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COMMITTEE ON THE RIGHTS OF THE CHILD

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION

Initial reports of States parties due in 1994

Addendum

BELGIUM

[12 July 1994]

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INTRODUCTION

1. The Government of Belgium presents its initial report on the implementation of the Convention on the Rights of the Child in conformity with article 44, paragraph 1 (a), of the Convention. This report deals with the measures taken by Belgium giving effect to the rights recognized in the Convention and indicates the progress achieved in the enjoyment of those rights. In connection with the various articles of the Convention, information is given on Belgian legislation in this area, and on any changes noted in the exercise of the various rights mentioned in the Convention.

2. This United Nations Convention of 20 November 1989 entered into force in Belgium on 15 January 1992, following the deposit of the instrument of ratification with the Secretary-General of the United Nations on 16 December 1991. It was the subject of the Approval Act of 25 November 1991 and was approved by Decree of the Flemish (15 May 1991), German-language (25 June 1991) and French (3 July 1991) Communities with the aim of making it effective in respect of matters within the competence of those Communities.

Part I

GENERAL MEASURES OF IMPLEMENTATION

I. Measures taken to harmonize Belgian law and policy with the provisions of the Convention

A. At the federal level

3. Following the entry into force of the Convention in Belgium, there has been a trend in both legislation and judicial practice towards compliance with the requirements of the Convention in respect of, first, article 12, and secondly, legislation on child labour.

1. Compliance with article 12 of the Convention

4. Although at present Belgian laws provide for the hearing of children only in exceptional cases (see below), legislative amendments are under consideration with a view to guaranteeing this right to be heard. Judicial practice is also moving in this direction. During the past few years, several courts (notably Ghent Court of Appeal, on 13 April 1992 and 1 February 1993; Liège Juvenile Court, 7 March 1994; Liège Court of Appeal, 24 June 1992; Liège Civil Court, 22 November 1991; Court of Cassation, 11 March 1994) have given effect to article 12 of the Convention. In divorce proceedings, judges have accepted requests that children should be heard on condition that the latter are capable of forming their own views.

5. A recent judgement of the Mons Court of Appeal of 20 April 1993 not only recognized the direct effect in Belgian domestic law of article 12 of the Convention, and hence the existence of a minor’s real subjective right to be heard, but also established the possibility for the minor to exercise this right through the procedural means of voluntary intervention in the judicial proceeding concerning him. Judicial decisions are therefore tending to favour the hearing of the child, a trend which is unquestionably echoed by the

political authorities. Various bills concerning divorce proceedings are currently under discussion in Parliament. In the context of these discussions, there is a proposal to incorporate the general thrust of article 12 in the Belgian Judicial Code and to establish rules that will apply to all proceedings concerning children and not just divorce proceedings. These provisions would enable the child to address a request to the judge, who could of his own motion decide that a child could be heard, in which case the child could refuse the opportunity.

6. Although the principle of the hearing of the child seems to have been established, the age from which a child may be heard is still the subject of discussion. Belgian law could in fact adopt the concept contained in article 12 of the Convention of a child capable of forming his or her own views, which would give the courts greater room for manoeuvre, or set the age at 12 years.

7. The latter solution would create a parallel with the recent Act of 2 February 1994 amending the Protection of Young Persons Act. The former Act, which should enter into force in September 1994, provides that a juvenile court has an obligation to hear a minor as from the age of 12 years, even if he is not a party to the case, when his interests are directly involved in disputes between persons vested with parental authority over him. Similarly, provision is made for a personal hearing by the juvenile court judge of children aged 12 or over before any provisional measure can be taken concerning them.

2. Legislation relating to child labour

8. Article 7.8 of the Child Labour Act of 5 August 1992 has reflected article 12 of the Convention in the following manner: "The competent official shall, in the individual derogation, establish specific additional conditions for the performance of the activities referred to in article 7.2. These specific additional conditions relate, inter alia, to: 2.7: ascertainment whether or not the child consents to perform the activity, the opinion of the child being duly taken into consideration in the light of his age and degree of maturity".

9. Similarly, articles 32 and 36 of the Convention are reflected in article 7.1.2 of that Act: "It is in all circumstances forbidden to cause or allow children to perform an activity which may have an unfavourable effect on their development in educational, intellectual or social terms or endanger their physical or moral integrity, or which may be prejudicial to any aspect of their well-being".

B. At the Community level

1. In the French Community

10. The French Community has developed two initiatives directly based on the philosophy underlying the Convention on the Rights of the Child: the publication of a new decree on assistance to young people and the formulation of a young children’s charter, intended to define the lines to be followed by a coherent medium and long-term policy on young children.

(a) Decree on assistance to children

11. The Decree of 4 March 1991 relating to assistance to children and young people puts particular stress on the need to keep children in the family environment. The Decree was drafted after a number of academic personnel had given their views and in the context of three-way consultations involving all the milieux concerned (social, judicial and political). The implementation of this Decree should result in assistance-seekers being directed towards the appropriate services and in coordination of the activities undertaken for their benefit, a task entrusted to the counsellor for assistance to young people. Children and young people are implicitly recognized as subjects of law since the Decree guarantees them greater participation and respect for their fundamental rights. The principle of "dejudicialization" constitutes an important step forward: it emphasizes the will of the French Community to ensure that the social problems encountered by young people are dealt with by the social institutions, and not by the judicial authorities.

12. The intervention of the judicial authorities is reduced to cases in which measures of constraint have to be taken in respect of the child, or his family or friends, when the physical or mental integrity of the child is seriously endangered, or when one of the persons vested with parental authority or having custody of the child refuses the assistance of the counsellor or fails to put it into effect. In these precise cases, the judicial authorities remain the best guarantor of respect for the rights of defence.

13. The new system of assistance to young people stresses prevention and the means used to avoid marginalization of young people by emphasizing the importance of young people remaining in their milieu. This prevention takes such diverse forms as social assistance, assistance to families, training, education, health, leisure, sport and culture.

(b) Young Children's Charter

14. The Young Children's Charter is a declaration of intent constituting an intermediate step towards the adoption of a covenant on young children. This Charter, which concerns children up to the age of 12, pays particular attention to children up to the age of 7. It also sets out rights of parents, as well as enunciating the following rights:

Right of the child to an adequate standard of living to permit his physical, intellectual, emotional and social development (art. 1);

Right of the child to enjoy the best possible state of health (art. 3);

Right of the child to benefit from social security (art. 4);

Right of the child to education (art. 5);

Right of the child to respect for his natural rhythm (art. 6);

Right of the child to receive quality care at the time of his birth and during the period he remains in a maternity clinic (art. 7);

Right of the child to lead a full and decent life (art. 8);

Right of the child to free medical follow-up care (art. 9);

Right of the child to assistance and specialized care when his health or safety is in danger (art. 10);

Right of the child to family allowances (art. 11);

Right of the child to rest and leisure (art. 12);

Right of the child to places where he will receive continuing attention (art. 13).

2. In the Flemish Community

15. In the Flemish Community, articles 3-21 of the Decrees relating to special assistance to young people, as coordinated on 4 April 1990, establish regulations concerning voluntary assistance for children with behavioural problems. Behaviour problems occur in a situation where the physical integrity and possibilities of emotional, moral, intellectual or social development of children are jeopardized by exceptional events, relational conflicts or the conditions in which they live.

16. This assistance is in most cases provided in the child's family environment, but if the child's interests so require, he may be placed in an institution. The organization of assistance concerns two administrative bodies, namely, the care of young people committee, which exists in each administrative district, and the mediation commission responsible for special assistance for young people, which exists in each judicial district.

17. Any person - and consequently any minor - may bring behavioural problems to the attention of the care of young people committee. This committee can organize assistance only with the consent of the minor's parents or the persons having custody over him. If the assistance provided affects the minor's personal freedom, he must also give his consent if he has reached the age of 14 or express his views if he is under the age of 14.

18. If, in the absence of the necessary consent, the committee is unable to organize assistance, a request for mediation may be presented to the mediation commission responsible for special assistance to young people by the minor or any trustworthy person who defends his interests de jure or de facto. The mediation commission is responsible for mediation between all the parties concerned, with the aim of organizing voluntary assistance. The minor may be assisted or, if the mediation commission authorizes such a course, be represented by a trustworthy person of his choosing at the hearings of the commission. If the minor himself is not capable of taking such action, the commission may appoint a trustworthy person ex officio.

19. The assistance is provided under an assistance programme and in accordance with an action or support plan which, in consultation with all the parties concerned, notably the minor himself, is prepared at the beginning of the assistance and is evaluated on its completion.

3. In the German-language Community

20. The German-language Community does not envisage any specific activity in the context of the Convention on the Rights of the Child, but several of its activities will be in conformity with the objectives stated in the Convention. The German-language Community has nevertheless set a number of objectives to be achieved by the year 2000. A draft decree relating to assistance to young people is under preparation and will be submitted to the Community Council in the course of 1994. Its purpose is the "dejudicialization" of this question and involves young people and their families in the decision-making process.

II. Existing or planned mechanisms at national or local level for coordinating policies relating to children and for monitoring the implementation of the Convention

A. At the federal level

21. At this level it is planned to establish a group of experts responsible not only for following up the implementation of the Convention in Belgium and supervising its execution, but also for coordinating the various initiatives taken at the federal, Community, regional or even local level relating to the rights of the child.

B. At the Community level

22. Generally speaking, two para-Community institutions and one ministerial department are concerned with children, even before their birth, and with protection of the family nucleus. These are the Birth and Children Office (ONE) in the French Community and the Kind en Gezin ("Child and Family" in English) in the Flemish Community. The Dienst für Kind und Familie (DKF), the equivalent department in the German-language Community, is on the other hand directly integrated within the Ministry of Health, the Family and Social Affairs. It is nevertheless important to make it clear that these departments, to which reference is frequently made in the report and which provide basic assistance, only deal with children up to the age of 6, except in the case of certain more specific questions such as adoption or ill-treatment of children. Lastly, it should be stressed that the services are of a voluntary nature.

1. In the French Community

23. The Births and Children Office (ONE) was established on 30 March 1983 by a Decree of the French Community's Executive. In addition to its concern with questions of medicine and hygiene, reflected in the protection of pregnant women, mothers and children (up to the age of 6) within the family, the ONE constantly seeks to promote the mental and social equilibrium of the protected persons. It is directly subordinate to the French Community's Ministry of Health and Social Affairs and will therefore also deal with cases of ill-treatment of children.

24. In appointing, by an Executive Decree of 10 July 1991, a Delegate-General for the rights of the child and assistance to young people, the French

Community took a further measure extending and giving specific form to recognition of the Convention. The Delegate-General has the following responsibilities:

(1) Informing private, natural or legal persons and persons in public law about the rights of young people;

(2) Ensuring the proper enforcement of laws, decrees, orders and regulations which concern young people and, where necessary, informing the Crown Procurator;

(3) Submitting to the Government of the French Community all proposals aimed at adapting the regulations in force with a view to the more comprehensive and effective protection of the rights of young people and making all necessary recommendations in this connection;

(4) Receiving information, complaints or requests for mediation relating to abuses of the rights of young people. A comprehensive system of coordination of assistance to young people, in line with the proposals for follow-up action in relation to the World Summit for Children, has thus been set up.

25. In the context of these responsibilities, the Delegate-General:

(1) May address to the authorities of the State, French Community, region or communes or to any institution subordinate to them requests for an inquiry or investigation;

(2) May, within the limits set by the Constitution, have access during normal working hours to all premises of private or Community public services subsidized by the French Community;

(3) May receive from senior officials and other personnel of these services such documents and information as he deems necessary, with the exception of those which are subject to medical confidentiality or which they learned about in their capacity as official recipients of essential confidential information.

Having been appointed and operating within the Community, he will also have the important role of establishing links with the State's other decision-making bodies on non-Community matters.

2. In the Flemish Community

26. Kind en Gezin is a Flemish public institution established by the Decree of 29 May 1984. It is responsible for promoting the prospects, well-being and health of children (up to the age of 6) and assisting, in the care given to children, parents or other persons who, without necessarily having this status, in law or in practice assume a parental role. In this context, attention is given both to the physical health of the child and to his mental and social condition. Generally speaking, stress is laid on the improvement of the child's quality of life. This responsibility particularly concerns children under the age of 3 years. However, Kind en Gezin may, if

circumstances so require, take a number of measures for the benefit of children of other ages (Decree of 29 May 1984 establishing the institution).

27. A number of articles of the Convention relate directly to questions forming part of the activities of Kind en Gezin. This is the case, inter alia, with article 24, which deals with the right of the child to receive the highest attainable standard of health care, and the articles relating to the protection of children against violence, abuse and ill-treatment, the rights of disabled children and the rights of the child with regard to adoption. The Convention has in fact become the reference text for all the initiatives taken by Kind en Gezin, and this approach has recently been approved by its governing body.

28. In order to give effect to the Convention, Kind en Gezin has launched a number of initiatives.

(a) The establishment of ombudsman services

29. Since November 1992, an ombudsman has been appointed in each provincial branch of Kind en Gezin. The officials in charge of these branches use the Convention as a guide for their everyday activities; when confronted with specific cases, they determine whether the young child in question is being treated in accordance with his rights as recognized by the articles of the Convention. In the first instance, the ombudsman service deals with complaints. In addition, it ensures that there is maximum access to the services offered. To this end, in response to each request for individual intervention submitted to it, the ombudsman service lists the possibilities of action by Kind en Gezin or by other bodies active in the same sectors. In difficult cases, positive results are sought through consultation, conciliation or coordination. If, despite this, it is apparent that a child aged under three years is still not enjoying his rights, the ombudsman service endeavours to define the problem more precisely (a deficiency in the existing assistance services, non-existence of a specific assistance service, negative consequences of the regulations concerned, etc.).

30. Through its work in the field, Kind en Gezin is able to highlight social trends and to formulate reports and statistics enabling the overall situation to be evaluated. These studies in turn provide means of formulating genuinely satisfactory proposals for legislation. Through their daily contacts with young parents and with those concerned with the welfare of young children, the ombudsman services can identify both the strengths, and weaknesses of the existing assistance services. Supplementary research work provides an even better understanding of the situation of young children. These two activities together, in principle, enable the ombudsman services to indicate the extent to which the Convention is already being implemented and to draw up a list of measures taken in order to facilitate access to the rights embodied in the Convention. The ombudsman services produce annual reports for the governing body of Kind en Gezin in which they mention difficulties encountered and possible solutions and make suggestions.

(b) Encouraging the authorities to take action to promote the rights of the child

31. Kind en Gezin's memorandum of December 1991 advocating an agreed new governmental approach stated: "The Convention on the Rights of the Child must be used as an opportunity for new initiatives for the benefit of children. The appointment of an ombudsman for children will undoubtedly constitute a valuable means to this end".

3. In the German-language Community

32. The transfer of the competence and resources of the national ONE to the German-language Community was effected by the Decree of 9 May 1988. Apart from traditional activities such as medical-social consultations for pregnant women and children up to the age of 7, the Dienst für Kind und Familie (DKF) has set itself the goal of increasing home visits by nurses, preferably nurses additionally qualified as social workers. Sex education is also promoted by this service in a non-school environment. Through its high level of acceptance in families, the DKF is the first and in many cases principal body in touch with parents. Through this public activity, the DKF also uncovers problems which not only concern the child's standard of health or education, but affect much more specific situations such as misunderstanding in the couple, financial and social problems, drug dependency, ill-treatment, etc.

33. In following up these problematic situations, the DKF tries to coordinate its action with other bodies involved, notably the Young People's Protection Committee, the public social assistance centres (CPAS) and the judicial bodies. This close collaboration has made it possible to identify and monitor in an effective and concerted fashion problems of education, ill-treatment or dependency. Another example of this successful coordination is the establishment of an adoption service managed jointly by the DKF, the mental health centre and the host family service.

III. Measures taken or foreseen to make the principles and provisions of the Convention widely known to adults and children alike

34. Far-reaching promotion and information campaigns have been undertaken in Belgium since 1989 through the ONE, Kind en Gezin, UNICEF and a number of non-governmental organizations with the aim of making the principles and provisions of the Convention known by appropriate and active means (Convention, art. 42). Brochures explaining the major principles of the Convention to children have been published and distributed in schools and youth movements. In addition, seminars organized by French and Dutch-speaking universities have enabled debates to be held on the major legal, psychological and sociological questions posed by the implementation of the Convention in Belgium.

35. For the first anniversary (16 December 1992) of the ratification of the Convention by Belgium, on the initiative of a non-governmental organization a conference presented by a psychiatrist and a judge was organized with the aim of reviewing certain specific points in the development of Belgian practice or

legislation since the adoption of the Convention. For its part, the Ministry of Social Welfare has also published and distributed brochures on the rights of young people and entitlement to social security.

A. In the French Community

36. In the French Community, the Delegate-General for children's rights has taken the initiative in publishing a brochure for young people entitled "Everything you always wanted to know about your rights but never dared ask". It contains information on the Convention, the Delegate-General for children's rights and assistance to young people, and the Youth Assistance Counsellor. The brochure was distributed primarily in the youth assistance services at the end of 1991. It was republished in September 1992 for distribution in schools. It contains various additions, including the Young Children's Charter, and information on the role of the judicial authorities and on school law. Posters informing young people of the responsibilities of the Delegate-General were also distributed in all sectors concerned with children. Stress should also be laid on the initiative taken by academic circles, which now give courses on the rights of the child in particular.

37. In addition, non-governmental organizations, such as Defence for Children International Movement, and other organizations such as the Mouvement Défense-Droits de l'Enfant and the Ligue des Droits de l'Enfant have set themselves the primary objective of ensuring that Belgium fulfils the commitments deriving from the adoption of the Convention. In this context, they receive any information relating to any discrepancy between Belgian legislation or State practices and the Convention, and undertake any inquiry necessary for respect for the Convention.

B. In the Flemish Community

38. In the Flemish Community, Gids voor Het Gezin, published on the occasion of the International Year of the Family, draws attention to the Convention. As regards activities to promote family education, the Royal Decree of 11 March 1974 organizing the granting of subsidies for activities designed to promote family education and encourage the development of family life and the training of persons responsible for family education offers the possibility of addressing the subject of the rights of the child during these activities.

39. In the Decree of 24 July 1991 relating to general social assistance, article 3 stipulates that the purpose of such assistance is to organize assistance activities with the aim of preventing, mitigating, identifying and eliminating problems that threaten or reduce the chances of well-being for individuals, families or groups. The consequent executive orders have not yet been approved, and work is now in progress on the existing regulations, notably with regard to youth centres. The instrument in question is the Flemish Executive Order of 12 December 1990 establishing the conditions for approval and subsidization of youth centres. These centres regularly distribute information guides and brochures relating to children, young people and their rights. The Federatie van de Jongeren Informtie-en Adviescentra also regularly publishes an information guide. The 1994 edition, which is entitled Jongerengids 94, om te weten waar je staat, is available

free of charge. The policy of assistance for disadvantaged persons supports the Vierde Wereld movement, which deals with the rights of the child.

IV. Measures taken or foreseen to make the report of Belgium widely available to the public at large

40. Since the drafting of the Belgian report is the result of cooperation between the various national and Community bodies having competence in this area, these authorities will, each in their own field, endeavour to ensure that it is as widely available as possible. Thanks to this collaboration, the report will be distributed in schools, universities, non-governmental organizations and so on. The first step to be taken will be to translate the report into the two other national languages, Dutch and French.

Part II

DEFINITION OF THE CHILD

Definition

41. The definition of the child in Belgian civil law is in line with the one in article 1 of the Convention, although Belgian law prefers the term "minor" to "child": "A minor is an individual of either sex who has not yet attained the age of 18 years" (Civil Code, art. 388).

Civil majority

42. The age of civil majority, previously fixed at 21 years, was lowered to 18 by the Act of 19 January 1990, which came into force on 1 May 1990 (Moniteur belge of 30 January 1990). The chief argument in favour of lowering the age of majority was "to adapt the legal rules to the new social reality, that is to say, in particular, the greater independence and effective emancipation of young people around the age of 18". This age seems to be a turning-point, since it coincides more or less with the end of secondary education and the beginning of higher education or working life. But even before the 1990 Act, a young person could exercise a whole series of rights from the age of 18, such as the right to conclude a work contract, to vote in certain elections, to be criminally liable, etc.

Minimum legal age for the exercise of certain rights and obligations

43. As regards the minimum legal age for the exercise of certain rights and obligations, although Belgian law lays down a minimum age in some situations, it is silent in others.

1. Consultation of a lawyer without parents' consent

(a) At the federal level

44. There is no provision in Belgium fixing the minimum age at which a child can consult a lawyer. From the standpoint of the organization of justice, it

should be mentioned that on the initiative of certain bar associations, a voluntary service is provided at juvenile courts, offering free advice to young people involved in court proceedings.

(b) At the Community level

45. In the French Community, young persons law services make legal advisers available to minors, backing up various kinds of judicial action taken to help young people in proceedings before the juvenile court, actions against Public Social Aid Centres, actions under educational law, etc.

46. In the Flemish Community, there are a number of centres giving young people easier access to legal advisers. They include the following:

(i) Youth Centres: article 3.3 (b) of the Flemish Executive Order of 12 December 1990 establishing the conditions for approval and subsidy of youth centres makes it a condition for approval that the centres should perform, on a permanent basis, the following function for persons, families or groups under the age of 25 who are in social difficulty or in particular danger: to formulate precisely, with the persons concerned, the assistance they need or their social difficulty, to find the most viable solutions and to help realize them by providing information and advice of a material, social, psychological, legal or medical nature. All approved centres perform this function, since it is a condition for approval. The Bruges Youth Centre has organized a law bureau for children as part of its activities. In addition, the Federation of Youth Centres has set up an information telephone line through "Overleg Kinderen Jongerentelefoon". The centres received a non-regulated subsidy of BF 300,000 for this purpose in 1993.

(ii) Everyday Life and Family Affairs Centres: article 4.1 (d) of the Flemish Executive Order regulating the approval of Everyday Life and Family Affairs Centres and the granting of subsidies to them makes it a condition for approval of such centres that they must provide information and, where appropriate, advice on the basic concepts of personal and family law. Eventually, these two texts will be amended to form an order implementing the above-mentioned decree of 24 July 1991 concerning general social aid.

