work.

²⁵² In particular : the Chairwoman of the Executive Committee of the Department of the Interior, the Internal Audit Service, the Director General of the Alien's Office, the Directorate of the Centres and within this department, the General Coordination and Monitoring Cell for the centres (CGCC), the Chairman of the Complaints Commission and the Directors of the immigrant detention centres.

²⁵³ Investigative Report 2009/2, *op.cit.* footnote n° 122, page 5.

²⁵⁴ *Ibidem*.

b. Complaint processing mission

Federal Ombudsmen may be contacted by any person (including foreign minors) who would have a claim against the Immigration Office regarding his deprivation of liberty in detention centres or in *return houses*.²⁵⁵

The handling of such claim will be as described under section D. 3.1., b. on page 54 and following of this report.

RECOMMENDATIONS

- ✓ Strengthening the communication and cooperation between the Immigration Office, as manager of the immigrant detention centres, the INAD centres and the "return houses", and the Federal Ombudsmen.
- ✓ Making parliamentarians aware of the need to regularly renew the monitoring of administrations controls that have previously been the subject of an investigation in order to assess the degree of implementation of previous recommendations and to ensure that the operation of administration concerned evolves in the direction recommended.
- ✓ Continuing and expanding the cooperation with ombudsmen for children's rights in order to give a cross-cutting nature to this issue in the context of its monitoring activities.

4.5.3. The DGDE and the KRC

a. External monitoring mission

Legal basis

The DGDE and the KRC²⁵⁶ have the authority to visit detention centres.

Good practices

In their **annual reports** 2012-2013 the DGDE and KRC both wrote a chapter on recommendations on the issue of foreign children and migration in Belgium.²⁵⁷ The KRC also has published an article in December 2013²⁵⁸ on foreign minors (accompanied or not) in which he recommended to give accompanied foreign children the opportunity to speak out during the asylum procedure. Indeed, only the voice of parents is generally heard in this context.

The DGDE and KRC regularly work together as part of the federal field of asylum and migration as well as with the Federal Ombudsman to formulate joint recommendations. In July 2013, they conducted a joint visit to the open return centre of Holsbeek (*not visited as part of this study*).

Since May, 13, 2009, both are observer members within the Separated Children Platform²⁵⁹.

Obstacles / Difficulties

We have, to date, no knowledge of joint visits or even individual visits conducted in other detention centres.

²⁵⁵ Article 1, 2°, Act of 22 March 1995 establishing Federal Ombudsmen, *op.cit.* footnote n° 153.

²⁵⁶ Royal Decree of 2 August 2002, *op.cit.* footnote n° 121.

²⁵⁷ DGDE, Annual report, 2012-2013, pages 35 to 38; KRC, Annual report, 2012-2013, pages 55 to 67.

²⁵⁸ KRC, «Heen en retour. Rechtspositie van kinderen op vlucht », December 2013.

²⁵⁹ <http://www.mineursenexil.be/>.

b. Complaint processing mission

Article 6 of the Decree of December, 19, 2002 regarding the DGDE and article 6, 2° of the Flemish Decree of 1997²⁶⁰ allow the DGDE and the KRC to handle complaints from foreign minors under the procedural rules described in section D, point 4.5.3., b. on page 94 of this report. They have, within the limits of their powers, the authority to call upon the Immigration Office, Fedasil and the Guardianship Service (for UFM).

In his publication of December 2013²⁶¹, the KRC mentions that the type of complaints that frequently are lodged by foreign minors concerns the right to participate (especially during an asylum procedure, the minor seeks to be heard).

RECOMMENDATIONS

- ✓ Developing a specific method for the follow-up of their recommendations with respect to matters within federal jurisdiction, particularly with regard to foreign minors.
- ✓ Organizing (together or separately) regular visits to places of deprivation of liberty for foreign minors (immigrant detention centres, INAD centres and "return houses").

4.5.4. The Parliamentarians

Legal basis

Within the framework of the **right to visit detainees** allowed by the Royal Decree of 2002²⁶², "the members of the House of Representatives and the Senate and members of the executive and judiciary may come into contact with one or more occupants previously identified after they have made themselves known as such to the centre director or his representative and if they demonstrate that their visit to this or these occupants is required as part of their mission or function." Article 42 of that Royal Decree also accords a **visiting right to Parliamentarians** from 8:00 to 19:00 hrs after they clearly made known themselves as parliamentarians being accompanied by the centre's director or his representative throughout the visit. There is no evidence for identifying the extent of parliamentary mandate in this regard.

Parliamentarians seldom exercise their visiting right.

We refer to previous recommendations to them on pages 66 and 74.

4.5.5. The Centre for Equal Opportunities and the Fight against Racism

a. External monitoring mission

Legal basis

The Centre for Equal Opportunities and the Fight against Racism was created by the Act of 15 February 1993²⁶³. It is an independent federal public service²⁶⁴ accredited with the National Institution of Human Rights

²⁶⁰ Flemish Decree of 15 July 1997 creating a Commissioner for Children's Rights (KRC), *O.J.B.*, 7 October 1997 ; amended by Decrees of January, 31, 2003, *O.J.B.*, 13 February 2003 and of 9 November 2011, *O.J.B.*, 10 December 2012.

²⁶¹ KRC, report « *Heen en retour. Rechtspositie van kinderen op vlucht* », December 2013.

²⁶² Royal Decree of 2 August 2002, *op.cit.* footnote n° 121.

²⁶³ Act of 15 February 1993 creating a Federal Centre for the analysis of the migration flows, the protection of the fundamental rights of foreigners and the fight against trafficking in human beings, *O.J.B.*, 19 February 1993.

(INDH) of the United Nations in 2010. Since the reform of 2014, the Centre has been divided into two entities: the **Interfederal Centre for Equal Opportunities** and the **Federal Migration Centre**. That second entity is the only one competent to visit the INAD centres and draws its mandate from the 1993 Act.

Mandate

Pursuant to the Royal Decree of 2002²⁶⁵, the Federal Migration Centre has a real visiting right. It is also responsible for the treatment of individual applications, the treatment of structural issues and making recommendations on fundamental rights of migrants. These visits are intended solely to gather information to feed the work of analysis of a particular situation (this does not imply legal assistance to migrants).

Composition

To ensure the impartiality and independence of the Centre and its compliance with the Paris Principles, the director is, since the reform of 2014, recruited through SELOR²⁶⁶ and appointed by the Board of Directors consisting of 10 full members and 10 alternate members (themselves appointed by the House of Representatives). With regard to the monitoring of INAD centres, the Federal Migration Centre is composed of a person in charge of fundamental rights, 5 persons full time in charge of human rights of migrants, 1 specialist in detention-deportation issue and 4 lawyers specialized in immigration law and able, at any time, to provide support for visits to detention centres.