(iii) Public Social Assistance Centres (CPAS): In accordance with the Flemish Community Executive Order of 6 February 1991 laying down objective criteria for allocations from the Special Social Assistance Fund, subsidies are awarded, in connection with projects for the disadvantaged, to CPAS which set up legal aid services.

47. Article 16 of the Decrees on special assistance for young people, coordinated on 4 April 1990, provides that when a request for mediation has been submitted to the mediation commission for special assistance to young people in connection with a behavioural problem with a view to an agreement on (voluntary) aid, the minor can be assisted, or if the mediation commission so authorizes, represented by a trustworthy person of his choice. If the minor

himself is not capable of doing so, the mediation commission may appoint a trustworthy person on its own initiative. The person in question may be a lawyer.

48. In the German-language Community, free legal advice for children and young people is provided through a young persons' information service (Infotreff) subsidized by the Community. The social service of the Committee for Protection of Young Persons (called in the draft decree "Service for Assistance to Young Persons") is ready to consider any request relating to assistance to and protection of young people, regardless of the age of the person making the request.

2. Consultation of a doctor without parents' consent

49. A young person has the right, in consultation with his parents, to choose "his" doctor and "his" medical treatment. If a minor's parents are opposed to any particular medical treatment, the doctor can disregard their view if the minor is capable of forming his or her own views, i.e. of due discernment. There is thus no fixed minimum legal age, but the care provided by the doctor will depend on the child's degree of "discernment".

3. Fulfilment of compulsory education requirement

50. Under the Act of 29 June 1983, full-time education is compulsory from the age of 6 to 15. From his sixteenth to his eighteenth birthday, a young person is obliged to pursue at least part-time education; he thus has a choice between full-time or part-time education.

4. Part-time work

51. From the age of 15, a young person engaged in part-time education can enter into a contract for part-time ordinary work. In such cases, the young person is normally covered by all aspects of the social security system, except the pension fund, to which he accordingly does not contribute. In addition, a working pupil can be recruited part-time under a practical training contract on condition that he is registered as seeking part-time work.

5. Full-time work

52. Under article 7.1.1 of the Labour Act of 16 March 1971 it is forbidden to employ minors who are still covered by the full-time education requirement or to employ them on work that is outside the framework of their education or training. It is thus only from the age of 18 that a young worker can enter into a full-time employment contract.

6. Dangerous work

53. Young workers under the age of 18 may not do underground work at mines, opencast workings or quarries (Act of 16 March 1971, art. 8). In article 9, the Act states that workers under the age of 18 may not do work that is beyond their strength, threatens their health or places them in moral danger.

7. Consent to sexual relations

54. The law considers that a minor under the age of 16 does not have enough "discernment" to enter into a sexual partnership. It therefore implies that such a minor can never consent to sexual relations, even if it is proved that he or she was consenting or that his or her attitude was provocative. In principle, "consenting" sexual relations are free from the age of 16, provided that they do not offend public morality.

8. Consent to marriage

55. The age at which a person can lawfully enter into marriage was changed under the Act of 19 January 1990. New article 144 of the Civil Code states that the minimum age for marriage, both for young men and for young women, is uniformly fixed at 18. (Before the reform, a boy could not contract marriage before the age of 18 and a girl before the age of 15; a young person old enough to marry could do so but would have to have the consent of his parents if under the age of 21. As things now stand, the age of legal capacity is the same as the age for marriage: a young person of 18, being of age, can marry without needing parental consent. It is possible to obtain permission for marriage at a younger age "on serious grounds". The juvenile court is competent to give such permission.

9. Voluntary enlistment in the armed forces

56. For persons who are not candidates for the rank of non-commissioned officer, the Royal Decree of 13 November 1991 on the recruitment and training of volunteer candidates, adopted in implementation of the Act of 21 December 1990 containing the regulations governing candidates for active military service, states in articles 6 and 7 that the candidate must have fulfilled the compulsory education requirement: a candidate wishing to enlist as a regular soldier must either hold a diploma or certificate showing that he has successfully completed the first three years of secondary education or the equivalent, or be able to produce a certificate to the effect that he is capable of satisfying these conditions at the end of the current school year. For officers, the various statutory provisions fix a minimum age of 17 to be reached by the candidate during the year in which he is accepted for training. In the case of non-commissioned officers, it is possible for candidates to follow a course of training before the age of 16. In such cases, they will be civilian pupils up to the age of 16, after which they will receive military training combined with the syllabus for full secondary education.

10. Call-up

57. In peacetime: Until December 1992, military service was compulsory in Belgium. Under article 4 of the Acts on the militia, coordinated on 30 April 1962, every Belgian, from the year in which he reached the age of 16, was registered on the call-up lists for the year in which he reached the age of 19. Deferment was possible in the situations covered by article 10 of the same Act. Early call-up was also possible: in such cases, the recruit was allowed to serve with the class of the year in which he reached the age of 18 on condition that he was found to be fit to serve. The Act of

31 December 1992, limiting the application of the old legislation to militiamen whose call-up year was 1993 or earlier, has now suspended any obligation to do military service.

58. In wartime: Due account being taken of the limitations introduced by the Act of 31 December 1992, article 2, paragraph 4, of the Acts on the militia coordinated on 30 April 1962 states that "militiamen shall be part of the recruitment reserve from 1 January of the year in which they reach the age of 17, until the time when they are taken into the army or their military obligations come to an end. This reserve can only be called up in the event of war or a threat to the territory".

11. Freedom to testify before the courts

59. The Judicial Code states in article 931 that a minor under the age of 15 may not be heard on oath, but that his statements may be taken for purposes of information. According to article 961, evidence given by a person incompetent to testify is null and void. A child, moreover, cannot be heard in a case in which his ascendants have opposing interests. It follows from these rules that, as the law now stands, a judge in an ordinary court cannot hear testimony, in the context of the examination of witnesses, from the child of two parents who are in conflict over the exercise of parental authority. He could, on the other hand, hear as a witness the child of only one of the parties to the dispute, e.g. the child of a previous marriage, or even the child of the new partner of one of the parents, but he could only do so in conformity with the rules of procedure applicable to the examination of witnesses and, in particular, the rule stating that witnesses shall be heard in the presence of the parties and, hence, of their lawyers (Judicial Code, art. 933).

60. In criminal matters the intention has also been to exclude the evidence of persons whose credibility seemed to be open to question. Among other conditions, therefore, the law imposes an age-limit for witnesses who are to be heard: the witness must be at least 15. Under article 79 of the Code of Criminal Procedure, however, children of either sex under the age of 15 can be given a hearing in the form of a statement and without taking an oath.

12. Criminal liability

61. A person under the age of 18 at the time when he committed an "act characterized as an offence" is not dealt with under the criminal law, but, at the federal level, under the Protection of Young Persons Act of 8 April 1965. This Act has been amended and supplemented by decrees by the Communities, which are now competent in the matter of protection of young persons.

62. As far as juvenile offenders are concerned, however, the federal authority remains competent to determine the measures that may be taken, although the application of those measures depends on the Communities. Minors who have committed acts characterized as offences will be brought before the juvenile courts, which can order protection measures, not impose punishments. The law thus considers that a minor cannot be held responsible for an offence even if all the elements constituting the offence are present. Nevertheless, minors over the age of 16 who have committed offences against the traffic

regulations will be prosecuted before the ordinary criminal courts (Act of 8 April 1965, art. 36 bis). But if it becomes evident from the proceedings in these courts that a custodial, preventive or educational measure is more appropriate, the courts can relinquish jurisdiction, stating the reasons for their decision, and refer the case to the Procurator's Office so that it may take the matter before the juvenile court.

63. Under article 38 of the Act of 8 April 1965, a minor brought before the juvenile court can nevertheless be tried as an adult if he was over the age of 16 at the time of the offence and if the court considers that any custodial, preventive or educational measure would be inadequate. In that case, the juvenile court may, giving reasons for its decision, relinquish jurisdiction and refer the case to the Procurator's Office with a view to proceedings before the competent court. In the eyes of the law, however, such relinquishment of jurisdiction should remain an exception. A minor under the age of 16 can never be prosecuted before an ordinary criminal court.

13. Deprivation of liberty; imprisonment

64. The Act of 20 July 1990 on remand in custody is not applicable to minors. Under article 53 of the Act of 8 April 1965, the judge of the juvenile court, and exceptionally the examining magistrate, may have a minor held provisionally in a local prison for not more than 15 days. This measure has been abolished by the Flemish Community and the French Community in so far as it refers to minors who are not offenders.

65. In practice, an offender who is a minor and is suspected of having committed a serious offence such as serious theft or an act of violence against persons or property is taken by the police before the Crown Procurator's Office: the competent magistrate has a personal interview with the minor and an investigation is made into the substance of the matter. The minor may be held at the police station for up to 24 hours. In serious cases, the Crown Procurator's Office will ask the judge of the juvenile court to take appropriate provisional measures with a view to releasing the minor under supervision or placing him in police custody, and, in exceptional circumstances, it will refer the matter to the examining magistrate. These decisions are determined by certain specific aspects of the facts, the personality of the offender and his background.

66. Article 53 of the Act of 8 April 1965 specifically provides that provisional custody in jail may only be used "if it is in practice impossible to find an individual or institution to receive the minor straight away". As long as the infrastructure of public institutions for observation and supervised education, particularly closed institutions, remains inadequate over large parts of the country, the present article 53 of the Act of 8 April 1965 will have to be maintained. The application of this article nevertheless has to be accompanied by substantial legal safeguards for the minor. As things stand, article 53, as amended by the Act of 2 February 1994, is in conformity with Belgium's international obligations as spelt out by the European Court of Human Rights (Bouamar decision). This subject will be discussed further in connection with the consideration of article 37 of the Convention. Under article 60 of the same Act, the judge of the juvenile court may, at any time and before the expiry of the 15-day period, either on his own

initiative, or at the request of the Procurator's Office, revoke or modify the original decision (e.g. changing it to placement in a specialized environment, either open or closed).

67. In the French Community, the Decree of 4 March 1991 on assistance for young persons states in article 18 that committal to a closed environment can only mean to a public institution of the Community and that this procedure is reserved for young persons prosecuted and placed under a judicial decision ordering such placement.

68. In the Flemish Community, the Decrees on special assistance for young persons, coordinated on 4 April 1990, state in article 23 (not yet in force) that a minor with behavioural problems cannot be placed in an appropriate closed establishment of the Community unless the following threefold condition is met: (a) he must have reached the age of 14; (b) he must have run away several times from the family he is living with or the open establishment in question; (c) the measure must be necessary in order to maintain the integrity of his person. This measure, which may not exceed a duration of three months, may nevertheless be renewed once for the same maximum period of three months.

14. Consumption of alcohol and other controlled substances

69. Since 1 January 1991 there has been a Royal Decree prohibiting smoking in closed premises (i.e. "any place that is normally cut off from its surroundings by walls and has a ceiling") which are open to the public and form part of establishments or buildings in which services are provided to the public, patients are treated, young people are accommodated, etc. There are penalties for adults who disregard the ban on smoking in these premises. In the case of young people under the age of 18 who contravene this regulation, the juvenile court is competent to take any protective measures that it considers it necessary to impose with regard to them.

70. In the event of consumption of alcohol which would place a minor in danger, the matter can be brought before the juvenile court by the Crown Procurator or on the basis of a complaint by the parents or the person who has custody of the minor. The juvenile court can reprimand the minor and place him under the supervision of the competent social service or apply to him one of the protective measures provided for in the Protection of Young Persons Act of 8 April 1965 through a representative of the court.

71. As to the abuse of other drugs (narcotics, sleeping pills, etc.):

(a) If the Crown Procurator learns of a minor manufacturing, acquiring, possessing or selling drugs or being involved in group drug consumption, he brings the matter before the juvenile court, which can take protective measures with regard to the young person in question.

(b) If a young person aged between 16 and 18 commits repeated offences owing to drug consumption, the juvenile court is likely to relinquish jurisdiction and refer the case to the Crown Procurator with a view to prosecution after arranging for a social study and a medical and psychological examination.

72. Apart from these few examples, Belgian law lays down a minimum legal age for the exercise of other rights and obligations. These are discussed later on in the report (with regard to adoption, establishment of filiation, guardianship, recognition of a child, the right to social assistance and the right to a minimum livelihood, etc.).

Part III

GENERAL PRINCIPLES

I. Non-discrimination (art. 2)

A. At the federal level

73. Following the ruling against Belgium on 13 June 1979 by the European Court of Human Rights in the Marckx case (discrimination between a natural and a legitimate child regarding the right to respect for privacy and family life) and in view of certain instances of discrimination in matters of succession (see Vermeire case judgement of 9 November 1991 of the European Court of Human Rights), Belgian legislation concerning filiation should be adapted to bring it into line with the requirements of the European Convention on Human Rights.

74. The general principle of the Act of 31 March 1987, substantially amending the provisions of the Civil Code, was the equality of all children, whether or not they were born to married parents. On the basis in particular of article 10 of the Constitution, which guarantees the equality of everyone in the eyes of the law, the main objective of the new provisions was to abolish all hierarchy and discrimination in filiations. This objective has materialized both in law (from now on all references to "legitimate", "natural", "adulterine", "incestuous" are deleted) and in substance, with the establishment, of rules to meet the following triple requirement:

(a) Virtually unreserved authorization to establish or dispute any filiation, the sole restriction concerning children formerly classified as incestuous;

(b) Ensuring of complete equality among all children, whether or not born in wedlock, in terms both of their rights and of their obligations;

(c) An indispensable balance between the protection of the family nucleus resulting from a marriage and the rights of children formerly classified as "adulterine".

75. The main principles of the Act of 31 March 1987 may be summed up very briefly as follows:

(a) For all children the maternal filiation is established by simply including the mother’s name in the birth certificate; as the adage has it: "mater semper certa est";

(b) Where the paternal filiation is concerned, the greatest possible latitude is given to the presumption that the husband is the father and, in the case of children not benefiting from this presumption, the law encourages

as far as possible recognition by the father and the use of all forms of proof in filiation proceedings. An innovation in article 331 octies should be mentioned here, namely that in filiation proceedings the courts may order blood tests or any other tests, in accordance with scientific methods;

(c) Whatever method is used to establish the filiation, the value of a child's share in the estate is currently identical;

(d) Lastly, the law endeavours to reconcile the rights of a child formerly classified as "adulterine" with the interests of children born in wedlock. In order to do so, provision has been made for some adjustments on behalf of the spouse and children born in wedlock, which do not, however, prevent children born out of wedlock, from establishing their filiation or from receiving the same advantages in regard to the amount of their share of the estate. In order to meet this necessary requirement of reconciliation, the law stipulates, for example, that "adulterine" children may only be brought up in the matrimonial home with the agreement of their parent's spouse (Civil Code, art. 334 bis).

76. However, as the law stands, it is still impossible for incestuous children to have a dual filiation. When the paternal filiation has been established first, the maternal filiation cannot be established if to do so would reveal an impediment to marriage between father and mother for which the Crown cannot give a dispensation (Civil Code, art. 313, 2, concerning maternal recognition; art. 314, para. 2, concerning filiation proceedings). The same holds for determining the paternal filiation, once maternal filiation has been established first (Civil Code, arts. 321 and 325, concerning paternal recognition and filiation proceedings). This discrimination may, however, be understood in terms of non-legal considerations (in particular moral or sociological). Once the filiation has been established, whatever the method used, all the children and their descendants have the same rights and obligations vis-à-vis their father and mother and the parents and relatives of their father and mother and vice versa.

77. The specific situation of children born of extra-marital relations has led the Legislature to subject the exercise of certain rights to conditions and terms which respect the moral and patrimonial interests of the family nucleus resulting from marriage, without calling in question the equality of the rights of all the children. It may therefore be in the child's interest to claim maintenance when the establishment of filiation is not desirable or possible (in the case of adulterine or incestuous children). The child may then initiate proceedings to claim maintenance without acknowledgement of filiation. The right of the child (Civil Code, arts. 336 to 341: claim for maintenance) vis-à-vis the man who had relations with his mother during the legal period of conception is therefore the same as that provided for in article 203 of the Civil Code (general law maintenance obligation).

78. As to the patrimonial effects of filiation, new article 723 of the Civil Code governs the order of inheritance between heirs by doing away with the previous discrimination vis-à-vis so-called "natural" children. All children have the same rights of inheritance, whether or not born in wedlock, and whether it is in direct line (Civil Code, art. 745, para. 1) or collateral line (Civil Code, art. 752). All descendants have the same inheritable

reserve (Civil Code, art. 913). However, article 837 of the Code introduces the possibility that the surviving spouse and the children born of the marriage can set aside the child born of adulterous relations from the division in kind, and to assign him a share in value, estimated by an expert if necessary. The purpose of this provision is to protect the spouse and children born in wedlock from the intervention of an heir who has not lived in the marital home and who could, for example, require the sale of the estate or a part of it that the family wishes to preserve as such. This option of setting aside children born of adulterous relations from the division in kind is not permitted if these children were brought up in the joint household or if the marriage was dissolved prior to a succession caused by death or divorce.

79. With regard to the right to care and social benefits, the law establishes a different system of social security benefits for children, depending on the parents' occupation and whether they are first, second, third or later children. The social security benefits in force in Belgium on 1 July 1993 differ: ordinary family benefits amount to BF 2,550 per month for the first child of wage-earning parents (BF 4,718 per month for the second child and BF 7,044 per month for the third and each of the following children), BF 743 per month for the first child of independent parents, BF 5,343 per month for the first child of disabled workers (BF 5,523 per month for the second child and BF 7,185 per month for the third and each of the following children), and BF 9,796 per month for the child of an orphan.

80. With reference to advances on maintenance benefits and the payment of these benefits by the public social assistance centres (Act of 8 May 1989, included in the Organization Act of 8 July 1976 on the public social aid centres), the right to maintenance advances was not open to all the children. Children who had obtained the right to maintenance advances, on the basis of article 336 of the Civil Code, did not come within the scope of the Act of 8 May 1989. Hence there was discrimination between the categories of child beneficiaries.

81. Later on, the Act of 29 December 1990 on social provisions (Moniteur belge of 9 January 1991) extended the right to advances on the terms of the maintenance benefit to children who successfully initiated proceedings - without acknowledgement of paternal filiation - for the grant of an allowance for their maintenance, education and appropriate training, against the man who had had relations with their mother during the legal period of conception (hypothesis provided for in article 336 of the Civil Code). In view of this extension of the scope of the law, it may be considered that the statutory provisions concerning maintenance advances are no longer likely to create discrimination between children.

82. By the same Act of 29 December 1990, the conditions governing the right to maintenance advances were also made more flexible, in the section on conditions concerning the person required to pay maintenance, who no longer needs to live in Belgium (he may reside in Belgium or abroad; it is no longer even necessary for his address to be known). The children of single-parent families stand in most need if the person required to pay maintenance cannot

be found and it is impossible to recover the maintenance. Hence, there is no longer any difference as regards access and the right to maintenance advances in terms of whether or not the place of residence is known.

B. At the Community level

83. Generally speaking, the Births and Children Office, Kind en Gezin and the Dienst für Kind und Familie, which look after the well-being of children, guarantee free care and protection to children regardless of any considerations of race, colour, sex, language, religion, political or other opinion of the child or his parents or legal representatives, their national, ethnic or social origin, their financial situation, their disability, their birth or any other circumstance.

II. Best interests of the child (art. 3)

A. At the federal level

84. The rights and integrity of the child occupy a central position in Belgian legislation and policy. The parents have prime responsibility for keeping and bringing up the child, but they (or the other persons legally responsible) must respect the child's life and personal integrity.

85. The child must be protected against ill-treatment, even if it is meted out by the parents. The Protection of Young Persons Act raises the question of the best interests of the child when he is "in danger" and provides for a whole range of measures adapted to the situation experienced by the minor and aimed at remedying it. The protection of minors in danger, however, now comes within the jurisdiction of the Communities, which have taken (French and Flemish Communities) or are on the point of taking (German-language Community and Brussels-Capital Region) the necessary steps to ensure this protection.

86. A young person who commits an offence shows shortcomings in integration into the standards of social coexistence. The offence only justifies intervention to restore or cancel out this integration; this is why, in the protection of young persons, the reaction of society must have an educational purpose, since the child's interests are paramount.

87. This principle is also expressly mentioned in some texts, such as article 319 of the Civil Code, concerning recognition of paternity. This provision, which will be analysed more fully in connection with article 7 of the Convention, provides that recognition may possibly be established in legal procedure in which the judge has broad discretion to appraise the child's interests in being recognized or otherwise by the man who claims to be his father. The court's appraisal will determine whether recognition is advisable and what the child's interests are. It will refuse authorization if the applicant is unworthy, if it sees him as an undesirable father, if indeed it is desirable for the child that this man should not be vested with parental authority (Civil Code, arts. 343-370).

88. When a child is helped by a public social assistance centre (CPAS) under the Organization Act, dated 8 July 1976, it is self-evident that the best interests of the child should be borne in mind. This stems indirectly from

the articles which define the right to social assistance and how the tasks assigned to the CPAS should be ensured. Article 1 of the Organization Act, which sets out the right to social assistance to enable the individual to lead a life in keeping with human dignity, should be taken in the sense in which the notion of each individual's need is completely personal (in this case, the need of the child).

89. In the individualization of the assistance:

> "The public social aid centre performs its task by following the social work methods best suited to the case and by respecting the ideological, philosophical or religious convictions of the persons concerned (art. 59);
>
> Action by the centre, preceded, if necessary, by an investigation, concluding with an accurate diagnosis of the existence and extent of the need for assistance and proposing the most appropriate means for providing it (art. 60, para. 1);
>
> It grants material aid in the most appropriate form (art. 60, para. 3);
>
> While respecting the free choice of the person concerned, it provides the psychological, social, moral or educational guidance required by the person assisted to enable him gradually to overcome his difficulties by himself. It takes into account guidance already provided and the possibility of it being continued by the other centre or service in which the person concerned has placed his trust (art. 60, para. 4);
>
> When the CPAS is not in a position to grant assistance itself, it may resort to the collaboration of persons, establishment or services which, whether public or private, have the means to implement the various solutions required, respecting the free choice of the person concerned" (art. 61, para. 1).

These articles refer to a method pursued by a social worker to obtain the most appropriate aid in keeping with the interests of the person assisted, in this instance, the ever-present interests of the child.

B. At the Community level

1. In the French Community

90. In the French Community, the spirit of the Decree of 4 March 1991, which is aimed, inter alia, at helping young persons in danger or difficulty, is based on scrupulous respect for their rights. As a result, when a social assistant is confronted with several rights at the same time, he must ensure that the child's interests prevail, without opposing the rights of the persons vested with parental authority.

91. Article 3 of the Decree sets out the right to special assistance for all young persons in difficulty and for all children whose health or safety is in danger, or where the conditions of their upbringing are jeopardized by their

behaviour, that of their family or their friends. The purpose of this special assistance is to provide the young persons concerned with an opportunity for a life in keeping with human dignity. The interests of the young person are therefore the essential justification for this special assistance, article 4, paragraphs 1 and 2, of the Decree provide that: "Anyone who provides young persons with the assistance due to them shall respect their recognized rights, their religious, philosophical and political beliefs and shall act in their best interests."

92. With reference more particularly to article 3, paragraph 3, of the Convention, it should be noted that Title VIII of the Decree of 4 March 1991 relates to the approval by the French Community required of services and persons offering to provide a home for or habitually assist young people. The conditions of approval of such persons and services are still governed by an Order prior to the entry into force of the Decree, the Order of 7 December 1987, concerning the approval and granting of subsidies to persons and services providing support measures for the protection of young persons. This Order, which is currently being revised in the context of the implementation of the Decree lays down standards which persons and services must meet in order to be able to receive from the requisite approval; these standards cover the areas set out in article 3 of the Convention, namely, safety, health, and the number and suitability of these services and staff. Titles VIII and IX of the Decree (in particular article 52) ensure that compliance with these standards is monitored.

2. In the Flemish Community

93. In the Flemish Community the best interests of the child are also the basis of voluntary aid as governed by the coordinated Decrees of 4 April 1990 relating to special assistance to young persons. Article 4 of these Decrees specifies that the Committee for the Protection of Young Persons ("Comité voor bijzondere jeugdzorg") must, in the best interest of the child, organize for minors and persons who are vested with parental authority or have custody of them, effective assistance in situations of behavioural difficulty. Similarly, under article 23, paragraphs 1 and 2 (not yet in force) of the Decrees, the measures taken by the juvenile court vis-à-vis minors in such situations and placed in a foster family or institution, must enable family-based action to be taken, notably by reducing the distance between the place at which the measure is taken and the minor's home, unless it can be demonstrated that this is contrary to the minor's interests.

3. In the German-language Community

94. For the German-language Community, the Protection of Young Person's Act of 8 April 1965 still remains fully applicable. Institutions and persons providing a home for minors are covered by the Executive Order of 14 June 1985, amended by an Order of 16 December 1991. However, a draft decree reforming the Act of 8 April 1965 is being prepared and will be deposited with the Council of the Community during 1994. The right to organized official assistance under this decree is intended to provide the young person with an opportunity for a life in keeping with human dignity and to further his development under the best possible conditions. The draft

decree specifies that the assistance contributed to the persons who are bringing up the young person must respect his fundamental interests.

III. The right to life, survival and development (art. 6)

A. At the federal level

95. Under the provisions of the Civil Code, a child acquires legal personality, i.e. legal existence, on the day he is born, provided he is born alive and viable, even if he is abnormal. Civil law goes further, however, in that it recognizes that a child exists in the eyes of the law before he is born, although he has neither age nor name; articles 725 and 908 of the Civil Code lay down that he may inherit and may receive gifts on the suspensive condition of being born alive and viable.

96. Abortion is permitted in certain situations of distress for which the Act of 3 April 1990 makes express provision. Certain acts carried out during a voluntary termination of ordinary pregnancy may be reimbursed by the sickness and disability insurance.

B. At the Community level

1. In the German-language Community

97. In the German-language Community, the Decree of 8 May 1988, amended by the Decrees of 7 May 1990 and 21 January 1991 on the establishment of a children's fund was supplemented by the establishment of a fund for the protection of unborn children, with the aim of making a pregnancy easier when it is undesired for financial reasons; special financial assistance and psycho-social support are used. The "clientele" mainly tend to be recruited through gynaecologists who, with the agreement of the future mother, inform the Dienst für Kind und Familie (DKF) of the straitened circumstances of the pregnant woman. In addition, the DKF organizes home visits, and ante-natal and infant consultations in collaboration with paediatricians, general practitioners and gynaecologists. The new "mother's card", created in collaboration with gynaecologists practising in the German-language Community is distributed to all pregnant women. The organization of ante-natal courses in collaboration with the staff of the regional hospitals, the distribution of the child's health card by paediatricians or the DKF for all children, and collaboration with school doctors in promoting dental hygiene are pertinent examples of the DKF's local action and its concern for coordination and consultation.

2. In the Flemish Community

98. In the Flemish Community, support by Kind en Gezin begins before the baby is born. The future parents may refer to the doctor attending them or to free Kind en Gezin ante-natal consultation clinics, since regular ante-natal supervision is recommended. During the consultation, the future mother is given a gynaecological examination. Preventive medical support provided by Kind en Gezin is by home visits to pregnant women or during information sessions organized for the future parents. These sessions discuss health, way of life, hygiene and food as factors which profoundly influence the successful

outcome of the pregnancy and the birth, the child's development, the circumstances of the birth, and health during the early years of life. Under article 4, paragraph 1, of the Decree establishing Kind en Gezin, this organization's task also consists in preventing perinatal mortality and premature births and in ensuring full development of the child. After birth in the maternity hospital, most women are visited by a medical/social worker, who thus makes the first contact with a view to continued support at home and at the consultation centre.

3. In the French Community

99. In the French Community, the role played by the Births and Children Office (ONE) is similar. The purpose of the antenatal consultations is to monitor successful progress of the pregnancy, to prepare the future mother physically and psychologically for a birth without problems and lastly, if necessary, to guide the couple in their role as parents. Antenatal consultations are provided by a gynaecologist or obstetrician, assisted by one or more medical/social workers. The observations made during the antenatal monitoring are communicated to the doctor attending the birth in the "mother's card".

100. For some years now, along with these consultations a new form of antenatal monitoring is in the process of being established. This consists of antenatal centres within the maternity hospital which provide psychological, medical and social monitoring of the pregnant woman up to the birth, on the basis of a project approved by the ONE. The medical/social worker who takes part in the consultation may also visit the future mother's home if she so requests, or if a particular problem prevents her from making the journey. On such occasions, he or she will explain to her in greater detail the measures the doctor has prescribed, such as diets, additional examinations or the need for complete rest. The medical social worker is also the person best placed to explain to the future mother the more complex aspects of social legislation for pregnant women (subsidies, family allowances, maternity leave, etc.) and, naturally, he or she will endeavour to answer all other questions. It should be recalled that he or she also visits the maternity hospitals to meet new mothers and to inform them of the services which the ONE can provide.

IV. Respect for the views of the child (art. 12)

A. At the federal level

101. Article 19 of the Constitution guarantees all citizens, including children, the right to express their views on any subject. In accordance with this principle, a number of legal provisions, for the most part amended by the Acts of 1987 on affiliation and adoption, provide for the possibility of hearings for children, either to express an opinion, or to give their consent, or even to establish a juridical act or initiate proceedings:

(a) When the minor is himself a parent (married or unmarried), he has the right to declare the birth of his child (Civil Code, art. 56, para. 2); the right to recognize his child (Civil Code, art. 328) provided he has "due discernment"; the right to initiate affiliation proceedings (in respect of either parent) (arts. 322 et seq.); the right for an under-age mother to

initiate maintenance proceedings without acknowledgement of affiliation (arts. 336 et seq.); the right to claim from the other parent a contribution to the cost of the child's maintenance and education (arts. 203 bis and 203 ter); the right to benefit from the attributes of parental authority; the right to consent to the child's adoption (art. 348); the right to request minimum maintenance;

(b) When the minor is married (and thus emancipated), he has the right to oppose the marriage of his spouse (Civil Code, art. 172); the right to apply for the marriage to be annulled (arts. 180 et seq.); the right to initiate proceedings to contest paternity (arts. 318 and 332); all the rights covered by the primary regime of the spouses (and their implementation) (arts. 214 et seq.); the right to request divorce (arts. 229 et seq.); the right to consent to the adoption of the non-judicially separated spouse; the right to obtain minimum subsistence at the joint rate;

(c) As from the age of 15, the minor has the right to consent to his own adoption and to recognition of paternity as provided for in article 319, paragraph 2, of the Civil Code; at the same age, if he has neither father nor mother, he may request the justice of the peace to convene the family council to discuss his emancipation.

102. Apart from these provisions, it should be noted that in Belgian law as it stands no other legal provision provides for the child to be heard in the various judicial or administrative procedures which necessarily concern him. These procedures are considered in the following paragraphs.

1. Organization of guardianship

103. At the present time, Belgian law (Civil Code, arts. 402 et seq.) does not allow a minor any right to intervene in this regard. Accordingly, he is not heard with reference to the choice of guardian, nor is he consulted during family council discussions. In view of the requirements of the Convention, a modification of this system is now being studied. Under the reform envisaged, the minor will be called by the judge for a hearing as from the age of 12 in procedures concerning him and as from the age of 15 in procedures concerning his property.

2. Protection of Young Persons Act

104. The Act also contains some lacunae regarding a minor's right to intervene. Under article 56, paragraph 1, of the Act, a minor is not considered to be a party to the discussion on matters concerning action vis-à-vis his parents. Hence, in these procedures the minor is not required to be assisted by a lawyer nor is any provision made for this, and since he is not a party to the case the child has no right of appeal.

105. A recent reform of the Act of 8 April 1965 amends article 56, paragraph 1, and provides that the juvenile court must first hear a minor if he is 12 years old in the case of civil procedures and of procedures concerning measures vis-à-vis his parents, in which he is not party but is

nevertheless directly concerned. Another stipulation in the reform is that, before any provisional measure is taken, a minor who is 12 years old must be given a personal hearing by the juvenile court.

3. Emergency and provisional measures (Civil Code, art. 223)

106. The justice of peace who rules on custody and on visiting rights never hears the child, has no access to a social service and never receives an opinion from the Procurator's Office. In addition, he is free to rule ultra petita, therefore at his own discretion, and the present trend of article 223 reveals that these decisions, far from being urgent and provisional, are often very long-term.

4. Divorce or separation of the parents

107. Here again a rapid overview of domestic law shows the lacunae in Belgian legislation.

(a) In the case of divorce or separation by mutual consent

108. Any hearing or any supervision by the magistrate, or any action by the Procurator's Office is completely impossible, except for recourse to the juvenile court on the basis of article 36 (2) of the Judicial Code, if a minor is in a situation of danger. During the divorce or separation procedure, the child's fate is settled on a discretionary basis in accordance with agreements established beforehand by the parents, although neither the magistrate nor the Procurator's Office are authorized to check their content, nor to demand that they be changed if they be manifestly contrary not only to the interests but also the rights of the child. The child himself is never heard or represented by an impartial third party, and even the Procurator's Office is precluded. In this context, the assignment of the right of custody and visiting rights thus elude any form of supervision by the Procurator's Office and the magistrate, who can only endorse the agreement between the parents, without being able to alter it or even able to request the child's opinion, as is possible in the context of other divorce procedures.

109. In view of this kind of obstacle, a "Praetorian" practice has been in existence for many years now in the Brussels legal circuit. The purpose of this practice is to obtain the consent of the parties to certain modifications or changes to their agreement when it seems to have an adverse effect on the basic rights of the child. The Procurator's Office requests the parties to consider the true interests of their children together and, if they feel that they should improve or rectify their agreement as indicated, to give the conciliation judge the new draft when they send a copy to the Procurator's Office. Case-law is thus established and accepts the changes of everything in the agreement that is contrary to the basic interests of the child. It is therefore necessary to ensure that the future of the child is not subject to any form of statutory formality, although this obviously does not constitute an obstacle to seeking negotiated agreements between the parents for the best interests of their children. The agreements are submitted to the judge and the child's views should be obtained or he should at least be impartially represented.

(b) In the case of divorce or separation on specific grounds

110. Although there is a slight possibility of giving the child a hearing as a result of social or psychological investigations, the judge is not allowed either to order the personal appearance of the child, since he is not a party to the case, nor to give him a hearing during an investigation. In this context the interim relief judge may request information from the Procurator's Office, on the basis of articles 872 and 1280 of the Judicial Code. This Office may also take the initiative, if a delegate for the protection of young persons so proposes, of collecting any information on the moral and material situation of the child and may carry out an inquiry. The judge may also order a medical/psychological examination. Can he, however, hear the child himself?

111. Despite emerging practice in the civil courts, the matter is very unclear as the law stands today. The judge cannot order the child to appear and question him himself (Judicial Code, art. 992) since the child is not a party to the case, although he is the person most involved. Again, the judge cannot hear his evidence because a child under 15 years of age cannot be heard under oath and can only make statements which amount to mere information; moreover, a child cannot be heard in a case in which his parents have opposing interests (Judicial Code, art. 931).

112. All in all, it seems that only the juvenile court judge, once the case is before him, may "at any time summon a minor, his parents, guardian or persons who have custody of him, both for protection and for civil proceedings" (Act of 8 April 1965, art. 51) and therefore hear the child himself. In fact, this authority is sharply contested in civil law cases, since the Bar considers that under these circumstances the child should be heard in the presence of the parties and their lawyer, in keeping with the adversarial principle.

113. In conclusion, whether it is a divorce or a separation on specific grounds or by mutual consent, the child's opinion concerning the exercise of parental authority is of extreme importance, since it is a question of taking a decision that is liable to unsettle his life. However, compliance with article 12 of the Convention should not allow its main purpose to be forgotten, namely, seeking the child's best interests. While the child's opinion is to be respected and listened to, it is not necessarily appropriate to endorse his opinion. Future legislation should take these two aspects into account.

B. At the Community level

114. In matters under their jurisdiction, the Communities are also endeavouring to bring their legislation into line with the requirements of the Convention.

1. In the German-language Community

115. In the German-language Community the draft decree concerning assistance to young people provides that, in regard to measures taken by the Young Persons Assistance Service, any persons affected by the measures should have a hearing, unless his age, health or an emergency make it impossible.

2. In the French Community

116. In the French Community, article 6 of the Decree of 4 March 1991 concerning assistance to young people provides that no individual decision or measure for assistance, whether accepted or imposed, may be taken by the administrative authorities established by the Decree unless the persons assisted - including the young beneficiary - have not first been summoned and given a hearing. No exception may be made to this obligation unless the hearing cannot take place on account of the person's age, state of health, an emergency, or failure to appear. These exceptions must nevertheless be viewed in the most restrictive form, particularly as regards age or state of health. The hearing of a young child should not therefore be ruled out on the pretext that he has not reached the age of discernment, i.e. at which he is capable of forming an opinion. Once he has the use of speech, a child is in a position to express his fears and desires. Similarly, the state of health should not be an obstacle to the hearing. Provision is therefore made to the effect that persons who cannot be given a hearing because of their state of health may appoint a person of their choice. Article 6 also provides that the young person must be associated with the decisions concerning him and their implementation, even when the assistance has been imposed by the juvenile court. Article 7 of the Decree stipulates that the written agreement of a young person over 14 years of age is required when he receives individual assistance from the youth assistance adviser, in other words, without with any constraint imposed by the juvenile court.

3. In the Flemish Community

117. As to the Flemish Community, in the context of social assistance to young persons, governed by the Decrees on special assistance to young persons, coordinated on 4 April 1990, assistance that affects the individual freedom of the minor is only possible when the minor accepts it, when he reaches the age of 14 or, if he is under 14, after he has been given a hearing.

118. If the minor's case is handled by a mediation commission, he is summoned to the hearing. He may be assisted by a person of trust, or represented with the commission's agreement. If the minor is not in a position to appoint a person of trust himself, the mediation commission must officially appoint one.

119. At the level of the commune, children and young people must be associated as closely as possible with the preparation and implementation of the policy concerning activities for young people. The Flemish Community subsidizes the communes in respect of this policy, provided the children and young people take part in the preparation of a three-year plan for this policy.

120. In 1992, a young persons council was in operation in approximately 60 per cent of the communes. The young persons council may issue opinions on all commune decisions concerning young people. Meanwhile, the entry into force of the decrees on participation and on local policy regarding activities for young people have further stimulated the setting up of young persons councils. Each time decisions are taken concerning young people, the Flemish Young Persons Council prepares an opinion for the Flemish Council.

Part IV

CIVIL RIGHTS AND FREEDOMS

I. Name and nationality (art. 7)

121. Children have from birth the right to a status. Their birth must be registered. They have the right to a name and to a nationality. Registration of their birth signifies official legal recognition of their existence. By virtue of nationality they are members of a national community and have the status of citizens. Their name gives them their own identity when it is joined to a first name, but in addition, except in the case of names given at random to foundlings or to children born of unknown parents, establishes their membership of a family group in accordance with the rules governing the devolution of names derived from affiliation (Civil Code, art. 335).

122. In Belgium births are required to be declared within 15 days (Civil Code, art. 55), failing which a penalty may be incurred. The birth certificate must necessarily show the name of the mother (art. 57 of the Civil Code), failing which a penalty may likewise be incurred (in contrast with France and Luxembourg, where there is no legal requirement for the name of the mother to be shown on the birth certificate). The naming of the mother on the birth certificate automatically establishes maternity and, if she is married, paternity in respect of her husband (Civil Code, art. 315).

123. Where previously the Civil Code remained silent on this point, new article 335 lays down rules for determining the name to be given to children born in or out of wedlock on the basis of three principles:

(a) Precedence of attribution of the name of the father in the case of simultaneous establishment of affiliation (art. 335, para. 1): if descent from the mother and descent from the father are established at the same time, the child takes the father's name.

(b) Stability of the name unless expressly decided otherwise by the parents (art. 335, paras. 2 and 3): if only descent from the mother is established, the child takes the name of the mother, and the fact of the child being recognized subsequently by the father does not entail any change in the name, unless the father and mother together, or either one of them if the other has died, declare in an instrument drawn up by the Registrar that the child is to take the name of the father. This declaration must be made within one year from the date when the persons making the declaration have received notice of establishment of affiliation and before the child's majority or emancipation. An annotation concerning the declaration is made in the margin of the certificate of birth and other instruments concerning the child.

(c) Protection of the moral interests of the conjugal family (art. 335, paras. 2 and 3): in cases where the child is born of a father married to a woman other than the mother at the time of conception, the child takes the name of his or her mother, who will usually be the person with whom he or she lives. If the father and the mother, or either of them, wish to avail themselves of the possibility of declaring that the child born in such circumstances and whose descent from the mother was established first is to

take the father's name, they may not do so without the agreement of the woman to whom the father was married at the time when affiliation was established. Subparagraph 2 of this paragraph 3, while being designed to protect the moral interests of the family of origin, should, however, be modified or amended on the occasion of the forthcoming reform of affiliation legislation. A preliminary issue having been referred to it in this connection, the Arbitration Court considered that article 335, paragraph 3 (2), violated articles 6 and 6 bis of the Constitution (now arts. 10 and 11 of the Constitution) in that it made a distinction between adulterine children a patre, on the one hand, and other children, on the other hand, since it requires that the parental declaration to change the child's name be agreed to by the woman to whom the father was married at the time of establishment of affiliation.

124. With regard to the right of children to know their parents, since the Act of 31 March 1987, Belgian law permits establishment of the dual affiliation of all children born out of wedlock, with the sole exception of children born of parents between whom there is an absolute impediment to marriage (arts. 161, 162, 363 and 370 of the Civil Code). Such children, formerly known as "incestuous", can have only a single affiliation, usually descent from the mother, since this is automatically established through the naming of the mother on the birth certificate. The reason for this prohibition is that it is considered to be in the interest of the child for it not to be officially proclaimed that there exists a link of affiliation in respect of relations within too close a degree (father-daughter, mother-son, brother-sister, etc.), which could harm the child socially and psychologically. Here again, the Act of 31 March 1987, although designed to establish equality among all children, subject to the exception just mentioned, created a further inequality between the father and the mother, which indirectly rebounds on the child.

125. The mother plays a key role in establishing or challenging the child's affiliation. Not only may mothers avail themselves of the presumption of paternity within the marriage and challenge it without necessarily naming another person as father (art. 332 of the Civil Code), but also and most importantly a mother may refuse to consent to recognition of paternity (art. 319 of the Civil Code) or oppose action to establish descent from the man with whom she procreated the child (Civil Code, art. 322). In such cases it falls to the civil court to ascertain whether the man in question is indeed the child's biological father, but also whether establishment of paternity is in the child's interest (Civil Code, art. 319). The court is thus vested with the disproportionate power of deciding whether the father - but never the mother - is fit to be a good father and, if not, to deny him, and hence the child, recognition of descent from the father. At the same time, the mother may agree to a man being recognized who is not the father but with whom she may have taken up after breaking with her previous partner, and it would be impossible to challenge this recognition if the child were reputed to be the offspring of the new couple.

126. In reply to the preliminary issue referred to it, namely whether or not article 319 of the Civil Code was in conformity with articles 6 and 6 bis of the Constitution (now arts. 10 and 11 of the Constitution), which lays down the basic principle that all Belgians are equal before the law, the Arbitration Court, in its decision of 21 December 1990, stated that

article 319, paragraph 3, of the Civil Code was unconstitutional in that it instituted, on the basis of sex, different treatment in respect of recognition by fathers and mothers of children born out of wedlock. Since that decision, the courts may no longer apply article 319, paragraph 3, of the Civil Code in so far as it makes recognition of an unemancipated child by a man who is the undisputed father of that child dependent on the prior consent of the mother. The solution to be found will then have to be guided first and foremost by the best interests of the child, but also by the rights of the father to respect for his family life (art. 8, para. 1, of the European Convention on Human Rights) and equality of treatment with the mother (art. 14 of the European Convention on Human Rights).

127. With regard to nationality, the new Code of Belgian Nationality of 1984 has endeavoured to limit cases of statelessness as far as possible by providing that Belgian nationality shall be granted to "all children born in Belgium who, at any time before they reach the age of 18 years (or prior to emancipation if earlier) would be stateless if they did not have Belgian nationality" (art. 10, para. 1).