Missions and Collaborations / Synergies

The Centre monitors compliance with the fundamental rights of foreigners through its field observations (including immigrant detention centres) as well as by monitoring the complex legislation which regulates this issue. It also provides first line support to those wishing to learn about their rights or their residence status (not during visits in centres). Through an ongoing dialogue with the authorities (local, regional and federal) and with other relevant public services, it seeks to enforce these rights in all areas that affect the situation of foreigners: international protection, entry, residence, the right to family life, access to employment and occupation, access to nationality, detention and deportation... This mission is implemented by

- *Assisting all those who make a request or a complaint*
- *Systematically investigating more general situations which are reflected by the particular cases encountered*
- *The establishment and maintenance of relations with the competent federal authorities (Interior, Social Integration, Justice), with specialized public institutions (Immigration Office, Commissioner General for Refugees and Stateless Persons, Fedasil...) and with associations on the front line in the area of support for foreigners (CIRE, VWV, Belgian Centre for Aid to Refugees, SDJ, Association for the rights of foreigners...) or associations that are providing second line assistance ("Vlaams Minderhedencentrum").* For more than four years the Centre has been working on the issue of legal assistance to people detained in immigrant detention centres.

Follow-up

The Federal Migration Centre provides recommendations via reports and may, at any time, contact the Immigration Office or the Minister of the Interior (via registered mail or orally). These recommendations are published and communicated to other NGOs (including through the TRANSIT group).

²⁶⁴ The autonomy of this federal public service is justified by the fact that it is not under the "hierarchical supervision" of a Minister or of another administration. The work program, the strategic plan and action plans are defined by the Centre itself.

²⁶⁵ Article 44, Royal Decree of 2 August 2002, *op.cit.* footnote n°121.

²⁶⁶ The public body for the selection of civil servants.

Good practices

The Federal Migration Centre has a real visiting right and a wide margin of manoeuvre. In practice it has access to all people in immigrant detention centres and does not need prior authorization (a simple notification of an impending visit to the centre on the eve of the visit is enough).

Obstacles / Difficulties

In the absence of a real monitoring mandate, the Federal Migration Centre limits itself to the analysis of a structural situation without necessarily opening his field of investigation to the specific situation of juvenile detainees.

RECOMMENDATIONS

- ✓ Expanding the mandate of the Federal Migration Centre so that it can effectively exercise control over the conditions of confinement of foreign minors.
- ✓ Implementing a reporting process to institutions, organizations and actors of the protection of children's rights.

4.5.6. The other monitoring bodies

The Royal Decree of 2002²⁶⁷ provides that the following institutions are automatically mandated to carry out their monitoring mission in closed centers UNHCR, the ECHR, the CPT and the CAT. (We refer in this regard to *TITLE 2* above, *THE INTERNATIONAL FRAMEWORK*).

4.5.7. The other complaint processing bodies

i. The Complaints Commission and the Permanent Secretariat

Legal Basis

The Royal Decree of 2002²⁶⁸ which governs the operation of detention centres for foreigners, asylum seekers and illegal residents, creates "a Commission with a permanent secretariat responsible for handling individual complaints of the detainees regarding the application of the Decree". A Ministerial Order of 2002²⁶⁹ establishes "the procedure and rules of operation of the Commission and the Permanent Secretariat, under Article 130 of the Royal Decree of August, 2, 2002". The Royal Decree of May, 14, 2009 on the operation of the return houses states that they will also "be responsible for the handling of individual complaints of occupants of accommodations."

Mandate

The Complaints Commission and its Permanent Secretariat is limited **processing complaints** which relate to the application of the 2002 Royal Decree²⁷⁰. It can therefore only be properly contacted for complaints that relate to the "regulations concerning detainees ", the "house rules and disciplinary regime in the centre," the

²⁶⁷ Article 44, 1°, 2°, 3° and 8° of the Royal Decree of 2 August 2002, *op.cit.* footnote n°121.

²⁶⁸ *Op.cit.* footnote n° 121.

²⁶⁹ Ministerial Order of 23 January 2009 establishing the procedure and the operating rules of the Commission and the permanent secretariat, referred to in the Royal Decree of 2 August 2002 *op.cit.* footnote n°121, amended by the Ministerial Order of 30 June 2010, *O.J.B.*, 8 July 2010.

²⁷⁰ Article 130, *op.cit.* footnote n° 121.

rules "on security and maintenance of public order", the "administrative requirements" and the rules regarding "individual complaints and the Annual Report".

Composition

The Permanent Secretariat has its headquarters at the department of the Chairman of the Federal Department of the Interior. In practice, the Permanent Secretariat is provided by an agent of the Chairman of the Executive Committee. The Complaints Committee is chaired by a (former) judge, assisted by 2 members: a lawyer or law professor on the one hand and the Chairman of the Federal Home Affairs Executive Committee or his representative. Given the above, it must be admitted that the Complaints Commission is an internal organ of the **Federal Department of the Interior**.

Implementation / Procedure

The occupant of the immigrant detention centre can file his complaint at the time provided for this by the Permanent Secretariat. Otherwise, the detainee should ask the Director of the detention centre to send the complaint to the Permanent Secretariat. The lodging of the complaint does not suspend the deportation or execution. The procedure takes place in writing. If the complaint is declared admissible, the Permanent Secretariat plays a role of ombudsman between the parties to try to resolve the problem before it arrives before the Commission. If conciliation fails, the Permanent Secretariat shall forward the complaint to the Commission, which will deal with it on its merits.

Follow-up

The Complaints Commission may decide to declare the complaint (partly) founded or unfounded. It can make recommendations on the application of the Royal Decree of 2002 to the centre director or to the director general of the Immigration Office or recommendations for a sanction against staff to the Director General of the Immigration Office. The Commission may also totally or partially cancel the decision regarding the complaint.

Difficulties and obstacles

The text of the Royal Decree and the internal rules of the centre should be made available to each person who wishes to consult it during his stay in the centre and each inmate must be given a "*welcome brochure*" that describes the living conditions in the detention centre and an "*information brochure*" that explains the possibilities of appeal against the decision to detain, the opportunity "*to complain about the circumstances of the detention*" the right to obtain the assistance of an NGO and the right to legal assistance. In fact, the Federal Ombudsman notes that the **information provided by the centres is sometimes fragmented, sometimes wrong**. Moreover, certain information are simply not given (or written in a language that the detainees - let alone the minors – cannot understand)²⁷¹ : see *Table n°14, Annex 3*.