II. Preservation of identity (art. 8)

128. Belgian provisions in respect of adoption are in conformity with the stipulations of article 8 of the Convention preserving the identity (nationality, name and family relations) of the child. It is true that the name of the adopted child will usually be changed and determined in accordance with article 358 of the Civil Code (ordinary adoption) and article 370, paragraph 3, of the Civil Code (full adoption); likewise, it should be noted that while, in cases of ordinary adoption, the adopted child retains certain links with his or her family of origin in the matter of maintenance (Civil Code, art. 364, para. 3) and succession (Civil Code, art. 365), fully adopted children do not retain any link, except of course in the form of an impediment to marriage (art. 370, para. 1). The first paragraph of article 8 of the Convention concerns the right of the child to preserve his or her identity as recognized by law. However, in cases of adoption, the child's identity is modified in accordance with the law. Consequently, the child is not illegally deprived of elements of his or her identity (para. 2 of art. 8). The Belgian Legislature adopted these provisions in the interests of the child.

III. Freedom of expression (art. 13)

129. The fundamental constitutional rights and freedoms are guaranteed for all citizens, children and adults alike. Every citizen enjoys freedom of expression vis-à-vis the Government and society, in other words, freedom to communicate information and to express thoughts, opinions and feelings orally, in writing or by representational means. Article 19 of the Constitution guarantees "freedom to express opinions on every subject, except in regard to the punishment of offences committed in the exercise of this freedom". Young people under the age of 18 can therefore speak in public, take part in demonstrations, refuse to subscribe to the philosophical or religious convictions of their families, and write what they wish.

130. However, the freedoms set forth in article 19 of the Constitution are in no way incompatible with the power vested in the State to prohibit and punish

indecent behaviour and other acts that it considers contrary to public order. Freedom of written expression is regulated more particularly by article 25 of the Constitution, which provides for freedom of the press, and by the Decree on the press of 20 July 1831, under which misuse of freedom to express one's thoughts shall be regarded as an offence. For there to be an infringement of the legislation on the press, it is required, inter alia, that the expression of thoughts through the medium of the press should be actionable (libel, insults, etc.).

131. Article 24 of the Constitution guarantees everyone the right to education while respecting fundamental rights and freedoms. School is one of the first places that lends itself to the interplay of ideas and offers children an opportunity to express and develop their opinions.

IV. Access to appropriate information (art. 17)

A. At the federal level

132. In cinemas, young people under the age of 16 will be refused admittance for certain films if it is considered that they constitute a threat to minors because as they contain scenes of violence having harmful effects or any scene whose content might have a degrading effect or seriously impair the moral education of young people. In the case of other films, cinemas refuse admittance to young people under the age of 18 in order to guard against the possibility of a film being banned by the Crown Procurator on the grounds that it offends public morality.

B. At the Community level

1. In the French Community

133. In the French Community, the Decree on audio-visual media of 17 July 1987, as amended by the Decree of 19 July 1991, provides in article 24 quater that the Belgian Radio and Television Company of the French Community (RTBF) and broadcasting companies serving the French Community may not broadcast:

(a) Programmes offending human dignity or containing incitement to hatred on grounds of race, sex, religion or nationality;

(b) Programmes that may seriously harm the physical, mental or moral development of minors, in particular programmes containing scenes of pornography or gratuitous violence, with this provision applying also to other programmes or programme elements, in particular trailers, that may harm the physical, mental or moral development of minors, unless care is taken, more particularly, through the choice of broadcasting time, to ensure that minors in the broadcasting area will not normally see or listen to such programmes.

134. In addition, outside television companies whose programmes are broadcast in the French Community are required to warn television viewers, by means to be determined in an agreement concluded with the Government of the French Community, when they are intending to broadcast programmes that may be offensive to them and in particular to children and adolescents (art. 4,

para. 4, of the Executive Order of 22 December 1988 laying down the conditions for granting, suspending and withdrawing permission to broadcast the programmes of outside television companies, in accordance with art. 22, para. 2, of the Decree of 17 July 1987 on audio-visual media).

135. Regarding assistance to young people, wide-ranging public information measures were taken through the distribution of a number of brochures and leaflets when the Decree of 4 March 1991 came into force. These documents, which continue to be distributed, in some cases after updating, concern the Decree itself, adoption, the rights of the child, services, and so on. This information, and other information as appropriate, is placed at the disposal of the public, particularly the young, in the reception areas of youth services.

136. In addition, the aforementioned Decree of 4 March 1991 also set up a district council to assist young people in the chief town of each judicial district. The task of the district councils is to promote coordination in the field of general prevention and to consider a timetable for meeting the district's needs for the services required to give effect to the decree. Their responsibilities include promotion of the rights set out in article 17 of the Convention on the Rights of the Child. This was previously one of the tasks of the young persons councils, which had already taken information measures, particularly with regard to AIDS, problems of violence, etc.

2. In the Flemish Community

137. In the Flemish Community, the Decree on cable television, approved by the Flemish Council on 20 April 1994, gives due attention to the protection of minors. More specifically, radio and television companies cannot broadcast programmes capable of seriously harming the physical, mental or moral development of minors, in particular programmes containing scenes of pornography or wanton violence. This provision also concerns programmes to which the foregoing does not apply but may nevertheless harm the physical, mental or moral development of minors, unless a broadcasting time is chosen or technical measures are taken such as to ensure that minors in the broadcasting area can neither see nor listen to the programmes.

3. In the German-language Community

138. In the German-language Community, the Committee for the Protection of Young Persons publishes brochures and newspaper articles for children and places very extensive documentation at their disposal. Furthermore, it regularly publishes articles on the media in the local press and gives weekly advice on television programmes suitable for children. Various information and education-related initiatives concerning the media are subsidized by the Community.

V. Freedom of thought, conscience and religion (art. 14)

139. The provisions concerning the right of the child to freedom of thought, conscience and religion make reference to rights which, in Belgium, are guaranteed for all citizens by articles 19 and 20 of the Constitution. Article 19 guarantees freedom of religion and of public worship and the

freedom to express one's opinion. Article 20 provides that "no one can be compelled to participate in any way whatsoever in the acts and ceremonies of a particular religion or to observe its rest days". Furthermore, the schools organized by the public, pluralist authorities offer, until the end of the period of compulsory education, a choice between instruction in one of the recognized religions and non-denominational ethics (Constitution, art. 24).

140. Exercise of parental authority entails the power to regulate the lives of children. By virtue of this educational power, parents are able to determine the religion in which their children will be brought up. They can choose the type of education to be received by their offspring and can decide whether or not to give them a religious education. This does not mean, however, that parents can impose "their" convictions on "their" children: education is not the same as coercion. Parents can bring up their children according to their convictions, without however indoctrinating them. The difficulty that may arise consists in reconciling the child's right to make philosophical or religious choices with the power of the parents. In the eyes of the Legislature, the family is required to play an essential role. A balance of rights and duties in the family cell is vital in order to ensure the stability that is essential for the harmonious development of the young person. However, what is to be done by a school principal who is told by a child that he wants to attend the course in Catholic religion while his parents say that he is to follow the course of non-denominational ethics? There are nowadays signs of a willingness, in some isolated decisions, to authorize minors to act of their accord when their request relates to a personal right and they are sufficiently old to be assumed capable of judgement.

141. Freedom of thought, opinion and religion is also guaranteed by article 76 of the Protection of Young Persons Act of 8 April 1965, which requires judicial and administrative authorities, natural or legal persons, and organizations, institutions or establishments responsible for contributing to the measures taken in pursuance of the law, to "respect the religious and philosophical convictions and language of the families to which the minors belong". This rule has been the subject of administrative circulars which recommend that the authorities empowered to order placements ask parents clear and precise questions, before reaching any decision, in order to know whether they want their child to practise a particular religion or to receive instruction in non-denominational ethics. Obviously in the event of a contradiction in the answers obtained or opposition on the part of the minor himself, the decision to be taken is dictated by the minor's interest and aspirations.

142. In the French Community, this federal provision is, moreover, to be supplemented and revised in accordance with article 54, paragraph 2, of the Decree of 4 March 1991 on assistance to young people, which provides that "natural or legal persons, public institutions and the services responsible for contributing to the implementation of the decree are required to respect the young person's religious, philosophical and political convictions".

143. In the Flemish Community, article 44 of the Decrees on special assistance to young people, coordinated on 4 April 1990, provides that anyone who, in whatever capacity, contributes to the implementation of decrees and, more generally, to special assistance measures for young people shall be required

to respect the religious, ideological and philosophical convictions of the families to which the children belong. However, as this provision may call for interpretation, it was spelled out anew in article 17 of the Flemish Government Order of 22 May 1991 laying down criteria and standards for subsidies to institutions providing special assistance to young people. This article stipulates that the establishments in which minors are placed must make the necessary arrangements for the young people to be able to continue their moral education and practise their religion where appropriate, in accordance with its precepts and requirements, pursuant to article 44 of the coordinated decrees.

VI. Freedom of association and of peaceful assembly (art. 15)

A. At the federal level

144. Under article 26 of the Constitution, "Belgians have the right to assemble peacefully and without arms, complying with such laws as may regulate the exercise of this right, without however the need for prior authorization". Open-air public meetings are entirely governed by public order statutes and may be subject both to regulations and to prior authorization. Private meetings on private premises are protected by article 15 of the Constitution, which formally recognizes the inviolability of the home, allowing the possibility of house searches only as and when the law provides.

145. Article 27 of the Constitution provides for freedom of association for Belgian citizens. This freedom is required to be extended to foreigners under article 20, paragraph 3, of the Act of 15 December 1980 on access to Belgian territory, residence, settlement and removal of foreigners, which stipulates that a foreigner cannot be taken to task for his lawful use of freedom to express his opinions or of his freedom of peaceful assembly and association.

146. It should, however, be pointed out that there is one form of association that is automatically prohibited, namely an association formed for the purpose of injuring persons or property, which constitutes a crime or an offence as the case may be, merely by virtue of its being organized as such, provided however that its members are clearly limited to it and form a body capable of real action (Criminal Code, arts. 322 to 326).

147. The provisions of article 27 of the Constitution are particularly spelled out by the Act of 24 May 1921 guaranteeing freedom of association and stipulating penalties in cases of violation of freedom of association. Article 3 concerns general violations of freedom of association. Penalties may be incurred by anyone who seeks to compel a person to form part or not to form part of an association and makes use of violence or threats to that end, or gives him cause to fear that he will lose his job or sustain injury to his person, family or property.

B. At the Community or local level

148. In Belgium vast numbers of minors aged 6 to 18 belong to youth movements. These various groups, organized according to age and sex, serve as meeting places for these children and adolescents and help them to develop team spirit and a sense of solidarity, adventure and responsibility. Youth centres may be

subsidized by the Communities and some municipal authorities. Furthermore, when young people decide to form into a group in order to organize a cultural or sports activity, they may receive subsidies from the public authorities.

149. In Belgium, article 15 may be a problem in sporting circles. Young players are often transferred from one club to another against compensation or on payment of a fee, which some people regard as child trafficking. The club to which the player belongs often asks for excessive compensation for the loss of that player to another club, considering that it is responsible for the progress made by the child in whom it has invested. The club seeking the transfer, which is often higher in the league tables, recruits a young player for his talent and is prepared to "pay a high price" to ensure that the child does not go off to a rival club. The opinion of the child who wishes to change club is not always respected when a transfer occurs, especially if the original club demands compensation. This situation is a violation of the right of the child to freedom of association (art. 15 of the Convention). In Belgium, the civil courts have settled conflicts between children and federations; they have found against clubs that refused to authorize, or demanded excessive compensation for authorizing, a transfer to another club chosen by the young player. These court decisions were based on the right to freedom of association as guaranteed in the Convention. It is then recognized by law that children must be completely free to join the club of their choice, irrespective of the financial claims of the clubs concerned.

VII. Protection of privacy (art. 16)

A. At the federal level

150. Articles 15 and 29 of the Constitution, and articles 439 and 460 respectively of the Criminal Code, which penalize violations of these articles of the Constitution, lay down the principles of inviolability of the home and confidentiality of correspondence. The Act of 8 December 1992 on the protection of privacy in respect of the processing of personal data takes up the principles of Convention 108 of the Council of Europe, to which Belgium is a party, spells them out and develops them. This Act, which concerns all citizens, also protects young people when they are in conflict with their parents or as third parties. Regarding privacy and freedom of correspondence, the same principle holds true for everyone: no one has the right to read or intercept correspondence not addressed to him or her. However, some parents and some judges consider that parental authority, entailing the right to bring up and supervise their children, justifies "censorship" of a minor's correspondence. Some parents take this right as a basis for allowing them to monitor the correspondence and personal relations of their child. They are, however, obliged to use licit means for this purpose. Furthermore, parental authority may and sometimes must yield to the child's right not to be subjected to such interference when the child is capable of due discernment.

151. It should be made clear that interference by the public authorities in the lives of minors and their families is motivated in each case, in accordance with the various provisions of the Act of 8 April 1965, by considerations regarding public security, law and order or the prevention of criminal offences.

B. At the Community level

152. In the French, Flemish and German-language Communities, the medical and welfare personnel of children's organizations, owing to the fact that they are in direct contact with families and are trusted by them, know a great deal about them and how they stand financially, medically, socially, emotionally, etc. They are therefore bound by the rule of professional secrecy. As children are the primary concern of such organizations, medical and welfare personnel comply strictly with their obligation to keep silent unless a child is in serious physical or moral danger.

153. A security system has also been introduced into data banks. Sensitive matters are not recorded in the computer (however, such data can be communicated to other welfare services concerned). Administrative and medical data are reproduced in data banks. However, the consent of parents is required in order to be able to process or communicate medical data. In all cases, the use of data in any field is subject to the prior agreement of the parents because the persons concerned are so young. As regards measures to protect and assist young people, both federal legislation (Act of 8 April 1965) and the decrees of the French and Flemish Communities require that the persons contributing to their implementation observe professional secrecy.

VIII. The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (art. 37 (a))

154. Generally speaking, chapter 1 of Title VIII of Book II of the Criminal Code severely punishes all forms of homicide. As for the death penalty, although it is still provided for in the Belgian Criminal Code (arts. 8 to 11) and is still handed down by courts at the present time, no one sentenced to death for an ordinary criminal offence has been executed since 1918. In accordance with ministerial instructions, it is the duty of the judicial authorities, in cases where the death sentence is handed down, to lodge automatically a petition for mercy. It is then a tradition, through exercise of the prerogative of mercy, to commute the death sentence to a sentence of life imprisonment.

155. Under article 1 of the Act of 31 May 1888 on conditional release, those sentenced to life imprisonment may be released on parole when more than 10 years of imprisonment have already been served, increased to 14 years in the event of a fresh conviction.

156. On 28 August 1983 Belgium signed Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty. This Protocol affirms the principle of the abolition of the death penalty and recognizes the individual's right to be neither sentenced to death nor executed. However, this Protocol cannot be ratified until the death penalty has been abolished in Belgian law.

157. The death penalty may be incurred by minors since, in accordance with article 38 of the Young Persons' Protection Act, minors over the age of 16 at

the time of committing a crime may be referred to the Court of Assize and be liable to the death sentence. However, a death sentence or a sentence of life imprisonment in the case of a minor under the age of 16 is no more than a theoretical possibility.

158. It is also important to note that the European Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment entered into force in Belgium on 1 November 1991. That Convention set up a Committee which has the right to visit any place holding persons who have been deprived of their freedom by a public authority. The Committee may therefore visit both prisons holding young people under the age of 18 and establishments reserved for minors.

159. In the Flemish Community, the Decree of 22 May 1991 laying down criteria and standards for subsidies to institutions providing special assistance to young people provides that any penalty imposed on a minor must take personality factors into account and that no order can be given to inflict corporal punishment or withhold meals.

Part V

FAMILY ENVIRONMENT AND ALTERNATIVE CARE

I. Parental guidance (art. 5)

A. At the federal level

160. Article 203 of the Civil Code defines the father's and mother's role towards their children: fathers and mothers are bound to support and raise their children and to provide them with adequate training. The family is the basic institution of society and it should ensure the child's full development. Parents are directly responsible for the child's training, survival and socialization.

161. The parent-child relationship today is based less on authority than on a dialogue through which children provide themselves with a structure and become socialized. Although children are both emotionally and financially dependent, it cannot be denied that they have a personality. In cases where children are capable of judgement, parental authority may yield to their rights.

B. At the Community level

162. As stated earlier, the French, Flemish and German-language Communities have established agencies that provide parents with free support and assistance in raising and caring for their children, through home visits by medical/social workers, consultations and supply of information on education, health, hygiene and development.

163. In the Flemish Community, specific home guidance services have been established in the framework of the special assistance to young persons. The main, or only, activity of these services is to provide visiting guidance services to young people in the family to which they belong. More specifically, their task is to provide educational, social, financial and

practical guidance for the children concerned in their family environment, in order to help the family function as smoothly as possible and provide the family members with better opportunities for self-realization in their own environment. The counselling is given in principle in the family home (arts. 14 and 27 of the Flemish Community Executive Order of 22 May 1991 setting the conditions for approval of and standards regulating subsidies to the agencies providing special assistance to young persons).

164. The Kind en Gezin agency pays special attention to specific needs or groups. Intercultural counsellors work with immigrant families (in cooperation with the Vlaams Centrum Integratie Migranten (Flemish Centre for the Integration of Immigrants)), while specialists familiar with the problems of disadvantaged persons work with disadvantaged families (Horizon project, with support from the European Social Fund). The specialists involved are immigrant women and women from disadvantaged backgrounds, who are the best suited to provide the families with "made to measure" support in cooperation with nurse/social workers.

165. The Royal Decree of 11 March 1974 organizing the awarding of subsidies for activities to promote family education, fostering the development of family life and training family education workers, enables recognized associations to provide education courses to help parents perform their child-rearing tasks.

II. Parental responsibility (art. 18, paras. 1 and 2)

A. At the federal level

166. The joint obligation of both parents to raise and support their children in accordance with their means is the very basis of article 203 of our Civil Code. Judicial remedies are duly provided for cases of deliberate failure to exercise this civil duty, from which parents may not derogate under any agreement. It is the duty of fathers and mothers to feed, support and raise their children and provide them with adequate training, even beyond the age of majority.

(a) If the parents live together, both father and mother hold parental authority; the decision of each parent alone is valid. Authority is therefore exercised "concurrently". If the other parent does not agree with the decision taken, he must ask the juvenile court, in writing, to take a decision, in the child's best interest (Civil Code, art. 373).

(b) If the father and mother do not live together, parental authority is exercised by the parent who has material custody of the child (i.e. with whom the child lives), with the other parent having an opportunity to make application to the juvenile court, but solely in the child's interest (Civil Code, art. 374).

(c) If the father or mother dies, the surviving parent automatically becomes the guardian of the minor, unemancipated child (even if this surviving parent did not have visiting rights). Although this de jure guardian is

supervised by the Family Council in all actions relating to the child's assets, he is not required to ask the Council's advice or account to it for any decisions having to do with the minor's person.

(d) If both parents die, the one who dies last can choose a "guardian", either by so specifying in his will or doing so before the justice of the peace. If he (or she) has not chosen a guardian, the ascendant (grandparent) becomes the de jure guardian. If there are several ascendants in the same degree (and, conversely, if there are no ascendants), the Family Council decides (Civil Code, arts. 402 and 405).

167. One task of the Public Social Assistance Centre (CPAS) is to provide protection for all minors for whom no one holds parental authority, guardianship or material custody (Organizational Act, arts. 63 et seq.). Few children are covered by this provision and they are mostly children who are not protected by any other legal statute (residual public law guardianship regime). In practice, these are mostly natural children, foundlings or orphans. The Social Assistance Council of the appropriate CPAS plays the role that the Civil Code assigns to the Family Council, designating one of its members to act as guardian (Organizational Act, art. 65). The treasurer of the CPAS is responsible for managing the ward's assets.

168. In addition to cases where the CPAS exercises guardianship over minors, a minor can also be placed by his or her parents or by a public authority in the centre's care. The centre will then place the child in a family or appropriate institution and defray the cost if necessary. In such cases the centre only supervises, supports and educates the children, without exercising the prerogatives of parental authority.

169. If one person alone adopts a minor and the adopted child is not the child of his or her spouse: the adoptive parent will be the child's guardian and exercise parental authority, under the supervision of a family council (Civil Code, art. 361, para. 1).

170. If only one parent recognizes a child, that parent will exercise parental authority alone, but will be supervised by a family council for the purpose of administering the child's assets (Civil Code, arts. 395 and 457).

171. Finally, it should mentioned that regardless of the individual to whom the child is entrusted, the father and mother retain their right to supervise their child's support and education and to contribute to the extent they are able (Civil Code, art. 303).

172. At the federal level, the Ministry of Social Welfare is responsible for family allowances, which are perhaps the most important component of financial support for families with dependent children. With a view to enabling parents (and legal representatives) to meet their responsibilities, the presence of children is taken into account when providing them with assistance. Indirectly, therefore, the benefits are in fact partly granted for the benefit of the children. One under-age child is enough for a minimum of subsistence allowance ("minimex") to be granted, even if the child in question does not fulfil the age requirement (full age), or makes it possible to award the minimex at a more advantageous rate. The right to the minimex is also granted

to single people (minors) with one or more dependent children (Act of 7 August 1974, art. 1, para. 3). The minimex was extended to pregnant minors by the Crown, by virtue of the powers conferred by law (Royal Decree of 20 December 1988, art. 1). In order to receive it, the person in question must provide the CPAS with a medical certificate confirming the pregnancy and mentioning the estimated date of birth.

173. A specific category of beneficiaries of the minimex was introduced by the Act of 7 November 1987, i.e. "single parents with dependent children". (Previously, the only categories were spouses living under the same roof, single or divorced individuals and couples living together.) This category is currently defined by law as covering a person who lives only with an unmarried under-age dependent child, or with more than one child including at least one unmarried under-age dependent child (this category was redefined following the lowering of the age of majority to 18, which caused a parent to lose the increased rate as soon as one child in the family reached the age of majority). This category therefore covers in particular - but not only - single mothers living with children including one dependent minor, regardless of marital status. They are granted a higher amount than the single or divorced parent rate; on 1 January 1992, a five-year-plan raised the minimex for this category to the highest amount, i.e. that of spouses living under the same roof. The Act does not take the number of the applicant's dependent children into account, since they might entitle the mother to guaranteed family allowances or she might already be collecting family allowances for them.