The Permanent Secretariat is **not obliged to organize hotlines within centres**. Currently, **its multiple missions** -administrative tasks, examination of the admissibility, conciliation procedure, compiling of a file and possible transmission of the file to the Commission- **are performed by a single person**.²⁷²

Practice shows that **the effectiveness of the right to lodge a complaint** leaves much to be desired. Any recommendations made by the Commission serve to improve the operation of the centres. Its field of intervention therefore exceeds the only concerns of the detainee²⁷³.

²⁷¹ Federal Ombudsman, Investigative Report 2009/2, *op.cit.* footnote 122, p.182, §963.

²⁷² *Ibidem*. p.182, § 965.

²⁷³ *Ibidem*. p.188, § 989.

No hearing or appearance of the parties are set out in the texts. It is not provided that, where appropriate, the complainant's lawyer is notified of the meeting of the Complaints Commission during which his client's complaint will be examined. The Commission takes a decision on the basis of the file compiled by the Permanent Secretariat. If it considers the file incomplete, it can collect additional information from the parties concerned. It is not legally bound by any deadline.

Moreover, the Centre for Equal Opportunities states that the present system **does not sufficiently guarantee the independence and impartiality.**²⁷⁴ Given the extreme vulnerability in which a detainee is faced with the risks of inhuman or degrading treatment, **it is imperative to provide for an independent monitoring mechanism for detention centres for migrants of the type of Committee P ("Committee D"?)**.

RECOMMENDATIONS

- ✓ Including /clarifying in the internal regulations of the centres all the rules to follow, the type of infringements of these rules that may be penalized, the different penalties and the right of appeal of the detainees.
- ✓ Writing the internal regulations in an understandable language, a language known to the occupants and giving them this brochure during the procedure of "intake" with a complete and updated version of the "information brochure".
- ✓ Specifically targeting the right of the detainee to speak to the Director of the centre, however, without the exercise of that right being subject to any conditions, and the detainee's right to lodge a complaint to the Complaints Commission and the ways to contact the Commission.
- ✓ Organising a permanent office of the Permanent Secretariat in the centres.
- ✓ Appointing a neutral person who can receive the complaints (other than the Director of the Centre).
- ✓ Creating a Committee D, in charge of external monitoring of all places of detention for migrants.
- ✓ Establishing more flexible conditions of admissibility to optimize the effectiveness of the complaints mechanism.
- ✓ Allowing detainees to address the admissibility of the complaint by giving them the opportunity to provide the missing elements within a time limit that allows them to retain the benefit of the date of the introduction of their complaint.

ii. The Director of the immigrant detention centre²⁷⁵

*"Each resident has the right to speak to the director of the center or his representative. He must make a request to the social service"*²⁷⁶.

The occupants are hardly aware of their right to speak to the centre's director, as shown in Table²⁷⁷ n° 14, annex 3.

It may happen that the centres add a condition to the right of complaint by demanding that the detainee justifies his request. As a result, **the Director may refuse to meet the detainee who does not motivate his request** although he possibly has justifiable grounds not to disclose his reasons to the employee that fixes the appointment. The Director is not bound by any deadline to respond to this request.

See the recommendations in respect of the right to "appeal" to the Director of the centre.

²⁷⁴ Centre for Equal Opportunities and the Fight against Racism, *Migration*, report 2007, p. 161.

²⁷⁵ Within the "return houses" no director is present. Foreigners placed in a "return house" are assisted by coaches from the Immigration Office. It is difficult to consider these coaches as the right people to receive complaints from foreign minors. In practice we cannot know the level of confidence that these minors have regarding the coaches. In addition to reliability problems, the language problem also appears to be a blockage. We will not address this issue further in this report.

²⁷⁶ Article 129, *op.cit.* footnote n° 121.

²⁷⁷ Federal Ombudsman, Investigative Report 2009/2, *op.cit.*, footnote n° 122, p. 180, § 955.

iii. Judicial procedures / Committee P, AIG

Any foreign minor may also, during a removal procedure—outside the centre— be the victim of abuse by a police officer who is responsible for accompanying him during transport. A minor may file a complaint with the Committee P or AIG under the rules explained in section D, point 4.5.7., iii., on pages 99 and following of this report.

E. Conclusion

Whether public institutions for the protection of youth, detention centres, police cells, psychiatric hospitals or any other form or practice of confinement; whether it lasts a few hours, weeks, months or years, deprivation of liberty of children in that it is a restriction of one of their fundamental rights-freedom-requires special vigilance and effective safeguards from the State in the first place and from all its representatives as well as from civil society.

Particular vigilance should be maintained to the extent that the vulnerability and special needs of children require that measures should be taken with regard to their rights in adequate and appropriate ways both in terms of information and accessibility as with regard to their implementation and monitoring.

There should be effective and efficient safeguards to ensure that the rights of children deprived of their liberty are respected and that they can assert their rights of defence or the violations thereof under all circumstances.

For this purpose, external and independent monitoring of all places of deprivation of liberty for children and effective complaint mechanisms should be made available to them which are the necessary guarantees of a system capable of preventing the violation of rights of the child and protecting them.

In Belgium, despite the multitude of monitoring bodies in place and the existing formal and informal complaints mechanisms, we can not say that they now make it possible to provide the guarantees necessary and sufficient for this. Moreover, none of these bodies takes on the role of a national preventive mechanism under OPCAT which unfortunately has not been ratified by Belgium.

The Belgian institutional system involves a complex division of powers between the Federal State and the federated entities (Regions and Communities). These powers are intertwined, coexist and are subject to transfers whenever the State implements reforms. They involve many actors-subject to separate regulations, using various methods of work, to varying degrees of cooperation-induced to further differentiate one side and the other of the linguistic border from the entry into force of the communitisation of the system in response to juvenile delinquency (gradually since 1 July 2014 and officially from 1 January 2015). The complexity of the system and its dependent bodies are also causing difficulties to conceive the creation of a National Institute of Human Rights (INDH) and are barriers to the creation of a national mechanism for prevention (MNP) mentioned by Belgium to justify the failure to have ratified the OPCAT.

This complexity could be rich if all the existing monitoring and complaints mechanisms on various levels of authority within the framework of deprivation of liberty of minors would cooperate, generate synergies, exchange their information (knowledge) and their working methods (i.e. their know-how) in order to reinforce each other. This is what one might expect from a body like the CPMO that brings together all ombudspersons (federal, community, regional and local). Unfortunately it seems that its objectives do not go beyond consultation and information as to what they are doing in their respective sectors.