174. Finally, it should be noted that the fourth category (couples living together) can also include single mothers living with male partners. The establishment of the first and fourth categories places married couples and unmarried couples living under the same roof on an equal footing, since for the latter, each partner can obtain half of the basic amount awarded to the spouses.

B. At the Community level

1. Preventive action by semi-public bodies

175. In addition to this financial aid, counselling is provided by the Communities' semi-public agencies. The goal of these consultations is to assist parents in helping their children to grow and develop as harmoniously as possible. The work focuses on three highly complementary spheres: medical, social and educational.

(a) Medical

176. The medical sphere consists of close and regular supervision of the child's state of health. This supervision is done by a doctor, i.e. paediatrician or general practitioner, whose task is preventive rather than curative. A sick child will immediately be sent to his regular doctor. The consulting physician, for his part, will conduct a thorough clinical examination, perform vaccinations, check height, weight and increase in head size, plan diets, and so on. He will also monitor the child's psychological

and motor development and take an interest in the emotional and social relations between the child, his or her parents and the outside world.

(b) Social

177. Work in this area is comparable to the work done in pre-natal consultation: according to need, the medical/social workers work together with the family to solve any social problems that might arise.

(c) Educational

178. During the consultations, information is exchanged on how best to care for the child. This is also an ideal place to provide health instruction.

179. Children's consultations are a valuable tool in our country, where preventive and social medicine is not very highly developed in other respects, especially as all the services we have just mentioned are obviously free of charge.

180. There is a home supervision service for children. This service is basically found in scarcely-populated rural areas. A medical/social worker makes regular visits to the homes of young children, closely examines their state of health and gives the mother any necessary advice. Parents are also invited to supplement this type of visit by bringing their children in for regular consultations or going out to the visiting health care bus when it comes by.

2. Available family crisis services

181. Besides the preventive action of the semi-public agencies, the Communities have also set up services to look after minors when their families are going through crisis situations. These foster environments represent a complementary and subsidiary alternative to the family environment. In other words, they are intended for parents who, for one reason or another, are temporarily unable to look after their own children, and therefore choose to entrust them to reliable outside individuals. However, such a choice is not always dictated by necessity. It has been found that for some children, being in a small community rather than always being in close association with their parents has an extremely beneficial effect on their intellectual and motor development and speeds up their socialization in a healthy way. In family crisis situations, various possibilities are available to parents.

(a) Day nurseries and foster care centres

182. This type of facility receives children for periods ranging from a few days to several months. Such temporary placement is intended to enable the child's family to solve a temporary crisis. In this context, parents' visits are encouraged in order not to estrange the child from his family environment. During such visits, psychological social work is begun with the family to reintegrate the child into his usual living circumstances as soon as possible. In the event of failure, a stable solution is sought.

(b) Homes for mothers

183. The purpose of the homes for mothers is to house, but also to guide and assist, future mothers and mothers of children under eight years of age who are temporarily unable to resolve their psychological or social problems by themselves. The purpose is to support the mothers temporarily and reintegrate them into the labour world as soon as they are able to take care of themselves.

(c) Medical-educational institute

184. The task of the medical-educational institute is to take in children from severely disadvantaged backgrounds who have emotional or motor problems. The root of the problem is generally a deficient or even traumatising family environment. The institutes provide children with all the medical or psychological assistance their condition requires, under the supervision of competent special education teachers. Meetings with the family are also held. Assistance provided for ill-treated children will be discussed in connection with article 19 of the Convention.

3. Specialized assistance

185. When a family crisis places children in dangerous situations, more specialized assistance can be sought.

(a) In the French Community

186. In the French Community, the Decree of 4 March 1991 established youth assistance counsellors whose task is to provide specialized assistance to young people in difficulty, people who are having great difficulty fulfilling their parental obligations and children whose health or safety is in danger or whose education is being jeopardized by their own behaviour or that of their family or those close to them.

187. The role of the youth assistance counsellor is first and foremost one of coordination and reconciliation. The counsellor is responsible for referring people seeking help to appropriate individuals or services, whether or not they are approved under the Decree - especially the competent social assistance centre or a multidisciplinary team specializing in the identification and treatment of children who have been the victims of ill-treatment, deprivation or serious negligence - and to support such individuals in obtaining the help they need. If there is no service or individual to provide appropriate assistance, the youth assistance counsellor may, exceptionally and temporarily, take charge of the situation and ask the individuals and services responsible for enforcing the Decree to provide appropriate assistance for as long as it is needed.

188. One form of assistance provided is guidance for the young person and his or her family by a registered service. The agency providing the guidance will most often be an educational guidance centre, which is a registered youth assistance service that provides young people with educational counselling.

(b) In the Flemish Community

189. In implementation of the Flemish Community decrees on special assistance to young persons, the committees concerned with the welfare of young persons and the juvenile courts take behavioural problems into account and try to correct them. Minors, and if necessary their families of origin, may receive assistance from the welfare service or any other recognized agency.

III. Separation from parents (art. 9)

190. The family is the natural place for a child's upbringing and development. Therefore, the State will only intervene in cases where the natural environment is lacking. Belgian law enunciates the child's right to have a relationship with both his parents, unless a decision to the contrary is taken in the child's interest by the competent judicial or administrative authority.

A. Decision taken by a judicial authority

1. Divorce or separation of parents

191. In the event of divorce or separation of the parents, custody of the child is awarded to one parent or joint custody to both, whether by agreement of the parents or by judicial decision. Final decisions on the custody of a child may be reviewed by the juvenile court at the request of any individual holding parental authority under a civil procedure or at the request of the Procurator's Office if the best interests of the child so require.

192. In cases of custody dispute between the father and mother, the courts take the following cumulative criteria into account:

(a) In principle, custody is awarded to the parent who has the most time available to look after the child, unless that parent's lifestyle is not compatible with his or her child-rearing responsibilities. As recommended in article 6 of the Declaration on the Rights of the Child, custody of very young children is generally awarded to the mother;

(b) In this type of dispute, particular importance is given to the interests of the child. This crucial criterion in awarding custody has been found in the case-law for many years and meets the requirements of article 3 of the Convention. In this connection, in accordance with article 12 of the Convention, the views of a child capable of judgement are increasingly taken into account;

(c) Therefore, a parent who was available for child-rearing but stated his intention to settle abroad with the child might be refused custody if the situation had a negative effect on the other parent's visiting rights. The alternating custody arrangement, which in many cases appears to be the best suited to the child's development in a conflictual situation, is increasingly popular among litigants today. Legal precedents, however, are divided on this subject, and the courts that reject it point out while material custody can be shared the same is not true of the child's legal custody.

193. When custody of the child is awarded to one of the parents, the other retains the right to have personal relations with his or her child. This right includes visiting rights, and the terms are set in the light of the circumstances of the case, and the right to check on the upbringing provided by the parent who has custody. The rights to both custody and personal relations are subject to monitoring by the courts when developments in the situation threaten the child's physical or mental health.

194. In situations in which the father or mother, out of resentment towards the spouse's family, attempts to limit that family's relations with the child, the courts grant the grandparents the right to have personal relations with the child, i.e. visiting rights, subject to the child's best interests.

195. In order to supervise the exercise of visiting rights in situations where it is difficult, conflictual or has even been interrupted for several years, the French Community subsidizes "Meeting place" agencies that are independent of the judiciary; they are as yet only a pilot project. The rationale for these bodies is the child's right to have access to both his parents, whatever the conflicts between them.

2. Removal of parental authority

196. Articles 29 to 35 of the Protection of Young Persons Act of 8 April 1965 establish a system for the protection of minors. These measures, which can be taken in the case of parents who ill-treat their children or fail to provide them with adequate living conditions, can result in complete removal of parental authority.

197. Removal of parental authority is a system designed to protect the child. It is a measure of protection for the child. The following may lose parental authority, completely or partly, in respect of all their children or one or more of them:

(a) A father or mother convicted of a crime or offence by virtue of an act committed against the person or with the help of one of his or her children or descendants;

(b) A father or mother who, through ill-treatment, abuse of authority, improper conduct or serious negligence, endangers a child's health, safety or morals;

(c) The same obtains for a father or mother who marries a person from whom parental authority has been removed.

198. Removal of parental authority is ordered by the juvenile court at the request of the Procurator's Office. Complete removal affects all rights of parental authority. It involves, for the person against whom it has been ordered and in respect of the child in question and that child's descendants:

(a) Removal of custody and child-rearing rights;

(b) Prohibition against representing them, consenting to their acts or administering their assets;

(c) Removal of the usufruct provided for in article 384 of the Civil Code (Civil Code, art. 384: "The father and mother shall have the right of usufruct of the property of their children, up to the age of 18 or emancipation");

(d) Removal of the right to claim a maintenance allowance;

(e) Removal of the right to collect all or part of his succession, in accordance with article 746 of the Civil Code (Civil Code, art. 746: "If a deceased person leaves neither descendants, brother, sister, nor their descendants, the succession shall be divided in half between the ascendants on the father's side and the ascendants on the mother's side. The ascendant in the closest degree shall collect the half assigned to his side, to the exclusion of the others. Ascendants in the same degree shall succeed per capita").

In addition, complete removal of parental authority renders the individual generally incapable of being an unofficial guardian, surrogate guardian, member of a family council, trustee or special adviser to a guardian mother. Partial removal affects the rights decided on by the court.

199. When the juvenile court orders full or partial removal of parental authority, it either designates a person to exercise, under its supervision, the rights set forth in article 33, paragraphs 1 and 2, which have been taken away from the parents or one parent, and to fulfil the related obligations, or it entrusts the minor to the youth assistance counsellor in the French Community or the social services connected with the juvenile court in the Flemish Community, which shall designate a person to exercise those rights, on approval by the court, at the request of the Procurator.

200. If only one of the parents has lost paternal authority, the juvenile court shall designate the parent who has not lost paternal authority to replace the other parent, when this is not contrary to the best interests of the minor. This solution is only used as a last resort, for the primary objective of the judicial authorities is to resolve problems within the family unit. Temporary placement of the child in a foster family or institute might also be considered.

201. Article 57 of the Act of 8 April 1965 enables the juvenile court to take protective measures directly for minors in danger or young offenders; these include placing them under supervision by the competent social service in the home of a trustworthy person or an appropriate establishment, where they are given shelter, treatment, education, or vocational training. The result of this type of placement is to separate children from parents who have lost de facto custody, without affecting legal custody as such. Since the protection of children in danger is now a matter falling within the competence of the Communities, removal of these children from their family environment is governed by Community decrees; this is already the case in the Flemish and French Communities. This type of removal as handled in the French Community will be discussed in section B below.

202. As regards juvenile offenders, removal from the family environment is a measure that is always decided by the juvenile court under the Act of

8 April 1965. It is the juvenile court that decides where the minor will be staying and who is responsible for following up the file, in particular as regards authorizations for holidays, outings, visits, etc. The measure is, however, carried out under the responsibility and control of the relevant Community, depending on the language which the judicial file was opened (in principle, that of the minor's family).

203. In the French Community, the Decree of 4 March 1991 sets forth a number of guarantees for enforcing the rights of minors in placement, whether their placement is the result of a judicial decision in implementation of the Act of 8 April 1965 or an administrative decision in implementation of the Decree of 4 March 1991. These rights will be examined in section B below. It should be noted, however, as regards young offenders in placement, specifically, that the Decree grants them, as it does to any other young person under placement, the right to communicate with a person of their choice, unless there is a substantiated decision to the contrary by the competent judge, and that they are informed of the right to communicate with their lawyer as soon as they are taken in by the residential service or public agency involved.

204. Article 9, paragraph 4 of the Convention stipulates that when separation results from any action initiated by a State authority, such as detention, the essential information concerning the whereabouts of the absent member(s) of the family must be provided to the parents upon request, unless the provision of the information would be detrimental to the well-being of the child. In Belgium, these requests are met by the circulars of the Prosecutors General, at least as far as judicial detention is concerned.

B. Decision taken by an administrative authority

1. In the German-language Community

205. In the German-language Community, the draft decree on assistance to young persons provides that the goal of all measures should be to keep the young person in his usual family environment, except, of course, in cases where that would be contrary to the best interests of the child. A person or institution sheltering a child should maintain and encourage contact with the family of origin, except where such contact is harmful to the child's development.

2. In the French Community

206. In the French Community, article 9 of the Decree of 4 March 1991 on assistance to young persons provides that decisions taken by the administrative authorities established by the Decree should give priority to encouraging the child's development within his family environment. However, if the young person's best interests require him to be removed from that environment, the assistance given him should in any case provide him with living conditions and conditions for development that are appropriate to his needs and age. Unless the best interests of the young person require otherwise, the service or individual taking care of him is bound to ensure that contacts with his relatives are maintained or at least encouraged. Removal from the family environment can be ordered by the youth assistance counsellor after the counsellor has ensured that no other solution - including the child's being taken in by a "front-line" service - is possible. In

the spirit of the Decree, removal must be exceptional and temporary - the sine qua non for this measure is the young person's agreement, if he is 14 years of age, or that of the individuals having custody of him, if he is under 14. The agreement of the individuals administering his person is also required in all cases.

207. Removal of a young person from his family environment can also be decided by the Director of Assistance to Young Persons on the basis of a decision of principle taken by the juvenile court. This is done in situations where a child's physical or psychological integrity is in serious danger or where one of the persons holding parental authority or de facto or de jure custody of the child rejects or fails to act on the counsellor's assistance. In such cases, where it is necessary to force uncooperative individuals to accept the assistance established by the Decree for young persons in danger, the juvenile court may order an assistance measure. In particular, it can decide in exceptional situations that the child will live temporarily away from his family environment, for the purposes of treatment, education or vocational training. If the child is over 16 years of age, the judge may also allow him to live in an independent or supervised residence and to be entered in the population register in the place where that residence is located. The implementation of the decisions of principle taken by the juvenile court in implementation of the Decree of 4 March 1991 are under the responsibility of the Director of Assistance to Young Persons, who shall decide where the young person shall live and settle the modalities according to which that decision will be carried out. Although his decisions are compulsory, the Director of Assistance to Young Persons is bound to hear the parties before taking them and involving the young person in carrying them out. Both the decisions of the youth assistance counsellor and those of the Director of Assistance to Young Persons may be appealed before the juvenile court.

208. The Decree also provides that, in addition to the rights enjoyed by all young people receiving assistance, a young person in placement shall enjoy specific rights such as the right to communicate with an individual of his choice, including his lawyer, to receive periodic visits (twice a year if he is over three years old, four times a year if he is under three years old) from the youth counsellor or Director of Assistance to Young Persons, or their representatives, as necessary, to receive pocket money, not to be transferred from one place to another without being prepared, etc. Like all assistance decisions, removal from the family environment is decided on for a maximum of one year, renewable as necessary if the conditions under which the initial decision was taken still obtain and if the procedure followed for the initial decision is respected.

3. In the Flemish Community

209. For the Flemish Community, the reader is referred to the measures available to the Public Social Assistance Centres in accordance with articles 57, 63 and 64 of the Organizational Act on the Public Social Aid Assistance Centres, which were described at length above.

210. Article 4, paragraph 1, of the Decrees on special assistance to young persons, coordinated on 4 April 1990, provides that when the committees concerned with the welfare of young persons learn of behavioural problems,

their task is to organize effective assistance for minors concerned and individuals having parental authority over them or custody of them, in the best interests of the minor. This assistance may consist in removing the minor from his parental environment and placing him in an establishment. Placement of a minor requires not only authorization by the individuals having parental authority over him or custody of him, but also that of the minor himself if he has reached 14 years of age. If the minor is under 14 years of age, he must be heard. Except in cases where his exclusive interest requires otherwise, a minor should be placed in an establishment as close as possible to his parents' domicile, in order for the assistance to be focused on the family throughout the duration of the minor's stay in the establishment. The assistance organized by the young persons welfare committee or the protective measures ordered by the juvenile court are implemented according to a plan prepared in cooperation with the establishment and all the parties involved, including the minor (above-mentioned Decrees, art. 42). This plan includes agreements concerning visits.

IV. Family reunification (art. 10)

211. Regarding family reunification, the applicable provisions of the Act of 15 December 1980 on access to Belgian territory, residence, establishment and removal of foreigners, as amended by the Act of 28 June 1984 and by the Act of 6 August 1993, are the articles 9 and 10. Under article 10, paragraph 1 (4), of this law, the spouse and the children of an alien who resides or is established in Belgium are allowed to live there for more than three months.

212. In regard to the children, four conditions must be satisfied: (a) there must be a legally established filiation; (b) they must be under 18 years of age; (c) they must be dependent on the parents; (d) they must be living with the parents.

213. There are two exceptions to this automatic right to residence (see art. 10, paras. 2 and 3):

(a) When an alien has been joined by a member of his family, the other members may only join him in the course of the year that the first family reunification took place and the following year;

(b) When an alien has himself benefited from family reunification, his spouse and his children may not invoke the right to join him.

It should be noted that, in the case of the family members of a student the automatic right to family reunification is abolished.

214. If article 10, paragraph 1 (4), cannot be invoked by the child, article 9 of the Act may be applied. Under this statute, the child may apply to the Minister of the Interior or his deputy for a residence permit. Parents who wish to join their child do not have an automatic right of reunification but they may apply for a residence permit on the basis of article 9.

215. The object of article 10, paragraph 2, of the Convention is to ensure the maintenance of personal relations and direct contacts between the child and

his parents, when they do not reside in the same country. In that case, article 2 of the Act of 15 December 1980 is applicable. It authorizes entry into and residence in Belgium by an alien in possession of the necessary papers.

216. As to restrictions on the right to leave the country, attention should be drawn to court decisions which, while granting the father (or mother) of the child the right to visit, prohibit him (or her) from leaving Belgian territory. The effectiveness of this measure is very uncertain, but it is adopted by some judges to prevent illegal transfer of the child abroad. Such a restriction is not, in our view contrary to article 10 of the Convention, since it is motivated by considerations of public order viewed, in the present instance, from the standpoint of the importance to the child of maintaining relations with the parent who looks after him. This is in conformity with the final provisions of article 10.

V. Recovery of maintenance for the child (art. 27, para. 4)

217. In order to compensate for the bad faith of the person who owes maintenance allowance, article 1412 of the Judicial Code provides that the maintenance allowance due is recoverable from the assets of the debtor, even those which are not usually attachable. However, even though the minimum means of existence (minimex) is attachable, social assistance, on the other hand is not.

218. There was a major amendment to the Organizational Act of 8 July 1976, concerning public social assistance centres (CPAS) in respect of the functions of this social institution. Thus, the right to a special type of financial advance was established by the Act of 8 May 1989, for a child whose parent or the person in respect of whom the child has successfully brought a non-declaratory action of filiation, either does not pay the maintenance allowance or pays it irregularly.

219. Non-fulfilment of the maintenance obligations is incompatible with the rule of law and flouts the principles of equity and solidarity, when it has the effect of placing children in a state of need. This happens, for example, when the child (who should receive maintenance) and the mother (or the father) who lives with him have precarious incomes and depend primarily on the payment of the maintenance allowance to meet their basic needs.

220. The various studies carried out before the Act came into force revealed that the break-up of families, the number of unpaid maintenance debts and the non-execution of court decisions were among the many factors that contribute to poverty and social exclusion. The Government felt that the difficulties of the persons to whom maintenance allowances were due could best be overcome through the CPAS centres.

221. The new Act of 8 May 1989 has therefore included articles 68 bis and 68 quater in the Organizational Act. It came into force on 1 September 1989 and forms a part of a policy to combat poverty. The purpose is to find a solution to the problems of unpaid maintenance allowances and only when the recipient is a child (i.e. a minor or a child who, although he has attained majority, is still the recipient of family allowances) and when

his own resources, alone or combined with those of the father or the mother to whom the maintenance allowance is due, do not exceed BF 360,000. This maximum amount for the annual income (an amount introduced by the Act of 29 December 1990 in order to broaden the scope of application of the law) is tied to the pivotal consumer price index and is recalculated on 1 January each year. On 1 January 1994, it was BF 397,476. A person living on a low income to whom maintenance allowances are due does not therefore have to go to the court to obtain his child's or children's maintenance allowance. Since the adoption of the Act of 29 December 1990 concerning welfare provisions, the CPAS can automatically intervene to give advances on maintenance allowances.

222. The centres have therefore been given a dual function: on the one hand, to pay advances on maintenance allowances (the maximum advance is BF 4,000 per month) and, on the other, to recover these allowances. The centres therefore have various legal means at their disposal for recovery (subrogation proceedings, exercise of the rights of the person to whom the maintenance allowance is owed, initiation of civil proceedings by the creditor, transfer of funds) and, finally, they have the power to relinquish their right of recovery and request the VAT, Registration and Property Department, no sooner than one month after the defaulter has been given notice, to pay the maintenance allowance, to proceed to recover that allowance by an enforcement order, pursuant to article 3 of the Property Act of 22 December 1949. Lastly, the centres' right of recovery is suspended for as long as the debtor receives the minimex (or has resources less than or equal to it) and the recovery cannot have the effect of leaving the debtor only with resources lower than the minimum means of subsistence to which he would be entitled.

223. The Legislature has restricted itself, under the terms of article 6 (b), paragraph 2 (2) of the Organizational Act, to granting the benefit of advances on maintenance allowances to those children whose father (or mother) has evaded his or her responsibility to pay a maintenance allowance, which he or she is required to pay either by a (temporary or permanent) enforceable court order, or by the agreement referred to in article 1288, paragraph 3, of the Judicial Code, after registration of the divorce or judicial separation by mutual consent. The first case usually relates to the decision setting forth a decree of divorce or legal separation on specific grounds, but also to a decision ordering the debtor to pay a maintenance allowance, by virtue of the obligation of parents to maintain their children, established in the Civil Code. It appears, in the latter case, that while the marriage of the parents is not necessary for the law to be applied, the paternal (or maternal) filiation must none the less be established.

224. As far as beneficiaries of the Act of 8 May 1989 are concerned, anyone who satisfies the conditions laid down is therefore recognized as having a specific subjective right: the right to obtain advances from the CPAS on payments of the maintenance allowances due, as well as a right to assistance from the centres in recovering the balance. It should be noted that the Act seeks essentially to enable resumption of the regular payment of the maintenance allowance due to the children. It is only when the debtor brings the proof that the goal has been achieved, in other words, that he has started to fulfil his obligation again and has made four consecutive payments, that the intervention measures cease to take effect.