Moreover, despite the many international recommendations to various specific monitoring bodies, we generally see a lack of independence, externality, consistency in the implementation of the monitoring mission, the lack of a common reference frame for visits regarding respect for the rights of the child or of standard criteria in this area; a lack of follow-up of the recommendations or of the assessment method of the follow-up given to issued and/or published reports. Worse, some existing mechanisms do not have sufficient resources (material, human, financial) to effectively implement their monitoring mission and/or the handling of complaints or the legal provisions strengthening their mandate has not yet entered into force.

Most complaints mechanisms-provided they formally exist, or can be implemented informally-remain inaccessible to minors deprived of liberty because of lack of information, lack of clarity of the information or its complexity, or unsuitability of proceedings in respect of minors. This generates fatalism and discouragement on the part of young people when it comes to their rights, if not ignorance of their rights themselves.

Parliamentarians, lawyers, and magistrates that are representatives of the public interest seem to neglect the monitoring tasks that are legally entrusted to them.

NGOs and associations play the role of observer and take advantage of their privileged position, internally, to provide information, guidance, advice or act as a conciliator but they do very little proper monitoring in order to avoid that the authorities would question their position and their actions.

Good formal or informal practices obviously emerge from this complex and varied system of monitoring and the processing complaints, such as:

- The role of ombudsmen with regard to children's rights is undeniable and-even if the guarantees of their independence could be further strengthened and if the information on them is not yet sufficiently accessible to all juveniles deprived of their liberty in all potential places of confinement and if their visits are not regular enough- one can stress the importance of their work and the number of collaborations that allow them to develop and to include the rights of the child in political, legislative, administrative and practical reflections ;
- The consideration by the Flemish Parliament of the KRC's recommendations as part of a "political plan on children's and young people's rights "approved at the beginning of the legislature and on which the opinion of KRC is required by the Flemish Government in its reporting phase is an interesting practice ;
- The methods the Federal Ombudsman uses, particularly in the follow-up to his recommendations are noteworthy and should be a source of inspiration for all monitoring bodies, although his lack of power of initiative confines him to act within the framework of the claims submitted to him and the interpellations by parliament ;
- The formalization of collection of the evidence of young people in IPPJs in the French-speaking part of the country and the redress mechanism, informally at this stage, but having the desire to systematize the practice in the future, and the assessment of the solitary confinement measures by young people themselves practiced in a psychiatric ward (CHJ Titeca) creates dialogue and interesting windows for expression as well as space for dialogue for young people, as long as it is acted upon by the directors of the institutions and by the authorities at the higher level ;
- The degree of information for young people deprived of liberty in Flanders particularly regarding the role of the KRC, the Jo-Lijn, the Flemish ombudsman and the 'Zorginspectie" seems quite satisfactory-the effective use of various mechanisms is another story.
- Now that the cards are being reshuffled with regard to the communitisation of the law on juvenile delinquency and the development of new community and federal governments, the opportunity should be taken to strengthen the current monitoring system of all places of detention for minors and to ensure that all minors can efficiently and effectively assert their rights. In this context, we believe it is appropriate to ensure :

Regarding monitoring –

- ✓ *That each place of deprivation of liberty for minors should be subject to independent external monitoring ;*
- ✓ *That this monitoring is conducted in an effective, regular and constructive way ;*
- ✓ *That it is published as a public report with recommendations ;*
- ✓ *That these recommendations are taken into account and implemented ;*
- ✓ *That the different bodies that formally or informally exercise this monitoring exchange their knowledge and expertise ;*
- ✓ *That together they establish criteria or appropriate monitoring systems based on their respective approach angles.*

Regarding complaints –

- ✓ *That every minor deprived of liberty has a remedy, internal and external, effective against any kind of violation of his rights in the framework of the deprivation of liberty ;*
- ✓ *That he is duly informed about his rights upon his arrival in the place of confinement in an appropriate and understandable language ;*
- ✓ *That the implementation procedure of the complaint is accessible and adapted ;*
- ✓ *That he can benefit from appropriate support to assist him in asserting his rights ;*
- ✓ *That the follow-up given to his complaint is objective, duly reasoned and timely ;*
- ✓ *That in case of dissatisfaction with the result of the complaint, an effective, accessible and responsive remedy is provided and that the process can be completed within a reasonable time.*

This should be the coordinated work of all the actors who are in any way connected to young people: politicians, administrations, various ombudsmen, bodies formally or informally carrying out a monitoring mission, judges, lawyers, associations, parents and finally the young people themselves. Everyone has a duty of introspection as well as cooperation in this regard.

Finally we are of the opinion that this work should go beyond the linguistic, geographic and political borders because a child locked up in Flanders or in Wallonia is still a child whose rights must be respected, even more so when it is deprived of liberty.

ANNEX

ANNEX 1

ANNEX 1 - LIST OF INTERVIEWEES & VISITS

ANNEX 1 - LIST OF INTERVIEWEES & VISITS

4 June, 2014 – Youth Support Agency – Community Institutions Department (« Agentschap Jongerenwelzijn »)

Individual interview

Ndl

- 1 – Staff member of the Community Institutions Department of the Agency
- 2 – Directors of the Public Institutions for the Protection of the Youth of :
 - “De Kempen”
 - “De Zande”

9 June, 2014 - Jean Titeca Psychiatric Hospital

Individual interview

Fr

- 1 – Surgeon General, Doctor
- 1 – Deputy Head of Service Specialized Unit for youngsters' treatment (UTI)

16 June, 2014 – Advisory Group (1)

Focus Group

Fr

- 2 – Lawyers specialized in juvenile law
- 2 – Juvenile judge
- 1 – Member of the DGDE's office especially in charge of placement, deprivation of liberty, juvenile justice
- 1 – Chairman of the supervisory board (« Commission de surveillance ») of the closed youth centre in St Hubert
- 2 – Criminologists – 1 Academic researcher and 1 researcher at the National Institute of Forensic Science and Criminology (INCC)
- 1 - Director of Coordination of public institution for the protection of the youth of the French community
- 1 – Member of the Cabinet of Minister of Youth Welfare of the French community
- 1 - Director of Youth Service law (SDJ) of Brussels
- 2 – Legal advisor of Caritas specialized in asylum and migration law

17 June, 2014 – Ministry of Justice

Individual interview

Fr

- 1 – Liaison officer of the CPT

23 June, 2014 - Support service for prisoners (SAD)

Individual interview

Fr

- 1 – Member

24 June, 2014 - Closed youth centre (CFF) in St Hubert, dessaisis section (for boys)

Individual interviews

Fr

- 1 – Director
- 1 – Member of the psycho-social staff
- 3 – Minors
- 3 – Members of the custodial staff

www.childrensrightsbehindbars.eu

NATIONAL REPORT - BELGIUM

ANNEX 1 - LIST OF INTERVIEWEES & VISITS

24 June, 2014 - Supervisory board (« *Commission de surveillance* ») of the closed youth centre in St Hubert

Individual interviews Fr

2 – Members

25 June, 2014 - Closed youth centre (CFF) in St Hubert, educational section (for boys)

Individual interviews and Focus Groups Fr

1 – Director

8 – Minors, 3 focus groups (2 + 2 + 3) including 1 individual interview, 1 separate individual interview and 2 refusals

1 – educator

2 – Members of the psycho-social staff

27 June, 2017 - Coordination of public institution for the protection of the youth of the French community

Individual interview Fr

1 – Director

30 June, 2014 - Public Institution for the Protection of the Youth of Braine le Château (for boys)

Individual interviews and Focus Groups Fr

1 – Member of the direction Board

1 – Psychologist

1 – Educator

1 – Member of the security staff

12 - Minors, 2 focus groups (5 + 7) including 2 individual interviews

2 July, 2014 – Advisory Group (2)

Focus Group Ndl

1 – Staff member of the Community Institutions Department of the Agency Youth Welfare

1 – Director of the Public Institution for the Protection of the Youth of “De Kempen”

2 – Members of the National Commission of Belgium on the Rights of the Child

1 – Social worker and lecturer of the University of Ghent, Belgium

3 – Members of the NGO Defense for Children International – Belgian section

1 – Doctorate student at the Free University of Brussels

1 – Professor at the Free University of Brussels

1 – Commissioner for Children’s Rights

1 – Juvenile Judge at the Brussels Court of first Instance

9 July, 2014 - Public Institution for the Protection of the Youth of Saint Servais (for girls)

Individual interviews and Focus Groups Fr

1 – Director

5 – Minors, 2 focus groups (3 + 2) and 1 refusal

1 – Psychologist

3 – Educators

ANNEX 1 - LIST OF INTERVIEWEES & VISITS

10 July, 2014 - The General Inspectorate of the Federal Police and the local police	
Individual interview	Fr
1 – Audit and Inspection advisor	
10 July, 2014 – Mental Health Platform	
Individual interview	Fr
1 – Complaint mediator	
14 & 15 July, 2014 - Public Institution for the Protection of the Youth of “De Kempen” in Mol (for boys)	
Individual interviews and Focus Groups	Ndl
2 – Director	
9 – Minors, 3 focus groups (4 + 2 + 3)	
1 – Psychologist	
2 – Educators	
2 – Campus leader	
2 – Social worker	
16 July, 2014 - Closed youth centre (CFF) in Tongeren, dessaisis section (for boys)	
Individual interviews	Ndl
1 – Director	
1 – Psychologist	
4 – Minors, 1 focus group (4) + 1 refusal	
16 July, 2014 - Supervisory board (« <i>Commission de surveillance</i> ») of the closed youth centre in Tongeren	
Individual interview	Ndl
1 – President	
22 July, 2014 - Public Institution for the Protection of the Youth of “De Zande” in Beernem (for girls)	
Individual interviews and Focus Groups	Ndl
1 – Director	
1 – Educator	
1 – Campus leader	
8 – Minors, focus groups (2, 3, 2, 1)	
23 July, 2014 - Public Institution for the Protection of the Youth of “De Zande” in Beernem (for girls)	
Individual interviews and Focus Groups	Ndl
1 – Director	
2 – Educator	
1 – Campus leader	
9 – Minors, focus groups (2, 3, 2, 2)	
1 – Psychologist	

ANNEX 1 - LIST OF INTERVIEWEES & VISITS

24 July, 2014 – Flemish Ombudsman

Individual interview Ndl

1 – The Ombudsman

30 July & 2 September, 2014 – General Delegate of the Rights of the child of the French Community (DGDE)

Individual interview Fr

1 – Ombudsman for children

2 – Members of the DGDE's office

31 July & 1st August, 2014 - Jean Titeca Psychiatric Hospital

Individual interviews and Focus Groups Fr

1 - Deputy Head of Service Specialized Unit for youngsters' treatment (UTI)

1 – Director nursing department

1 – Nurse

5 – Minors, 1 focus group (3) and 2 individual interviews

14 August, 2014 – Committee P

Individual interview Fr

1 – Permanent member of the board

1 – Director of investigation department

1st September, 2014 – The Flemish Care Inspectorate

Individual interview Ndl

1 – Team leader

15 September, 2014 – The Federal Ombudsman

Individual interview Fr

1 – Director of the Federal Mediator's office

16 September, 2014 – Youth department of the public psychiatric care centre in Geel

Individual interviews Ndl

1 – President of the Ethic Committee of the centre and psychiatrist of the youth department

1 – Ombudsman of the centre

2 – Team-leader and nurse

2 – Minors + 1 refusal

1 – Case-manager and special education specialist

1 – Educator and nurse

ANNEX 2

ANNEX 2 – BARS

ANNEX 2 – BARS

MINORS HAVING COMMITTED AN ACT WHICH CONSTITUTES AN OFFENCE - LEGISLATION

GENERAL

FEDERAL GOVERNMENT

Law of 8 April 1965 concerning the protection of youth, treatment of minors having committed an act constituting an offence and the reparation of harm caused by this act.²⁷⁸

Penal Code

Judicial Code (Article 76)

Code of Criminal Investigation (Articles 606²⁷⁹)

Law of 1 March 2002 concerning the provisional placement of minors having committed an act constituting an offence²⁸⁰

Royal Decree of 1 March 2002 establishing the creation of a centre for the provisional placement of minors having committed an act constituting an offence 1 March 2002²⁸¹

Agreement of cooperation between the Federal Government, the German-speaking Community, the French Community and the Flemish Community concerning a detention centre for the provisional placement of minors having committed an act constituting an offence²⁸²

Royal Decree of 12 March 2009, establishing a federal detention centre in Tongeren for minors having committed an act constituting an offence²⁸³

Royal Decree of 22 April 2010 establishing the creation in Saint-Hubert of a federal detention centre for minors having committed an act constituting an offence²⁸⁴

FRENCH COMMUNITY / WALLOON-BRUSSELS FEDERATION

Decree of 4 March 1991 concerning Youth Welfare²⁸⁵

Decree of the French Community concerning the code of public institutions for the protection of young people referred to in Article 19bis of the decree of 4 March 1991, concerning youth welfare of 13 March 2014²⁸⁶

²⁷⁸ M.B., 14 April 1965

²⁷⁹ Art. 26 of the special law of 6 January 2014 concerning the sixth state reform M.B., 31 January 2014, came into effect 1 July 2014