225. At the international level, Belgium has ratified the New York Convention of 20 June 1956 on the Recovery Abroad of Maintenance, as well as the Hague Convention of 24 October 1956 on the Law Applicable to Maintenance Obligations towards Children and the Hague Convention of 15 April 1958 on the Recognition and Enforcement of Decisions relating to Maintenance Obligations. Bilateral conventions have also been concluded with Austria, Romania and the former Yugoslavia.

VI. Children deprived of a family environment (art. 20)

A. At the federal level

226. In this article, as in article 7, paragraph 1, article 8, paragraph 1, article 9, paragraphs 1 and 3, article 18, paragraph 2, and article 27, paragraphs 2 and 3, there is a recurring theme, namely the right of the child to grow up in his family and the duty of the States parties to assist the family in the task of bringing up the child or, when separation of the child is necessary, to make sure he maintains personal contacts with his parents unless this is totally inadvisable, and in every case to provide for some form of alternative care.

227. Under Belgian law, the Act of 20 May 1987 concerning the abandonment of children under age (Civil Code, art. 370 bis et seq.) attempts to find a solution for those children who have been morally and physically abandoned by their parents after placement voluntarily or by a court order with a third person or in an institution. The Act which enables the "abandoned" child to be declared free for adoption, has none the less been the subject of some fundamental criticism because of the following problems:

(a) The problem of giving the child a hearing: such a hearing remains optional if he is under 15 years of age;

(b) The problem of the parents' right of defence: it is sometimes difficult to determine whether the indifference of the parents towards their child is voluntary or not. There are parents who find it physically impossible to visit their child regularly and gradually lose track of him or her, perhaps to their despair;

(c) The problem of the exclusion of the grandparents: at a time in our society when the role of grandparents is becoming increasingly important and recognized (see the case law on the subject of visiting rights) during the minor's childhood, they are completely excluded from this legislation.

228. To satisfy the requirements of the Convention on the Rights of the Child, the Communities have been very careful to help families that have practical or moral difficulties in bringing up their children, so as to avoid foster placement and then ensure the right of the child who is separated from both parents or from one of them, to maintain personal relations and direct contacts on a regular basis, unless this is contrary to the interest of the child.

229. Besides, adoption is not the only solution to the problem of abandoned children. Not all children are suitable for adoption, either because of their

age, their past, their handicap, their ethnic origin, or their attachment to their family of origin. What then is to be done in the case of children who have been placed, voluntarily or by a court order, in a foster family or an institution?

230. None of the current solutions in Belgian law (whether it is court-ordered guardianship, administrative guardianship, substitute guardianship or even the recent formula of "placement in the care of a family member" established in article 370 ter of the Civil Code (Act of 10 May 1987 which entrusts the child to a member of the family up to the fourth degree of kinship if the mother and father are indifferent about whether the child is placed with a third person or even in an institution as an alternative to the declaration of abandonment), meets the requirements of article 20 of the Convention on the Rights of the Child. The Convention prescribes that States parties shall provide suitable alternative protection for the child who is temporarily or permanently deprived of his or her family environment.

231. In Belgium, foster placement has virtually no legal status. Placement is therefore virtually non-existent. It is a veritable legal void, a kind of anomaly in family law, which is being increasingly criticized because of the uncertainties, the confusion about roles and most of all because of the insecurity of the partners in this triangular relationship with the child, starting with the child himself. Belgian law must therefore set up a system of foster placement which, while enabling the child to be taken temporarily into a foster home, encourages relations with his family of origin and his return to it. Recommendation No. R (87) 6 on foster families, adopted by the Council of Ministers of the Council of Europe on 20 March 1987, has contributed some very useful material in this regard.

B. At the Community level

232. The Communities share authority with the federal State in this matter and have also adopted measures to help the children deprived of their family environment.

1. In the French Community

233. In the French Community, the Decree of 4 March 1991 organizes assistance for children who, in their interest, are or have to be temporarily deprived of their family environment. As explained during the consideration of the article of the Convention, both the youth assistance counsellor, on a voluntary basis and the youth assistance director, pursuant to an enforcement order issued by the juvenile court, may exceptionally remove a young person, where necessary, from his family environment. Following this order, the young person may be lodged in a private home or in an institution approved by the French Community. As pointed out earlier, the placement should provide the young person with suitable living conditions and conditions that are appropriate for his development and adapted to his needs and age, and the person or institution in whose care he is placed is required to ensure that the contacts with his family are maintained, or at least encouraged, provided that this is not contrary to his interests.

234. Family placement services are approved by the Community in order to select the most suitable foster families and to ensure guidance. For example, the services are responsible for seeing that these families meet the conditions required of them by the Decree, especially in the matter of contacts with the family of the young person placed in their care if this is not contrary to his interests. In the spirit of the Decree, the family in whose care he is placed does not replace the family of origin; in fact, placement in the foster family, like any kind of placement, is in principle temporary, and preparations for the return to the family of origin should, as far as possible, be made under the best conditions.

235. There are, however, cases where, despite the efforts to help the family of origin to resume its rights, the child has to remain in the foster family or the institution in which he has been placed. There are also cases where the family of origin has washed its hands completely of the situation and abandons the child in the foster home or institution. To avoid such situations, articles 40 to 42 of the Decree prescribe that any service which habitually accommodates children at the request of the family, the youth assistance counsellor or pursuant to a juvenile court decision, shall send a report on the placement of each child to the youth assistance administration. If the report describes the situation of abandonment, the matter shall be referred to the competent youth assistance counsellor, who shall investigate the causes of the abandonment and try to remedy it. If his action fails to change the situation of abandonment, he may apply to the juvenile court for a declaration of abandonment with a view to having the child adopted.

236. The actual implementation of these provisions of the Decree, which requires considerable investment in time and staff, is now the subject of a joint study of "the relations between children in foster care and their families" by the youth assistance administration and the "Right and Security of Life" Centre of the Faculty of Law of the Notre-Dame de la Paix Faculties at Namur.

2. In the Flemish Community

237. In the Flemish Community, under the terms of article 57, paragraph 3, of the Organizational Act on public social assistance centres (CPAS), the centres provide guardianship or at least ensure the custody, maintenance and upbringing of children under age assigned to them by law, by the parents or by agencies. Article 63 provides that every child under age, over whom no one has parental authority, or of whom no one is the guardian or has physical custody, shall be entrusted to the centre of his commune. In keeping with article 64 of the Act, the juvenile court or the Committee for the Protection of Young Persons may entrust to the CPAS the children for whom the centre has already made arrangements for their custody and whose parents have been partly or totally deprived of parental authority.

238. Under the Flemish Executive Order of 6 February 1991, which lays down the objective criteria for the distribution of the Special Social Assistance Fund, benefits are provided for the placement of children in children's homes (1.5 per cent of the Fund) and in foster families and/or in family homes (1.5 per cent of the Fund). Some allowances may be granted by the Special

Fund, within the framework of projects for the underprivileged, to the CPAS and so contribute to the cost of holidays for the children of poor parents.

239. In application of articles 4 and 9 of the Decrees on special assistance to young persons, coordinated on 4 April 1990, and the Flemish Executive Order of 17 July 1991 on the organization and operation of the committees for the welfare of young persons, the latter may place a minor with behavioural problems in a foster family or in an institution. However, the prior consent of both the parents and of the minor is required, if the latter is 14 years of age. If he is under 14, he must absolutely be heard before any action is taken. On the basis of article 37 of the Protection of Young Persons Act of 8 April 1965, the juvenile court may place a minor with behavioural problems or who has committed an act which is characterized as a crime, in a foster family or in an appropriate institution for his accommodation, upbringing, education or vocational training.

240. The institutions or agencies in which the committees of concern for young persons or the juvenile court places minors must be approved by the Flemish Community in accordance with the Flemish Executive Order of 22 May 1991, setting forth the conditions of approval and the regulations governing subsidies for young persons' special assistance agencies. The approved agencies must satisfy many conditions relating to staff, infrastructure, operation and organization. They are inspected regularly to check that they conform to the approval standards. If an agency does not measure up to these standards, approval may be withdrawn. In addition, the approved agencies are subsidized by the Flemish Community.

241. The placement of a child in a foster family is usually supervised by an institution or agency that is approved and subsidized by the Flemish Community. The institution selects families that are physically and morally sound and it thoroughly investigates a foster family before placing a minor. The welfare service of either the committee for the welfare of young persons which has organized a placement or the juvenile court which has ordered it monitors the execution of the placement.

242. The social service sees to it that the foster care is in conformity with the plan of action drawn up at the beginning of the placement, in agreement with the institution and all the persons concerned, including the minor. If it proves necessary after one of these regular evaluations, the social service contacts the committee or the juvenile court, as appropriate, to make adjustments to the assistance being given. A minor will only be placed in a foster family or in an institution when it is felt that it is in his interest. In fact, the Flemish Community's regulations on special assistance to young persons are based on the principle that, as far as possible, the committee and the juvenile court organize assistance that can be given in the parental environment (art. 72, para. 3, of the Flemish Executive Order of 17 July 1991, on the organization and operation of the committees for the welfare of young persons and art. 14, para. 1 (1), of the Flemish Executive Order of 17 July 1991 on the organization and operation of the social services of the juvenile courts in the Flemish Community).

3. In the German-language Community

243. In the German-language Community, a service to place children in foster families was set up in January 1990. It is responsible for selecting and supervising the foster families. The placement decision is taken by the Committee for the Protection of Young Persons or the CPAS or the juvenile court. The person or institution in whose care the child is placed must maintain and encourage contacts with the family of origin, unless these contacts are detrimental to the child's development. A family assistance service (Dienst für Familienarbeit) attached to the institution which provides foster care is responsible for promoting family contacts for children in foster care and to provide for family therapy so as to encourage the return of the children to their families of origin.

VII. Adoption (art. 21)

A. At the federal level

244. There are two types of adoption under Belgian law: simple adoption and full adoption. Both types constitute a solemn contract and are subject to approval by the court. The conditions for full adoption are the same as those for a simple adoption, except for the age of the adopted child: full adoption is allowed only in the case of a minor. Furthermore, full adoption places the adopted child on exactly the same footing as a child born of the adoptive parents, whereas a simple adoption does not alter the status of the adopted child in his own family. As a rule, the adoption contract is received by a justice of the peace at the adoptive parent's domicile or a notary public. This is followed by ratification of the deed in the civil court or the juvenile court if the person adopted is a minor. These are the only authorities competent to do this under the Civil Code.

245. In respect of adoption, Belgian law has always been anxious to respect the interests of the child and this principle can be found in the legislative provisions quoted below:

(a) If any of the parties required by the Civil Code to give consent refuses to do so, whether it is the child's father or mother, the court may order adoption if it deems such refusal to be an abuse (Civil Code, art. 353). Furthermore "if consent is refused by the child's father and mother or by whichever of them has custody of the child, adoption cannot be ordered by the court unless it is a new adoption, and if the parent who refuses to give this consent has been indifferent to the child or has endangered his health, security or morals" (Civil Code, art. 353);

(b) If one of the conditions required when the deed of adoption was drawn up has ceased to exist before it is approved, the judge shall take this fact into account not as a basis for validating the process, but as a factor to be used in making his assessment, in the light of the interests of the child;

(c) When a child over 15 years of age is adopted, he himself must consent to his adoption;

(d) Furthermore, article 343 of the Civil Code specifies that simple adoption and full adoption are allowed "if the basis is sound and if they offer advantages for the child who is to be adopted".

246. The contractual nature of adoption and the two-stage procedure (consisting of the adoption document, followed by the court's approval, except in cases where the adoption is ordered upon abusive refusal by the parents (Civil Code, art. 353)) can have the paradoxical effect of placing the juvenile court judge, who has been called in after the whole process has been concluded, to approve the contract which has already been signed, and who is in a way presented with a "fait accompli". It can also reduce his supervision to observance of the legal formalities and to intervention in any extreme situations where the interests of the adopted child are so endangered that the child would have to be removed from the family, but which might be the only one family he has ever known and in which he has already been living for some months, perhaps even some years.

247. Belgium has always been concerned that the child should be respected. Therefore, within the framework of the Hague Conference on Private International Law, it participated in the drafting of the Hague Convention of May 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption. In the French Community, the Council has adopted the Decree ratifying this Convention on 24 March 1994.

248. This Convention endeavours to set out in precise legal terms some rather general principles enunciated in article 21 of the United Nations Convention on the Rights of the Child. It tries to secure effective implementation of the ideas which the international community has developed on the question of adoption; it sets forth the guarantees to be provided so that the inter-country adoption will be in the child's best interests and will respect for his rights: it is the child that must be given a family and not the reverse. The Convention seeks to ensure respect for these guarantees and to prevent the abduction and sale of or trafficking in children.

249. Finally, it provides that all the contracting States shall automatically recognize the adoptions that comply with its provisions. In view of its purpose, this treaty did not have to settle the sensitive question of the appropriateness of intercountry adoptions. However, the negotiators made a point of recalling the principles which are now universally accepted on this question: the child should grow up in an harmonious family environment, and preferably in his family of origin; if that is not possible and a suitable family cannot be found for the child in his country of origin, intercountry adoption may offer the advantage of giving him a permanent family.

250. The Convention also stresses the obligation properly to obtain the consent of the persons, agencies and institutions responsible for the child. It establishes strict rules regarding the conditions that must be fulfilled in obtaining this consent (especially that of the mother). It further requires that the child himself shall be consulted, if he is sufficiently mature.

251. This lengthy Convention, consisting of 48 often very detailed articles, contains still more provisions, dealing in particular with the protection of personal information about the child, his parents of origin or his adoptive

parents, the prohibition of improper financial gain by the agencies and the persons involved in the adoption, as well as the implementation of the Convention in federal States. Although some of these principles are already included in the Belgian Civil Code, the law on adoption will still need to be amended in order to meet all the requirements of the Convention.

B. At the Community level

252. The Communities are also competent in this matter and they have filled in some of the gaps and have set up a system for approving adoption agencies.

1. In the Flemish Community

253. On 3 May 1989 the Flemish Community promulgated a Decree on the approval of adoption services and restricting, on pain of criminal sanction (art. 7), the monopoly of the "mediation" activity vis-à-vis the adoption of a Belgian or foreign minor by approved legal persons (art. 2). The tasks (art. 5) of these bodies are mainly information, study and follow-up of the natural parents, the prospective adoptive parents and the child, the interdisciplinary character of the decision concerning placement, the drawing up of a written contract between the prospective adoptive parents and the association concerning the probable duration of the procedure as well as the cost and content of the services guaranteed and, in intercountry adoption, the obligation to deal only with services or bodies approved by the foreign country if the latter has an approval procedure and, in any case, on the basis of an agreement approved by the semi-public body Kind en Gezin.

254. Recourse to an adoption service is, however, still optional for prospective adoptive parents; this is understandable in the case of endo-family adoption. However, any non-approved legal person and any individual who acts as intermediary between the natural family and the prospective adoptive parents would incur criminal sanctions. At the beginning of 1994, 12 agencies had been approved as adoption agencies by the Flemish Community. This recognition which is reviewed annually, may be withdrawn at any time on specific grounds.

255. At the end of March 1994, the Flemish Government enacted two orders (not yet published) in implementation of the aforementioned decree and in the spirit of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (not yet ratified). These orders concern the designation of Kind en Gezin as the "Central Authority" within the meaning of the Convention and the introduction of an "agreement of principle" for the adoptive parents.

2. In the French Community

256. In the French Community, article 50, paragraph 1, of the Decree on assistance to young persons provides that: "Any legal person under private or public law desirous of acting as intermediary in the adoption of a young person must first be accredited for that purpose". Article 50 of the decree of 4 March 1991 like the Executive Order of 19 July 1991 may be traced directly to the travaux préparatoires of the Hague Conference on Private International Law on intercountry adoption.

257. The French Community thus anticipated the obligations that now devolve upon it following its approval of the Convention. For instance, it covered the following obligations:

(a) The obligation for adoption agencies to be constituted in the form of a non-profit-making association (Decree, art. 50; Executive Order, art. 1) and not to derive improper financial gain from their activities (Executive Order, art. 10; Hague Convention, art. 8, art. 11 (a) and art. 32);

(b) The obligation for adoption agencies to comprise a multidisciplinary, qualified, experienced and trained team (Decree, art. 50, para. 1, Executive Order, arts. 2 and 9; Hague Convention, art. 11 (b));

(c) The obligation to assess the suitability of the applicants to be adoptive parents (Decree, art. 50, para. 1; Executive Order, art. 7, para. 1; Hague Convention, art. 5 (a), art. 15 and art. 17 (d));

(d) The obligation to ensure that the prospective adoptive parents are counselled as may be necessary (Decree, art. 50, para. 1; Executive Order, art. 7, para. 3; Hague Convention, art. 5);

(e) The prohibition on the prospective adoptive parents from choosing the child (Executive Order, art. 7, para. 1; Hague Convention, art. 29);

(f) The obligation to preserve the information on adoptions carried out (Executive Order, art. 11; Hague Convention, art. 30 (1)) and to allow the adopted child access to such information (Executive Order, art. 11; Hague Convention, art. 30 (2));

(g) The obligation to make the adoption of a child subject to prior verification of his adoptability on one hand and respect for the principle of subsidiarity of intercountry adoption on the other hand (Executive Order, art. 5, para. 2 and art. 6, annexes II, III; consultant for 4 a and b);

(h) The obligation to ensure that the consent of the natural parents to the adoption of their child is given freely in full knowledge of the facts (Executive Order, art. 5, annex I.B; Hague Convention, art. 4 (c) (1));

(i) The obligation to inform the child, to obtain his view or his consent to his adoption (Executive Order, annexes II, IV; Hague Convention, art. 4 (d) (1));

(j) The obligation to prepare a report on the child (Executive Order, art. 6, Executive II; Hague Convention, art. 16).

258. Further, with a view to preparing the entry into force of the Hague Convention on its territory, the French Community set up, by Executive Order of 14 July 1992 (Moniteur belge of 26 August 1992) a central authority, namely, the Community Authority for Intercountry Adoption (ACAI), (Hague Convention, arts. 6 and 7). This central authority was established within the youth assistance administration. The Government of the French Community accredits the youth assistance administration, which monitors the adoption agencies (Decree, art. 50 and art. 12; Hague Convention, arts. 9 and 10). In

so doing, the youth assistance administration requires the adoption agencies with drawing up on their own responsibility the reports on the suitability of prospective adoptive parents (Decree, art. 50, para. 1; Executive Order, art. 7; Hague Convention, art. 22 (5)).

259. However, the central authority can assume responsibility only for what it controls. Its position inside the youth assistance administration enables the ACAI to monitor the adoption agencies and it can therefore assume responsibility for the merits of the medical-social-psychological studies aimed at determining whether prospective adoptive parents are suitable (Decree, art. 50, para. 3; Executive Order, art. 11). Its unique position also enables the ACAI to comply with the requirement contained in article 21 of the Hague Convention in that it may ensure that appropriate measures are taken if, after the transfer of the child to its territory, it considers that the continued placement of the child with the prospective adoptive parents is not in its interest.

3. In the German-language Community

260. In the German-language Community, adoptions are carried out through the services approved by the two other Communities. The new Decree on assistance to young persons makes provision for the recognition of the adoption services approved and monitored by the other Communities.

VIII. Illicit transfer and non-return (art. 11)

261. The measures taken at the national level to forestall the international abduction of children (exercise of visiting rights in a specific location or in the presence of a third party, prohibition on leaving Belgian territory, surrender of passport, payment of a security, etc.) proved unsatisfactory and/or ineffective. It was therefore soon felt necessary to develop international cooperation by establishing coercive machinery to promote the return of children transferred illicitly beyond national frontiers.

262. On 1 August 1985, Belgium ratified a convention drawn up in the Council of Europe, the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, Luxembourg, 20 May 1980 (Moniteur belge of 11 December 1985, entry into force 1 February 1986). This Convention has been ratified by a majority of the member States of the Council of Europe, namely, Austria, Cyprus, France, Luxembourg, Netherlands, Portugal, Spain, Switzerland, United Kingdom, Denmark, Norway, Sweden, Greece, Finland, Ireland and the Federal Republic of Germany.

263. In order to simplify the repatriation of children, the Convention provided for intervention by Central Authorities appointed by each contracting State, usually the Ministry of Justice (the case in Belgium), whose task is to work together. The judicial cooperation established aims at achieving dialogue between the central authorities and dialogue between the competent national authorities. Recourse to the Central Authority is optional but is encouraged. The purpose of the Convention is to allow persons to whom custody or a visiting right has been granted to enforce that right abroad and to secure the return of the child by means of a simple and expeditious procedure

when the child has been taken or is being held abroad illicitly. Protection of the visiting right is also assured in the context of the European Convention. The procedure is entirely free of charge, except, however, for repatriation expenses.

264. In January 1982, Belgium signed the Hague Convention on the Civil Aspects of International Child Abduction of 25 October 1980 which was negotiated in conjunction with the Hague Conference on Private International Law. This Convention, which may be regarded as supplementing the European Convention, seeks to guarantee the immediate return of a child who has been transferred illicitly and to guarantee protection of the visiting right by the establishment of Central Authorities that work together. This recourse to the authorities is, however, optional.

265. Within the European Union, a recommendation was adopted in 1985 establishing the institution of national correspondents pending the entry into force of the Council of Europe and the Hague Conference Conventions in all the member countries of the European Union. The task of the correspondents is to exchange information in the areas covered by these Conventions. The services of the Ministry of Justice have been designated in Belgium to carry out this task.

266. In conjunction with the political cooperation within the European Union, a working group on judicial cooperation has been set up in order to simplify and unify the exequatur procedures in matters relating to personal status.

267. Side by side with these multilateral agreements, mention should be made of the existence of bilateral agreements concluded by Belgium in respect of custody rights and visiting rights signed with France and the Grand Duchy of Luxembourg on 4 April 1987 and on 15 July 1991 with Morocco. Two protocols signed with Morocco and Tunisia on 19 April 1981 and 27 April 1989 respectively are currently in force at the administrative level. The Belgian-Moroccan Protocol establishing a consultative commission on civil matters makes provision for administrative cooperation between the Ministries of Justice in order to reach amicable settlements of individual disputes in regard to personal status, including custody and visiting rights in order to secure and guarantee the protection on the rights of the child and the parents. Since its inception, the commission has met on eight occasions. The Belgian-Tunisian Protocol is mainly intended to promote the amicable settlement of individual cases. Set up in 1989, the Belgian-Tunisian commission has thus far met on four occasions.