²⁸⁰ M.B., 1 March 2002, modified by the law of 27 December 2006, M.B., 28 December 2006

²⁸¹ M.B., 1 March 2002

²⁸² M.B., 11 September 2002

²⁸³ M.B., 18 November 2009 modified by the Royal Decree of 8 January 2013, M.B., 15 January 2013

²⁸⁴ M.B., 29 April 2010

²⁸⁵ M.B., 12 June 1991, last modified by the Decree of 29 November 2012, M.B., 11 March 2013

²⁸⁶ MB., 17 July 2014

www.childrensrightsbehindbars.eu

ANNEX 2 – BARS

FLEMISH COMMUNITY

Decree concerning special assistance for young people (« Decreetinzake Bijzondere Jeugdbijstand») of 7 March 2008²⁸⁷

Decree of the Flemish Government of 24 October 2008 implementing the decree of 7 March 2008 concerning special assistance for young people²⁸⁸

Decree Administrative policy framework of 18 July 2003²⁸⁹

GERMAN-SPEAKING COMMUNITY

Decree of 19 May 2008 by the Parliament of the German-speaking Community concerning youth welfare.²⁹⁰

JOINT COMMUNITY COMMISSION OF THE BRUSSELS-CAPITAL REGION

Order of 29 April 2004 concerning youth welfare²⁹¹

MENTAL HEALTH & FQI

INTERNATIONAL STANDARDS

International convention on the rights of the child (Article 24. 1°)²⁹²

European Charter on the Rights of Hospitalised Children (EACH)²⁹³

FEDERAL GOVERNMENT

Law of 8 April 1965 concerning the protection of young people²⁹⁴

Law of 6 June 1990 concerning the protection of persons with mental illness²⁹⁵ and its royal decree of 18 July 1991²⁹⁶

Law of 22 August 2002 concerning the rights of patients²⁹⁷

Federal protocol agreement of cooperation of 22 February 2007 which governs the terms and conditions of collaboration between Belgian legal authorities and units for medical and psychological care²⁹⁸

²⁸⁷ M.B., 15 April 2008

²⁸⁸ M.B., 2 March 2009

²⁸⁹ « Huisregels Gemeenschapsinstellingen» <https://wvg.vlaanderen.be/jongerenwelzijn/assets/docs/hulp/gi-gfc/algemene-huisregels.pdf>

²⁹⁰ M.B., 1 October 2010

²⁹¹ M.B. 1 June 2004

²⁹² Opcit.

²⁹³ The EACH Charter drafted in Leiden (Netherlands) in May 1988 by the 1st European Conference of Associations "Children in the Hospital"

²⁹⁴ Opcit.

²⁹⁵ Opcit.

²⁹⁶ M.B., 26 July 1991

²⁹⁷ M.B., 26 September 2002

²⁹⁸ M.B., 26 June 2007. This protocol agreement was subject to evaluation in 2011 in the French Community with the aim of including new care paths developed after its creation, not validated by competent authorities. A new re-evaluation is currently under way in the French Community and should be completed by the end of 2014

www.childrensrightsbehindbars.eu

ANNEX 2 – BARS

Addendum of 8 December 2008 to the Federal protocol agreement for cooperation of 22 February 2007²⁹⁹

Charter of Rights pertaining to the care of minors who are hospitalised and who are required by a judicial authority to receive treatment

FRENCH COMMUNITY / WALLOON-BRUSSELS FEDERATION

Decree of 4 March 1991 of the French Community concerning youth welfare³⁰⁰

FLEMISH COMMUNITY

Decree of 7 March 2008 of the Flemish Community concerning special care for young people³⁰¹

No equivalent of the Charter of Rights specific to the treatment of hospitalised minors who are required by judicial authorities to receive treatment exists in Flanders.

GERMAN-SPEAKING COMMUNITY

Decree of 19 May 2008 by the Parliament of the German-speaking Community concerning youth welfare.³⁰²

JOINT COMMUNITY COMMISSION OF THE BRUSSELS-CAPITAL REGION

Order of 29 April 2004 concerning youth welfare³⁰³

POLICE

FEDERAL GOVERNMENT

Law of 20 July 1990 concerning preventative detention³⁰⁴

Law on the function of the police

Law of principles of 12 January 2005 concerning the penitentiary administration as well as the judicial status of detained persons (Dupont Law)³⁰⁵

²⁹⁹ M.B., 16 January 2009

³⁰⁰ Opcit.

³⁰¹ M.B., 15 April 2008

³⁰² M.B., 1 October 2010

³⁰³ M.B. 1 June 2004

³⁰⁴ M.B., 14 August 1990

³⁰⁵ M.B., 1 February 2005

www.childrensrightsbehindbars.eu

ANNEX 3

ANNEX 3 – STATISTICS

ANNEX 3 – STATISTICS

Table No. 1: Types of acts defined as criminal offences (FQI) for which minors are reported for prosecution (from all the districts of the Judicial Arrondissements³⁰⁶ in the country)³⁰⁷ :

Type of prevention	2009	2010	2011	2012	2013
<i>Offences against property</i>	48.81 %	50.03 %	50.29 %	45.95 %	43.81 %
<i>Offences against people</i>	18.87 %	18.57 %	18.90 %	20.06 %	20.00 %
<i>Order and public safety</i>	10.50 %	10.06 %	10.20 %	10.43 %	10.73 %
<i>Narcotics - Drugs</i>	7.94 %	7.89 %	7.12 %	9.04 %	11.16 %
<i>Policing (traffic)</i>	6.92 %	6.57 %	6.55 %	7.56 %	7.16 %
<i>Other</i>	4.18 %	4.01 %	3.97 %	3.43 %	3.17 %
<i>Family and public morality</i>	2.78 %	2.87 %	2.97 %	3.53 %	3.97 %
Total amount of prevention	80,178	83,014	79,249	62,626	59,163

Table No. 2: Receiving capacity of the IPPJ/GI in 2014, by type of section (open or closed) and by gender³⁰⁸:

Localisation	No. places in open prison regime		No. places in closed prison regime		Total
French Community	Boys	Girls	Boys	Girls	
Braine-Le-Château	-	-	40 (+ 3)		43
Fraipont	46		10 (+1)		57
Jumet (school dropout)	22		-	-	22
St Servais		34		4 (+1)	39
Wauthier-Braine	42		10		52
	110	34	64	5	
	144		69		213
Flemish Community	Boys	Girls	Boys	Girls	
De Hutten	-	-	40		40
De Markt	72			10	82
Ruiselede	54		26	-	80
Beernem		10		36	46
	126	10	66	46	
	136		112		248
Total in Belgium	236	44	130	51	
Total in Belgium	280		181		461