IX. Abuse and neglect (art. 19), including physical and psychological recovery and social reintegration (art. 39)

268. An ill-treated child is not simply a child who is beaten by his parents, guardians or by the teachers responsible for him. He may also be a child who is neglected, ill-fed, uncared for, constantly denigrated or humiliated by his family. He may also be a child who is forced to submit to the sexual advances of an adult, which inevitably have devastating consequences on a young developing mind.

A. At the Community level

269. Since the reform of the State, this issue has largely been "Communitarized" (questions that may be personalized: Constitution, art. 128, para. 1). The Councils of the three Communities regulate it by decree, each individually. These decrees have the force of law in the respective Communities (Constitution, art. 127, para. 2).

1. In the French Community

270. In the French Community, the Decree of 30 March 1983 established the Births Children's Service (ONE). Its general function is coordination at the Community level. The Decree of 29 April 1985 on the protection of maltreated children enables the multidisciplinary teams that specialize in detecting and treating maltreated children to be eligible for grants made by the ONE when they are accredited by the Government of the French Community. Thus far 14 teams have been accredited. The teams inform and alert the public and authorities and also train and supervise medical/social workers. They also take into care cases at risk by ensuring that the appropriate aid is provided.

271. After many years of research, ONE officials have developed structures for prevention and intervention that are unique of their kind, namely, the SOS Children multidisciplinary teams, of which there are currently 14 in the French Community. Needless to say, total elimination of the problem could be envisaged only with the full cooperation and training of all the parties concerned, accompanied by an extensive campaign to alert public opinion. This is one of the team's objectives, in addition to the treatment of individual situations. In order to obtain the particulars as soon as possible, a single telephone number (1991) has been brought into service, as a result of the cooperation of Télé-Accueil. Anyone wishing to report a case of ill-treatment can make contact with an SOS Children team by dialling that telephone number.

272. Since the entry into force of the Decree of 4 March 1991, the SOS Children teams have found it necessary to work in cooperation with the youth assistance counsellors, whose function is to provide aid to young people in danger, including children who are ill-treated. Article 36 organizes this cooperation in two stages when the youth assistance counsellor is first to be apprised of the mistreatment:

(a) Either the persons involved spontaneously apply for assistance and he merely directs them, without further action, to the SOS Children teams;

(b) Or, when he has knowledge from third parties of ill-treatment, privation or neglect suffered by a child, or when he suspects this to be the case, he may request an SOS Children team to take action; in such a case the team keeps him informed of the situation.

273. Article 57 of the Decree of 4 March 1991 also specifies that, notwithstanding the professional secrecy by which they are bound under that article, persons involved in the implementation of the Decree are required to inform the competent authorities (including an SOS Children team and the youth assistance counsellor) when they have knowledge of certain offences relating to ill-treatment of children.

2. In the Flemish Community

274. The Decree of 29 May 1984 (Moniteur belge of 22 August 1984) set up the organization Kind en Gezin for the Flemish Community. The brief of this organization is mainly to prevent cruelty and neglect in respect of children and to provide assistance in such an eventuality (art. 4, para. 1 (c)). It approves and subsidizes assistance centres for mistreated children, in accordance with the conditions specified by the Flemish Government Order of 8 July 1987 (Moniteur belge) of 15 January 1988.

275. In carrying out its mandate, the basic principles of Kind en Gezin are as follows: (a) to follow a medical-psychosocial model with assistance rather than repression; (b) to follow a family-oriented policy; and (c) to implement a multidisciplinary policy. Thus far Kind en Gezin has approved six centres, in principle one for each province. These centres have the following functions: to provide expert assistance to helpers, to coordinate, and if necessary organize, assistance to families and to other persons who are involved, and finally, to create an awareness among helpers, the teaching profession and the public.

276. Needless to say, the problems arising from ill-treatment inflicted on children must be treated by experts. It is a particularly difficult and sensitive matter to deal with ill-treated children and their families. It is a task which requires undivided attention and exceptional commitment. Ongoing training, both theoretical and practical, is essential. The key to success, however, is still continuous cooperation and dialogue, not only within the team in the centre itself but also with other bodies, both public and private. In particular, the Kind en Gezin social workers are in a position to play a significant role in that extensive cooperation arrangement. That is due to their unique position as well as their potential for establishing a relationship of trust with families. It should not be forgotten that some 700 medical/social workers throughout Flanders call on virtually all the families with children up to 3 years of age. They are in a position to detect families at risk, to help them, and when it proves necessary, to steer them towards the centres. On the basis of these direct contacts and the relations of trust thus established, they are able to make a contribution to prevention and assistance activities in the case of ill-treatment inflicted on children.

277. In the case of ill-treatment or neglect of a child giving rise to behavioural problems, the minor may obtain help in the context of the arrangements for special assistance to young people. Articles 4 to 9 of the Decrees on special assistance to young people, coordinated on 4 April 1990, enable the committee for the welfare of young persons, when apprised of a situation giving rise to behavioural problems, either to refer the person concerned to specialized services or to organize voluntary assistance in the context of the special assistance for young people. The minor may then either be placed in the establishment or be assisted by a social service or by any other means within his family. In implementation of article 36, paragraph 1 (2) and article 37 of the Protection of Young Persons Act of 8 April 1965, the juvenile court may order a measure of assistance for a minor with behavioural problems. Here again, this aid takes the form either of placement or of assistance to the minor within his family.

3. In the German-language Community

278. In the German-language Community, families at risk or families in which a problem has arisen are followed up in most cases on the initiative of the social service of the Committee for the Protection of Young Persons or the juvenile court in cooperation with various social services, such as Dienst für Kind und Familie, Dienst für Familienarbeit, Familienhilfsdienst, and Sozialpsychologisches Zentrum. All these services join, at the initiative of the Committee for the Protection of Young Persons, in a multidisciplinary specific team, "Study Group on Cases of Ill-treated Children" to study cases and measures to be taken from the individual viewpoint as well as from that of more extensive prevention.

279. The organization of prevention and the approval of multidisciplinary groups in the French Community in 1985 and multidisciplinary assistance centres in the Flemish Community in 1989 have been the subject of debate in the respective Communities. Mention may also be made of a private initiative. In March 1990 a publicity agency embarked on a somewhat aggressive poster campaign. This campaign gave rise to objections on the part of the multidisciplinary teams and the assistance centres as well as the ONE and Kind en Gezin.

B. At the federal level

280. Although the Communities are competent in the main, civil law still regulates the criminal aspect of this question as well as the confidentiality problem. The multidisciplinary teams in the French Community and the multidisciplinary assistance centres in the Flemish Community inform the judicial authority only in cases in which the threat of ill-treatment cannot be dispelled, owing to the unwillingness or weakness of the parents.

281. Article 458 of the Criminal Code obliges doctors, surgeons, health officers, pharmacists, midwives and any other persons who, as a result of their trade or profession, are in possession of secrets confided in them, to remain silent about the matters they have learned in the exercise of their profession, except in those cases when they are called upon to testify in court and when the law obliges them to disclose these secrets (contagious diseases and declarations of birth). The punishment provided for the disclosure of secrets may range from one week to six months' imprisonment and a fine of 100 to 500 francs.

282. The principles applicable are as follows:

(a) All social workers are covered by this article, whatever the service in which they are employed; on 20 February 1905 the Court of Cassation stipulated that confidentiality applied in connection with their duties;

(b) The obligation exists only in connection with secrets, i.e. matters discovered or observed or confidences;

(c) Professional secrets must be involved, i.e. matters which the confidant learns or with which he is entrusted because of his confidential role;

(d) The disclosure must be spontaneous and voluntary, made in the knowledge that an unlawful act is being committed.

No offence is involved if the secret is disclosed as a result of imprudence, forgetfulness or irresponsibility. However, civil liability might be incurred.

283. There is however one exception, testimony in court. There is an obligation to testify in court when a summons is issued. In accordance with article 925 of the Judicial Code, only if the witness is duly summoned does he have the obligation to appear in court, failing which he may be liable to a criminal sanction. Confidentiality stops at the door of the court. An expert is therefore completely free to speak when he is called upon to testify in court, even if the hearing is public. Hence, he will never be liable to incur the penalties prescribed by article 458 of the Criminal Code. Conversely, an expert is always entitled to professional secrecy; he may always take refuge behind confidentiality to avoid making certain disclosures. It is obviously very difficult for the expert to decide which attitude he will take. In respect of outsiders to legal proceedings, the obligation to maintain confidentiality is absolute. There can be no question of disclosing to neighbours, acquaintances and the press facts which have come to his knowledge in the exercise of his duties.

284. The obligation to respect professional secrecy is limited by the very purpose of the profession. The obligation to maintain confidentiality lapses when, despite the advice and support of the medical/social worker, the moral and physical health of the child is seriously endangered. The aim then is to protect the child against his own parents. At this time the medical/social worker does not only have the right to come to the assistance of a child, he even has the duty to do so. In such a case, confidentiality is often wrongly invoked, because the view is taken that the "client" is the parent. However, professional secrecy is owed to the victim, who is the child. Consequently, parents who inflict injuries should not be protected.

285. Further, articles 422 bis and 422 ter of the Criminal Code punish reprehensible failure to assist a person in danger. Article 422 bis, inter alia, specifies penalties of imprisonment and/or a fine for "a person who fails to assist or to provide assistance to a person exposed to serious danger, whether he has seen for himself the situation of this person or whether the situation is described by those who request his intervention. The offence is committed if the person could have taken action without serious danger to himself or anyone else". Such a provision could be invoked in respect of ill-treatment of a child inflicted by parents or by other persons. Confidentiality should never be absolute, but relative. It is a means of protecting values but is not a value in itself.

286. Despite all the measures taken nationwide as well as at the Community level, there are occasions on which the effects of article 19 of the Convention are nullified. For instance, at the beginning of 1993, the Government was faced with a genuine problem, namely, a child belonging to the family of an ambassador and living under his roof in Belgium was ill-treated by the ambassador’s wife. Obviously, in accordance with article 41 of the Vienna Convention of 18 April 1961, it was incumbent on the ambassador to

respect the laws and regulations of the receiving State and more particularly the Convention on the Rights of the Child. However, diplomatic immunity, set forth in articles 29 and 38 of the Vienna Convention, must also be respected. For that reason, the Government was unable to take coercive protection measures in the case of this child.

X. Periodic review of placement (art. 25)

A. At the federal level

287. Any judicial measure under article 37, paragraph 2 (3) and (4) must be reviewed for the purpose of being confirmed, revoked or amended before a period of one year has expired from the day on which the decision became final. This procedure is undertaken by the Procurator's Office in the manner prescribed in article 45 (2) (b) and (c) of the Act of 8 February 1965. The competent authorities referred to in article 37, paragraph 2 (4) transmit each quarter to the juvenile court an assessment report on the person who has been the subject of a custody measure in a closed educational system.

B. At the Community level

1. In the French Community

288. In the French Community, as already explained when article 9 of the Convention was considered, the Decree of 4 March 1991 guarantees a young person in placement a periodic review of his situation. Accordingly, the Decree prescribes maximum periods of custody (art. 10), renewal being subject to the condition that the situation of the young person is reviewed. On the occasion of this review, the Decree stipulates compliance with certain formalities:

(a) The persons in receipt of assistance are heard and take part in the decisions which concern them and in their implementation (art. 6);

(b) Concerning renewal of the assistance, no decision will be taken without the written agreement of the young person if he has reached the age of 14 or, if he has not reached this age, by persons who have custody of him (art. 7);

(c) Any young person in placement receives periodic visits from the youth assistance counsellor or director so that his situation may be reviewed (art. 10).

289. In addition, article 40 of the Decree stipulates that any service habitually accommodating children at the request of the family, the counsellor or in implementation of a juvenile court decision shall transmit a report on the placement of each child every six months to the ministerial representative. This report contains an assessment of how the placement is proceeding in the light of the child's personality, his family situation and his contacts with his family.

2. In the Flemish Community

290. In the Flemish Community, periods ranging from 30 days to 1 year have been prescribed for the various forms of assistance that may be organized by the committee for the welfare of young persons in situations where there are behavioural problems (see art. 71 of the Flemish Government Order of 17 July 1991 on the organization and operation of the committees). Some forms of assistance may be extended only once.

291. Chapter IV (not yet in force) of the Decrees on special assistance to young persons, coordinated on 4 April 1990, prescribes 13 different measures that may be taken by the juvenile court in respect of minors experiencing behavioural problems. The maximum duration of the measures also varies from 30 days to 1 year. When this period has expired, the measures must be reviewed. Most of the measures may be extended several times, some only once and others not at all. Further, at any time, the measures may be withheld as a matter of course or replaced by the juvenile court, at the request of the minor, his legal representative, the Procurator's Office or the social service of the Flemish Community attached to the juvenile court.

3. In the German-language Community

292. In the German-language Community, the draft decree on assistance to young people specifies that all measures taken by the youth assistance service and by the juvenile court are limited in time (from six months to two years) and their renewal is subject to the condition that the situation be reviewed.

PART VI

BASIC HEALTH AND WELFARE

I. Survival and development (art. 6, para. 2)

A. At the federal level

293. At the national level, the sickness-disability insurance system, which falls within the competence of the federal Government, indirectly helps to promote the health of children and mothers by reimbursing the cost of certain health services. Services covered by the sickness insurance include examinations and consultations by general practitioners and specialists, dental care, childbirth, the supply of pharmaceutical products, the treatment of mental illnesses, tuberculosis, cancer, polio, congenital defects and malformations, hospitalization for observation and treatment, re-education services, placement (for the purpose of prevention of tuberculosis) in an observation sanatorium or in a camp for susceptible children, placement (for the purpose of protection of children against tubercular infection) in a nursery, in a preservation institution or in a family, and the supply of breast milk. Female beneficiaries of the insurance also receive a maternity allowance and are entitled to antenatal rest leave (not less than one week and not more than six weeks before childbirth) and postnatal leave (not less than eight weeks after childbirth for employees and three weeks for self-employed women).

294. On the question of occupational diseases, attention should be drawn to the importance of preventive measures which may preserve the mother's health. Thus, a worker affected or threatened by an occupational disease may, on the advice of his doctor and on the proposal of the Occupational Diseases Fund, stop, either temporarily or permanently, working or engaging in any activity that may expose him to the risk of such a disease. A worker may apply to the Fund for permission to stop working.

295. As regards efforts to be made to promote child health, stress will be laid on the value of:

(a) Encouraging examinations of pregnant women and infants in order to limit the risks of premature birth and malformation. In this connection, the new Maternity Insurance Act, by providing for a week's compulsory antenatal rest, may be said to help to preserve mother and child health;

(b) Reminding families of the dates of essential booster vaccinations for children;

(c) Developing school medicine as a preventive tool;

(d) Giving information on preventive dental care and the preventive care card.

B. At the Community level

296. The various activities of the semi-public institutions in each of the Communities have already been described in the observations on article 18, paragraph 1, of the Convention (see paras. 175-189 above).

II. Disabled children (art. 23)

A. At the federal level

297. The Belgian Government devotes particular attention to the question of disabled persons. Disabled children obviously need special care and appropriate education and training with the aim of promoting their independence and active participation in the life of the community. From a financial standpoint, the coordinated legislation relating to family allowances for gainfully employed persons (Royal Decree of 19 December 1993) made provision for certain benefits for disabled children:

(a) Article 47 provides that family allowances shall be increased in accordance with the child's degree of independence, by a supplement of BF 11,471, BF 12,556 or BF 13,423 for each disabled child under the age of 21 suffering from at least 66 per cent physical or mental disability. The independence of the child is evaluated by comparison with a non-disabled child of the same age;

(b) Article 63 stipulates that family allowances shall be granted up to the age of 21 in respect of children suffering from not less than 66 per cent physical or mental disability.

As regards self-employed persons, the family benefit system provides for an additional family allowance and family allowances beyond the age-limit for disabled children.

B. At the Community or regional level

298. From the standpoint of practical assistance and guidance, the Wallonia region and the Brussels-Capital region organize, on the basis of the Decree of 12 July 1990, the approval and subsidization of early assistance services for disabled children. These services are intended for children suffering from an established disability, whether mental, physical or sensorial, from birth up to the age of six and for their families. It is their responsibility:

(a) To stay in close touch with parents, as from the time when the disability becomes known, and to provide them with social and psychological assistance;

(b) To provide children with educational assistance and the parents with educational counselling which will avert action prejudicial to the development of the children by making maximum use of the resources of the family and extra-family environment.

Comprehensive care of disabled children will be provided by an interdisciplinary team which will act in collaboration and partnership with the socio-medical institutions.

1. In the Flemish Community

299. In the Flemish Community, the Decree of 27 June 1990 provides for the establishment of the Flemish Fund for the Social Integration of Disabled Persons. This Fund, inter alia, subsidizes a number of institutions dealing with disabled children:

(a) The first of these are residential establishments, also known as medical-educational institutes, which offer 24-hour accommodation and guidance for disabled children, every day of the year. This does not mean that the children stay there all the time. During the day, children able to attend school follow courses, generally in a special school which may be associated with the residential institution. Alternative school activities are provided for other children. Many children spend the weekends and holidays with their families; in this case, the role of the residential institution is to support the family. Residential institutions may also in some cases replace the family (e.g. in the case of placement by the authorities responsible for the protection of young people);

(b) Apart from these residential institutions, there are also semi-residential institutions which, from 8 a.m. to 6 p.m., provide accommodation, guidance and tuition for disabled children; they are open to both children attending a school and other children;

(c) Brief-stay homes provide, for both disabled children and disabled adults, day and night facilities for a short period. Their function is manifestly to support the family by acting as a replacement for it and relieving it of responsibility at difficult times;

(d) Observation, guidance and medical, psychological and pedagogical treatment centres are intended for psycho-neurotic and/or mentally disabled children. When the child arrives at the centre, it undertakes an examination of the various aspects of the disability and prepares a report on the treatment to be followed, the educational approach and possible acceptance in a specialized institution;

(e) Centres specializing in developmental problems are intended for children with very complex and/or multiple disabilities. It is necessary, in the interests of the child, not only to detect and diagnose the disability in time, but also to provide appropriate guidance. If necessary, these centres can call on specialized departments of the university hospitals with which they are in contact;

(f) Apart from the above-mentioned institutions, there are also services available to both children and adults. The family placement services deal with placement in volunteer families. When a placement is made, the service carries out an inspection and ensures that the family receives support and guidance. In addition, there are the home guidance services which provide comprehensive assistance in the area of education to families comprising a disabled person.

300. With regard to the education of disabled children, in Flanders the above-mentioned special education is available. There are three levels, special nursery education, special primary education and special secondary education. Special education is also divided into eight types according to the nature of the problem. Disabled children may also follow integrated education courses, where they are integrated into ordinary education while at the same time receiving guidance through special education.

301. For the sake of completeness, it should also be stated, in the context of a coherent and comprehensive policy, that the Flemish Fund performs services for adults in the areas of specialized vocational guidance, vocational training, employment and equipment in the health care sector - in a nutshell, in all aspects of social integration.

2. In the German-language Community

302. The German-language Community also has an early assistance service which monitors children suffering from retarded development or any kind of disability as from their time of birth; a mutual assistance group has been set up for parents with disabled children. Financial support in the context of social assistance is granted by the Community (when sickness, disability or a difficult social situation gives rise to substantial costs). Kindertagesstätte Elsenborn is responsible for the daytime care of disabled children. The Community has been instrumental in organizing international seminars on disabled children and has an office for disabled persons.

303. In order to enable disabled children to gain access to adequate training and education, specific teaching structures have been set up for children and adolescents who, while capable of being taught, cannot follow a normal education course. An Act of 1970, supplemented by a Decree of 1978, establishes distinctions between eight categories of disability: (i) slight mental disability; (ii) severe mental disability; (iii) physical disability; (iv) children suffering from diseases; (v) children requiring hospital care; (vi) eyesight deficiency; (vii) hearing deficiency; and (viii) motor imbalances.

304. Education specially adapted to the needs of these children has been provided for under the various systems at the nursery, primary and secondary levels (extended to the age of 21) in the form of either special sections in ordinary schools or special schools. There are normally 10 pupils to a class, and a medical or paramedical team is always present. On the other hand, no specific skill is required of teaching staff and their practical training is not always adequate.

305. Pupils in special education account for 3-4 per cent of the total school population. This percentage tends to be slightly lower in primary schools and rises slightly in secondary schools. The number of children suffering from slight mental disability represents half the total children enrolled in special education for disabled children.

306. The Special Education Act of 6 July 1970 applies to disabled children who, while capable of being taught, are nevertheless incapable of following courses in an ordinary school and thus ensures the development of their physical and intellectual abilities and their social adjustment by preparing them for family life, the practice of occupations compatible with their disability and their employment in a protected environment.

III. Health and medical services (art. 24)

A. In the French Community

307. In the French Community, the Decree of 12 March 1990 contains the necessary provisions for the establishment of the structures of the Births and Children Office (ONE), a Community body which succeeds the former National Office for Children. The ONE, through its consultations and facilities, enables a large number of children to receive free vaccinations. Vaccinations against polio, diphtheria, whooping-cough and tetanus are administered to more than 95 per cent of all children. Active promotion of vaccination against measles, mumps and rubella (MMR) has been under way since 1989, and special efforts have been made to improve the maximum MMR vaccination rate for children aged two. This has led, inter alia, to a 26.6 per cent increase in doses of vaccine distributed and an appreciable decline in the incidence of measles during the past two years.

308. During 1993, the vaccination rate was measured in accordance with the cluster survey technique in order to determine progress made since 1989, when the trivalent MMR vaccination rate had been only 57 per cent for infants aged between 18 and 24 months. The results achieved should make it possible to

continue the effort already begun or to reinforce activities aimed at eliminating the five diseases from the programme of the WHO Regional Office for Europe.

309. Under an agreement between three universities, the various vaccinations have been integrated within a single programme. Apart from the subsidized national programmes, the French Community subsidizes others, such as the screening of metabolic diseases and assistance for certain long-term diseases.