The figures in () represent emergency places

³⁰⁶ Subdivisions in Belgium below the provincial level

³⁰⁷ College of Public Prosecutors, Annual statistic on the prosecution of young people, <http://www.om-mp.be/stat/jeu/f/index.html>

³⁰⁸ Figures published in the annex Government Decree of the French Community on the code of public institutions for the protection of young people targeted in the article 19bis of the decree of 4 March 1991, concerning youth welfare of 13 March 2014, MB, 17 July 2014

ANNEX 3 – STATISTICS

Table No. 3: Reception capacity in Federal Detention Centres in 2014 by type of section (education or dessaisissement³⁰⁹)

Localisation	No. places in provisional placement centres - Boys	No. places in dessaisissement section - Boys	Total
Everberg	40		40
GFC Tongeren	4	16	20
CFF Saint-Hubert	37	12 (+1)	50
	81	29	110

Table No. 4: Average rate of general occupancy for Federal Detention Centres³¹⁰:

CFF	2009	Average capacity in 2009	2010	Average capacity in 2010	2011	Average capacity in 2011	2012	Average capacity in 2012	2013	Average capacity in 2013
Everberg	45.5	50	30.6	34.1	22.5	35	32.2	40	32.4	39.9
GFC Tongeren ³¹¹	5.8	17	13.5	23.4	17.7	34	31.9	34	36	34
CFF St-Hubert ³¹²	0	0	32.7	48.6	41.5	50	37.7	50	39.7	49.9
TOTAL	51.3	67	76.8	106.1	81.7	119	101.8	124	108.1	123.8

Table No. 5: Number of records of prisoner arrival³¹³ of minors in dessaisissement in Federal Detention Centres³¹⁴:

CFF	2009	2010	2011	2012	2013
Everberg	0	0	0	0	0
GFC Tongeren ³¹⁵	1	3	4	9	12
CFF Saint-Hubert ³¹⁶	0	1	25	15	17
Total Boys	1	4	29	24	29
Total Girls	0	0	0	0	0
TOTAL	0	4	29	24	29

³⁰⁹ Dessaisissement is a section in Belgian detention centres for young people tried as adults: See (French)

http://justice.belgium.be/fr/themes_et_dossiers/enfants_et_jeunes/delinquance_juvenile/qu_est-ce_que_le_dessaisissement_

³¹⁰ Figures taken from reports of annual activities by the General Directorate for Prisons of the Federal Public Justice Service (2011-2012-2013)

³¹¹ Since 21 November 2009

³¹² Since 30 April 2010

³¹³ Deals with the type of initial entry in prison, here, more specifically following a decision by a judge of youths taken within the context of the procedure of dessaisissement.

³¹⁴ Figure taken from reports on annual activities of the General Directorate for Prisons of the Federal Public Justice Service (2011-2012-2013)

³¹⁵ Since 21 November 2009

³¹⁶ Since 30 April 2010

ANNEX 3 – STATISTICS

Table No. 6: Number of placements in IPPJ by regime and by type of care³¹⁷:

REGIME	2006	2007	2008	2009	2010	2011	2012	2013
Open Prison Regime	1088	1071	1054	987	990	1053	943	978
	66.34%	65.63%	67.48%	66.87%	61.57%	60.38%	58.86%	60.15%
Reception	735	712	688	651	649	679	624	636
Orientation	148	140	139	138	158	160	131	117
Education	205	219	227	198	183	214	188	225
Closed Prison Regime	221	208	205	189	230	226	218	212
	13.48%	12.75%	13.12%	12.80%	14.30%	12.96%	13.61%	13.04%
Observation/evaluation	109	110	105	99	99	99	94	106
Education	51	46	42	41	35	41	44	33
Observation/orientation	37	36	34	28	34	29	26	26
Soder					41	37	34	34
Individualisation	24	16	24	21	21	20	20	13
API-Tandem	89	84	72	91	105	186	179	172
	5.43%	5.15%	4.61%	6.17%	6.53%	10.67%	11.17%	10.58%
Federal Detention Centre * (Education)	242	269	231	209	283	279	262	264
	14.76%	16.48%	14.79%	14.16%	17.60%	16.00%	16.35%	16.24%
TOTAL	1640	1632	1562	1476	1608	1744	1602	1626
	100%	100%	100%	100%	100%	100%	100%	100.00 %

* CFF Everberg – De Grubbe until 2010 and CFF St-Hubert since 2010

³¹⁷ Figures given by the Coordination Directorate of the IPPJ of the DGAI in July 2014

ANNEX 3 – STATISTICS

Table No. 7: Number of places in IPPJ by institution and by gender according to the type of care³¹⁸:

BOYS	2006	2007	2008	2009	2010	2011	2012	2013
Braine-le-Château	160	156	147	140	134	140	138	139
Observation/evaluation (closed regime)	109	110	105	99	99	99	94	106
Education (closed regime)	51	46	42	41	35	41	44	33
Wauthier-Braine	391	402	384	366	410	403	377	392
Reception	259	264	253	253	241	246	239	234
Orientation	79	77	72	70	80	76	61	75
Education	53	61	59	43	48	44	43	49
Soder (closed regime)					41	37	34	34
Jumet	85	82	85	92	90	108	87	66
Orientation	69	63	67	68	78	84	70	42
Education	16	19	18	24	12	24	17	24
Fraipont	371	391	370	343	338	363	330	346
Reception	250	261	239	231	229	247	219	217
Education	84	94	97	84	75	87	85	103
Observation/orientation (closed regime)	37	36	34	28	34	29	26	26
TOTAL IPPJ	1007	1031	986	941	972	1014	932	943
Federal Detention Centre *	242	269	231	209	283	279	262	264
TOTAL (closed regime)	439	461	412	377	492	485	460	463
TOTAL BOYS	1249	1300	1217	1150	1255	1293	1194	1207
GIRLS	2006	2007	2008	2009	2010	2011	2012	2013
Saint Servais	302	248	273	235	248	265	229	247
Reception (open regime)	226	187	196	167	179	186	166	185
Education (open regime)	52	45	53	47	48	59	43	49
Individualisation (closed regime)	24	16	24	21	21	20	20	13
TOTAL GIRLS	302	248	273	235	248	265	229	247
TOTAL IPPJ	1309	1279	1259	1176	1220	1279	1161	1190
TOTAL IPPJ/CFF	1551	1548	1490	1385	1503	1558	1423	1454

* CFF Everberg – De Grubbe until 2010 and CFF St-Hubert since 2010

³¹⁸ Ibidem

ANNEX 3 – STATISTICS

Table No. 8: Number of beds in Intensive Treatment Unit (UTI) for the reception of minors undergoing juridical measures³¹⁹:

Court of Appeals	Gender	UTI for young people FQI	UTI for young people FQI/SEP/MEO
FLANDERS			
Ghent			
PZ Heilige Familie Kortrijk	Boys	8 (7+1)	
Pc Caritas Melle	Boys	8 (7+1)	
Pc Sleidinge			8 (7+1)
Antwerpen			
ZNA	Boys	8 (7+1)	
OPZ Geel	Mixed		8 (7+1)
Asster (Saint-Trond)	Mixed		8 (7+1)
Medisch Centrum Bilzen			
Brabant Flamand			
UPC Kortenbergh	Mixed		8 (7+1)
PZ Broeders Alex. Tienen			
BRUSSELS BI-COMMUNITY			
CH J. Titeca (Brussels)	Boys	20 (17+3)	
CH J. Titeca (Wallonia)	Boys	8 (7+1)	
Fond Roy	Girls	8 (7+1)*	
WALLONIA			
Liège			
IsosI – Les Cyprès	Mixed	8 (7+1)	8 (7+1)
CHR La Citadelle			
Mons			
CRP Les Marronniers (Tournai)	Boys	8 (7+1)	
A. Paré (Mons)			8 (7+1)
TOTAL beds		76	40

*yet to open (2015)

Table No. 9: Comparison by year of issues targeted by the requests made to the General Delegation on the Rights of the Child (DGDE) divided into complaints (C) and information requests (IR)³²⁰:

Domain	2012-2013			2011-2012			2010-2011		
	Total	C	IR	Total	C	IR	Total	C	IR
Mistreatment	125	66	59	125	78	47	151	99	52
Placement	123	69	54	109	73	36	144	120	24
Admin of Justice	73	51	22	82	72	10	89	77	12
Juvenile Delinquency	17	2	15	24	13	11	15	11	4
Imprisonment*	27	23	4	16	15	1	14	11	3
Other	791	412	379	708	420	288	659	399	260
Total	1156	623	533	1064	671	393	1072	717	355

* NB : The complaints of mistreatment in IPPJ or CFF are classified in this category

³¹⁹ Figures provided by the SPF Public Health, security in the food chain and environment in September 2014

³²⁰ Figures issued in the last 3 annual reports of the DGDE

ANNEX 3 – STATISTICS

Table No. 10: Summary of the occurrences most often encoded from 2010 to 2012 following complaints filed with the Comité P (Permanent Oversight Committee on the Police Services) against police services (without specifically focusing on minors)³²¹:

Occurrences	2010	2011	2012
Behaviour or aggressive attitude	305	379	392
Unjust findings	289	321	317
Refusal to record complaint	238	257	287
Unequal treatment	231	214	233
Assault and battery	174	141	208
Disparaging behaviour	218	161	208
Lax or negative attitude	181	184	198

Table No. 11: Files on complaints concerning police violence from 2010 to 2012:

	2010	2011	2012
No. of files	468	512	576
Percentage of files	19.09%	19.06%	21.49%

Table No. 12: Division of work between AIG and Comité P³²² :

Inquiries given with priority to the General Inspectorate (AIG)	Inquires primarily to be undertaken by Inquiry Services of the Comité P
Arrests and arbitrary jailing;	Infractions implying a breach of Articles 2 (right to life) and 3 (prohibition of torture) of the European Court of Human Rights (ECtHR);
infractions which result from or have dealt with the enforcement of laws, ordinances, orders, or instructions and directives pertaining to the functioning and the organisation of police services, notably the forgery and use of falsified documents, embezzlement, theft of material, concealment, the act of following an order (infraction of Art. 126§3 of the law of 7 December 1998)	Death of a person placed under surveillance by a police service
Breaches of professional secrecy;	Terrorist infractions (Articles 137 to 141ter of the Penal Code);
Illegal access to computer systems;	Corruption (Article 246 and the following from the Penal Code), whilst this occurs in an organised context, criminal conspiracy (Articles 322 to 324 of the Penal Code) and participation in a criminal organisation (Articles 324a and 324b of the Penal Code);
Moral crimes, attacks against modesty and other related infractions committed by members of the police service;	Infractions against the course of operations where special methods of searching such as illegal listening (Article 259 bis and following from the Penal Code);

³²¹ Comité P, Annual Report 2012 page 77

³²² AIG Annual report for the years 2011-2012 page 26

ANNEX 3 – STATISTICS

Acts of harassment by people which hold a key position at the heart of the police service;	Complaints borne by police officers regarding infractions susceptible to have been committed in the line of duty where they are charged with an important criminal case by the nature and seriousness of prejudices or by their effect on public opinion.
Narcotics;	Infractions of the law of 10 May 2007 modifying the law of 30 July 1981 criminalising certain acts inspired by racism and xenophobia which, due to their repetitive nature, are signs of a blurring of the general norms at the heart of the police service concerned.
Theft.	

Table No. 13: Number of complaints dealt with by the "Ho-Lijn" in Flemish Community in 2013³²³.

Jo-Lijn (line of complaint)	2013
Formal complaint of front line	20
Withdrawal and termination of the complaint	5
Internal treatment of complaint of second line	4
Conciliatory treatment of the complaint	35
Transfer of the complaint to establishments (private) of second line	7
Total	71

Table No. 14: Information communicated within Detention Centres for foreigners during administrative Intake pertaining to the right to file complaints by the occupants with the Commission of complaints³²⁴:

	Written information	Oral information	Oral explanation on the procedure
Centre 127	No	No	Not applicable
Centre 127 bis	No	Yes	No
CIB	Yes	No	Not applicable
CIM	Yes	Yes	Yes
CIV	Yes	No	No

Table No. 15: Information communicated within Detention Centres for foreigners during administrative Intake concerning the right to file complaints by occupants with the director of the centre³²⁵:

	Included in the Internal Rules	Communicated during intake	Delivery of an appointment form
INAD	No	No	No
Centre 127	Yes(not delivered during intake)	No	No
Centre 127bis	Yes(not delivered during intake)	Yes	Yes
CIB	Yes	No	No
CIM	No	No	No
CIV	Yes	No	Yes

³²³ Flemish Mediator, « Eerstelijnsrapport klachtenmanagement werkjaar 2013 », KLM-jaarrapport 2013 Beleidsdomein WVG, p. 8

³²⁴ Federal Mediator, « Investigation sur le fonctionnement des centres fermés gérés par l'Office des étrangers », juin 2009, p.182, §963

³²⁵ Federal Mediator, *op.cit.*, p.180, §955