310. Nutritional problems arise essentially in qualitative terms. Health education campaigns are under way to promote a balanced diet in pregnant women and young children. Training is provided for kitchen staff working in children's institutions. A study is to be initiated on disturbances related to iodine deficiency. Breast-feeding is the subject of a carefully designed promotion campaign. The free choice of mothers is respected and information is provided on the advantages and disadvantages of the various forms of feeding. With the aim of helping women wishing to work, the ONE has established child care facilities. This policy will be pursued in order to meet all needs.

311. Action to combat premature birth has always constituted one of the ONE's chief concerns. A number of studies have been or are being undertaken in this sector (psychological factors liable to induce early birth, extremely premature birth, in utero transfers of risk cases). Regular health education campaigns are conducted on this subject. The ONE also stresses the need for early monitoring of pregnancies. As regards facilities, it should be noted that the ONE subsidizes antenatal consultations and consultations for children. These facilities are intended to ensure the psycho-medico-social monitoring of mothers and children, and are supplemented by a network of medical/social workers who, inter alia, make regular home visits.

312. The ONE has defined 11 priority mother-and-child-health programmes relating to the following subjects:

Measles, mumps and rubella (MMR) vaccination;

Breast-feeding;

Screening of eyesight disorders;

Screening of dental decay;

Ill-treatment of children;

Growth;

Tuberculosis screening and action to combat the disease;

Urinary infections;

Nutritional problems;

Accidents in the home;

Cot-death syndrome.

313. As regards efforts to combat sexually transmissible diseases and more particularly AIDS, the Government of the French Community, on 16 April 1991, adopted a Decree establishing the Scientific and Ethical Agency and Council for the Prevention of AIDS. The Agency may, on its own initiative or at the request of the Minister concerned:

(a) Undertake, organize or promote initiatives in the area of the prevention of AIDS, and coordinate these initiatives;

(b) Compile documentation relating to the various disciplines affected by its activity;

(c) Establish contacts with public or private institutions operating in the context of its activities;

(d) Represent the French Community at meetings relating to its activities;

(e) Give the Executive an opinion on any request for a subsidy within two months of the relevant application to the Community.

B. In the Flemish Community

314. In the Flemish Community, the public authorities provide, free of charge, the necessary vaccine against diseases such as tetanus, whooping cough, diphtheria, measles, mumps and rubella. Previously, the vaccination programme formed part of the services offered by Kind en Gezin, which was, as it were, the forerunner of the School Medical Inspectorate. As regards other matters, mention has already been made in the report of the surveillance of child health through home visits by nurses/social workers, the consultation offices for children, and the brochures and information evenings organized by Kind en Gezin.

315. The Community organizes the School Medical Inspectorate (IMS). Children placed under the surveillance of the Ambulante en Sociale Gezondheidszorg service include all those between the first year of nursery school, i.e. children aged three years, and higher non-university education, i.e. young people of school age. This surveillance is organized under the Flemish Government Order of 30 July 1985 concerning the IMS, an Order which regulates the frequency and content of preventive medical examinations, the screening of tuberculosis and the adoption of prophylactic measures in the event of outbreaks of infectious diseases in schools. The Order extends the role of the IMS to the review and follow-up of the vaccination situation and to the examination of school living conditions, with further responsibility, where necessary for counselling the parents and the school on preventive health care, notably in the areas of hygiene, nutrition and school meals, safety, physical education and sport.

316. In addition, the IMS team remains prepared for dialogue with teaching staff, parents and pupils, and plays an active part in health information and education programmes in the school system. These programmes cover a wide range of subjects, including nutrition, hygiene, tobacco and alcohol abuse, drugs, stress at examination time, healthy living habits, sex education, education in human relationships and safe working conditions in vocational training.

317. In recent years the activities of the IMS have grown considerably. As society develops, new needs arise and so part-time teaching has recently been included among its responsibilities. Among the new problems, occasional cases of drugs in school and the presence of HIV-positive pupils have already been reported. The ill-treatment of children is another problem whose handling requires great care. An effective and adequate response cannot be made through the straightforward application of legislation, given the multidimensional character of the situations involved. Various bodies have to collaborate and coordinate their activities.

318. As regards AIDS, the Flemish Community puts the main emphasis on prevention in young people. A number of activities of various organizations have received the support of the competent Community Minister. A portion of the approximately BF 12 million paid in subsidies is devoted to projects in which young people constitute the target group. These are projects outside the school environment, intended for young people aged between 15 and 18. The most important project is the Veilig Vrijen Toernee conducted by the Aidsteam; its purpose is to provide information on ways in which AIDS may be contracted, methods of contraception, and other sexually transmissible diseases. The Jeugd en Sexualiteit working group has also, in the past, received a subsidy for another AIDS prevention project. Through recent regulations, attempts are being made to remedy the financing difficulties encountered by the various AIDS prevention projects; it has, however, been found impossible to keep the excellent existing information projects at a consistent level owing to the shortage of financial resources allocated for this form of prevention and information, and more particularly information focused on the young. The Vlaams Instituut voor Gezondheidspromotie could help to improve this situation significantly.

C. In the German-language Community

319. In the German-language Community, special campaigns have been launched for the screening of eyesight disorders, MMR vaccination, etc. Financial support is also provided for diseases such as mucoviscidosis and hypothyroidism. A coordinating group and a sensitization campaign to combat AIDS have also been initiated by the German-language Community.

IV. Social security and child-care services and facilities (art. 26 and art. 18, para. 3)

A. Social security

320. Family policy in Belgium has been within the purview of the Communities since August 1980, with some exceptions, including the family allowances designed to provide families with children with extra income, based on their

parents' occupational or social situation. Plans for reforming family allowances currently centre on the concept of the rights of the child. The goal is to extend family allowances by detaching them from the socio-occupational status of the parents. One trend is to ensure social security rights on an individual basis: "Family allowances should no longer be a right stemming from the parents' socio-occupational situation, but an inherent right of the child as such".

321. For wage-earners, family allowances are one of the five branches of social security, together with sickness-disability insurance, unemployment insurance, retirement and survivors' pensions and annual holidays. It would be more accurate to speak of "family benefits", to the extent that family allowances are only one of the forms of action of this particular branch of social security, which also provides:

(a) Payment of birth allowances: the birth allowance is a single payment, to which every birth gives entitlement. The purpose is to relieve the costs entailed by an infant (children's supplies, bedroom, etc.). The birth allowance is highest for the first child (in July 1995, it was BF 34,545, as against BF 25,991 for subsequent children);

(b) Payment of an adoption allowance: since 1 January 1993 this allowance has been granted to anyone who adopts a child and fulfils the conditions entitling him to family allowances. The amount paid for each adopted child is the same as the birth allowance for the first child;

(c) Benefits in the form of co-financing of community services and facilities. Subsidies are given to day nurseries (for children under three years of age), community homes for small children and the family assistance services.

Family allowances have been an acquired right of all wage-earners since 14 December 1930, with the publication in the Moniteur belge of the Act of 4 August 1930 instituting family allowances for wage-earners. Belgium thus became the first country in the world to stipulate that employers must join a family allowance fund.

322. The amount of the family allowances depends on several factors, in particular the number and age of the children. In July 1993, the basic monthly allowance for an employed person was BF 2,550 for the first child, BF 4,718 for the second child and BF 7,044 for each of the subsequent children. At the ages of 8 and 12 each child is entitled to a supplement in accordance with his age. All the amounts mentioned are regularly adjusted to the consumer price index.

323. Family allowances were extended to self-employed workers through the Act of 10 June 1937 and the Royal Decree of 22 December 1938. This law sets out the considerations and principles adopted by the Act of 1930 instituting family allowances for wage-earners, i.e. essential equality between self-employed workers with dependant children and those without, by making it obligatory to join a family allowance compensation fund. There is also one provision whereby the funds must award family allowances "at least equal or equivalent to those awarded to workers under the Act of 4 August 1930"

(art. 3, para. 1). This principle of equality or equivalence between the family benefits of salaried and independent workers is not respected. The basic difference occurs at the level of the family allowance granted for the first or only child: the amount of the ordinary family allowance for the first child of a self-employed worker is considerably lower than that under the wage-earner system. The basic reason for this difference is the mode of financing of the self-employed regime. The self-employed workers' family allowance regime shows a deficit, apart from the State subsidies.

324. The trend towards extending family benefits first took the form of extending the right to family allowances to all categories of the population: from the cost-of-living allowances paid by the State to public employees during and after the First World War through guaranteed family benefits. It is estimated today that nearly all children throughout the country are receiving family allowances; this represents approximately 2.5 million persons, or one quarter of the country's population. This trend then took the form of broadening the conditions for child beneficiaries. The following are examples of this process: payment of family allowances to students continuing their studies beyond the compulsory schooling period, full-time students of school age, apprentices and students attending school part-time, young "assistant home makers" or "household managers". The latter two categories of beneficiary apply to a young person under 25 years of age who either assists one of the parents to perform household tasks in a household having at least 4 children, 3 of whom are receiving family benefits, or assists a parent who is unable to perform his or her household tasks. In this type of situation, the basic definition of family allowances is altered and becomes the awarding of an income outside of the cases generally laid down by the social security system: pension, unemployment, sickness-disability.

325. Finally, mention should be made of the guaranteed family benefits system that was introduced for families and children who were not entitled to any family allowances under a Belgian, foreign or international system. In other words, this system gives entitlement to family allowances regardless of labour benefits or related conditions relating to the situation of a beneficiary. In practice, the system is reserved for families whose income is under a certain amount. Only the beneficiaries of the minimum livelihood allowance (Minimex) or the guaranteed senior citizen's income are entitled to guaranteed family benefits without an inquiry into their finances, since that was already done when deciding whether they were entitled to the Minimex or guaranteed income.

326. The guaranteed family benefits system, introduced by the Act of 20 July 1971, completed the trend towards extending family benefits which had begun with initiatives by the State and certain employers at the end of the First World War. The system is limited, however, because it restricts certain conditions for awarding family benefits. Besides the fact that guaranteed family benefits are not granted beyond certain levels of income, there are a number of restrictions regarding the beneficiary, the child beneficiary and the family benefits themselves. An applicant must "be an individual who has effectively resided in Belgium for at least five years without a break before submitting the application for guaranteed family benefits". Because the awarding of the benefit is confined to individuals, guaranteed family benefits are not granted if the child is in the custody of a

public authority, an institution, or a guardian. However, the five-year limit does not apply to recognized political refugees, persons born in Belgium and Belgians themselves.

327. When candidates for refugee status are being assisted by a public social assistance centre (CPAS), a Ministerial Order (20 May 1983) setting limits for reimbursement by the Ministry of Public Health and the Environment of the costs of assisting an indigent person who does not have Belgian nationality up to the day he is entered in the population register enables the CPAS to be reimbursed the equivalent of the guaranteed family benefits that would have been awarded. The CPAS may be reimbursed this amount in the event of a decision to reject the application by the National Family Allowances Office for wage-earners. Beginning 1 January 1992, the five-year limit also does not apply to nationals of a member State of the European Union. This change in the law is aimed at bringing the Belgian system into line with Community law.

328. A child receiving benefits must reside in Belgium at the time the application for family benefits is submitted. The residence requirement introduces a difference between the guaranteed family benefits and the other family allowance systems. Under the other systems, family allowances are paid to children living abroad when certain conditions are fulfilled. In other respects, a child receiving guaranteed family benefits must fulfil the same conditions as in the general system: be a dependant, of mandatory school age, an apprentice, a student, etc.

B. Child-care services and facilities

1. In the French Community

329. As regards child-care services, the policy of the ONE, a French Community body, has always been to make a variety of arrangements available to families. Some parents may prefer their children to be looked after in a group situation, in a specially designed or arranged building; these will choose a day nursery, pre-nursery services, children’s club or the brand new "community child care centres". The centres are exactly like an ordinary day nursery, the difference being that the mode of financing is based on a particularly profitable participation by the commune and the ONE. Other parents, wishing to see their children in a more family-like environment, closer to the conditions found at home, are more apt to choose the "child-minder" arrangement. Child-minders may belong to a supervised child-minder service, or work independently. For parents, the only perceptible difference between these two types of child-minders (supervised or private) is the cost. The charges are governed by law in the case of the former and by contract in the case of the latter. We should also mention that the supervised child-minders are given regular training and are supervised by a social worker. In all cases, however, the children’s safety and well-being are monitored by the ONE services, whether the child-care service is public or private.

2. In the Flemish Community

330. In the Flemish community, extensive and largely diversified child-care services are available. Parents may make use of an entire range of possibilities, involving care in both families and institutions. Mention has

already been made in Part V of this report of the measures that the CPAS can take under articles 57, 63 and 64 of the Organizational Act on the CPAS and of the incentives contained in the subsidy criteria of the Special Welfare Fund.

331. Activities organized by private initiative include care for young children as a result of the family's specific working or living conditions and crisis or problem situations. Specific types of care following ill-treatment or negligence is also given by third parties. The role played by Kind en Gezin in this respect is to provide incentives, lay down regulations, and award subsidies. Kind en Gezin is largely concerned with arrangements for care of children up to school age, which include authorized and subsidized care institutions; supervised but unsubsidized institutions and care that is not under supervision.

332. Day nurseries and foster care families fall in the category of authorized and subsidized day care institutions. They are governed by strict regulations as regards their educational and medical/social staff. This is necessary in order to ensure adequate supervision of the children, parents and/or foster families. Parents pay an official charge based on their taxable income.

333. Private or independent foster families and care institutions are not subsidized, but they are legally required to report to the Kind en Gezin. They can ask for supervision from Kind en Gezin, which then issues a certificate when a number of conditions and qualitative criteria are satisfied. This certificate may be considered as being a seal of quality. The charge to parents for such care is not determined by law.

334. A significant amount of child care in Flanders is always provided by grandparents or other relatives. There is no legal obligation to declare this traditional form of care. Like all other care structures, however, home supervision by the Kind en Gezin medical/social worker can be requested. Urgent care for children and women in crisis situations is provided in day and full-time residences for children, child-care centres, homes for mothers and private family placement services. The goal of care is always to provide counselling towards as complete and rapid a reintegration as possible into the family and society.

335. The child's daily care has been designed in terms of the various underlying interests, i.e. overall family policy, the child's development and needs and women's participation in the labour market and position in society. However, this does not mean that care is not available to children whose parents do not work.

336. This more general approach to child care as a qualitative family instrument rather than a necessary evil for working parents explains the fact that the Government seeks to conduct a realistic family policy that meets families' needs and demands, with a view to making more time available for families and child-rearing.

3. In the German-language Community

337. In the German-language Community, a supervised child-minding service is provided. A project for establishing a group service during vacations is

under study, as is a project for child care outside of school hours. The Community has also approved a project for establishing day nurseries and training their staff.

V. Standard of living (art. 27, paras. 1-3)

338. The Act of 31 March 1987, which entered into force on 6 June 1987, amended articles 203 et seq. of the Civil Code, which now relate not only to the "obligations deriving from marriage", but also to obligations deriving from filiation. The obligation to support and bring up children is now an obligation not only of married parents, but of all parents (provided that filiation is established).

339. Before the recent reform of the Act (1987), case-law had affirmed the principle that the obligation to support the child should continue after the child reached the age of majority, until he was able to provide for his own support (Court of Cassation judgement, 14 March 1980): this principle has been incorporated into the law. In addition, the obligations established on behalf of children (Civil Code, art. 203; art. 303, which takes over after the parents' divorce) exist independently of any legal claim to obtain enforcement (Court of Cassation judgement of 2 June 1978). Lastly, both parents are under the obligation to feed, support and bring up the children they have had together. For children who do not have double filiation established (in particular children born of incest) there is a possibility of requesting food assistance without declaring filiation (Civil Code, arts. 336 et seq.). Thus the parents bear the primary responsibility of providing the living conditions necessary for the child's development, as far as they can and are financially able to do so.

340. However, the State provides material assistance in order to help poor parents. Belgium today enjoys a broad legal apparatus that reflects and guarantees the right to human dignity: the right to a minimum livelihood and the right to social assistance. The minimum livelihood allowance (Minimex) represents social assistance in the strict sense of the term and there is a specific amount for each category of beneficiary defined by law (see below). Social assistance in the broad sense of the term (or ordinary assistance) may also be financial but may consist of another form of material or non-material aid and may be very diversified in nature (see below). Both types of assistance might be cumulative for a single beneficiary in terms of his specific state of need and the decision of the CPAS in question. This legal framework is established by the Organizational Act of 8 July 1976 on the public social assistance centres and supplements the minimex system introduced by the Act of 7 August 1974. Both forms of benefits (ordinary social assistance and minimex) are provided at the local level by the public social assistance centre in every town and the city.

A. Right of everyone to social assistance

341. Article 1, paragraph 1 of the Organizational Act of 8 July 1976 on the public social assistance centres stipulates, "Everyone is entitled to social assistance. The goal of social assistance is to enable everyone to live a life in keeping with human dignity". This article is essential, for the right to social assistance, in the actual terms of the law, involves the human

dignity of every person. The article contains two important components: on the one hand, the universal scope of the right to social assistance, and on the other, the explicit reference to human dignity. The right to social assistance is considered to be an inalienable right founded on recognition of the humanity of everyone.

342. No criteria of nationality or race are needed in order to avail oneself of this right. The only criterion is that of leading a life that is not (or is no longer) compatible with human dignity. Since such a state of destitution is an entirely personal matter, the situation of each applicant has to be examined individually. The same situation might be treated differently from one public social assistance centre (CPAS) to another. Before the CPAS takes action, an inquiry is conducted to determine the extent of the need and propose the most appropriate solutions. When the assistance is granted, the best interests of the child are naturally taken into account.

343. Articles 57 et seq. impose on the Centre a number of obligations vis-à-vis an individual whose specific situation entitles him to claim his right to social assistance as recognized by article 1. The task of the CPAS is to provide individuals with the assistance due from the community. The centre provides not only palliative or curative assistance, but also preventive assistance. The assistance involved is of a general nature and the form in which it is provided may be material (for example, ordinary financial assistance), social, medical, medical-social or legal. Article 60 lists a number of the centre's tasks. The list is not exhaustive, and individual social assistance may take forms other than those explicitly provided by the law.

344. As a result, everyone in Belgium may receive, either automatically or on request, assistance suited to his needs, whether those needs are physical or social in nature. Some examples of this social assistance are the following:

(a) Financial assistance for an individual who does not fulfil all the requirements laid down by the Act of 7 August 1974 for the minimum livelihood allowance or a supplement to the minimex when it is considered insufficient for that person's situation;

(b) Temporary financial aid in the form of advance payments to a person who has applied for another social benefit and not yet obtained it or a person whose income is temporarily unavailable;

(c) Advances on unpaid children's maintenance allowances;

(d) Occasional financial assistance to meet necessary expenses or exceptional needs;

(e) Payment of some debts in cases of temporary financial problems or urgent needs, which can even take the form of a plan for the payment of creditors;

(f) Assistance in kind: clothing, coal, medical card entitling the holder to free health care, medicines, food vouchers for certain shops, etc. Such assistance is provided in the framework of special social and financial assistance and cannot be extended to everyone;

(g) Cash supplement to cover heating costs;

(h) Financial participation in hospitalization costs or costs relating to stay in a care institution;

(i) Housing assistance;

(j) Assistance in kind to cover specific material needs;

(k) Appropriate legal assistance to enable the person in question to avail himself of all the rights and advantages to which he is entitled;

(l) Psychological and social guidance to help the person overcome his problems (this might also involve preventive assistance). Such assistance is generally provided in the context of combating the structural causes of poverty;

(m) Inclusion of the person in an insurance scheme (sickness-disability insurance), with the choice of scheme being left to the individual concerned;

(n) Arrangements designed to obtain a job for a person who must show that he has been working for a certain period in order to receive full social benefits. If necessary, the CPAS can furnish this form of social assistance by acting as employer itself for the period in question.

Finally, social assistance by the CPAS is not necessarily provided on an occasional basis only; it can also be granted on a long-term basis if the individual's specific needs so warrant.

345. It should also be noted that recipients of financial assistance or the minimex are entitled to some supplementary social benefits, including sickness-disability insurance, and can avail themselves of certain measures taken in the context of employment policy. Although the right to social assistance is recognized, the person in question has a corresponding duty to cooperate, especially as regards inquiries into his social and family situation and income.

346. Individuals receive health care insurance as unprotected persons. Those receiving the minimex are exempted from payment of insurance premiums on the basis of a certificate issued by the CPAS. No exemption is possible, however, under the social assistance category, although the CPAS often pay the premiums themselves. The individual may be asked to make a personal contribution as far as possible.

347. Article 71 of the Act entitles everyone to appeal against a decision on assistance by the public social assistance centre. The type of assistance to

be given is evaluated by the CPAS in terms of the state of need. Case law has most often found that an amount equalling the minimex should be granted (in particular for candidates for political refugee status).

348. Social assistance is not reserved for nationals alone, and the law also prohibits any requirement of prior residence for a particular number of years. The only element taken into consideration is the presence in Belgium of a destitute person, regardless of that person's residence status. For example, the general terms in which article 1 of the Organizational Act is drafted make it impossible to reserve social assistance to foreigners properly entered in the town population or aliens registers or to require legitimate residence in Belgium as an exclusive condition.

349. Again, as regards the right to appear in court on a social assistance matter "in the broad sense of the term" (financial assistance and any other form of material or non-material assistance), the Organizational Act of 8 July 1976 on the public social assistance centres did not explicitly derogate from the principle that a minor is legally disqualified to file an application for social assistance with the CPAS. Minors, like everyone, are entitled to social assistance. But the law does not explain whether a minor may also file an application for assistance and receive it, or, for that matter, who should file the application when the beneficiary is a minor. It is a fundamental rule of civil law that a minor is legally incapable of taking action. Case law, however, has observed that minors are in fact capable of taking action in respect of acts of everyday life. Acts necessary for acquiring absolutely vital resources to enable himself to lead a life in keeping with human dignity can be seen as representing acts of everyday life.

350. Therefore, a minor who finds himself in a state of need that prevents him from leading a life that is in keeping with human dignity is also entitled, on a personal basis, to social assistance, and according to the case law of the Council of State (C.E. 19 October 1988), he must be recognized as having the capacity to exercise this right by himself when his legal representatives do not do so for him (or when the legal representatives are themselves unable to do so). The general rule of legal incapacity - which is justified by the need to protect the child - cannot therefore be applied in such a situation. Likewise, although in principle the minor does not have the capacity to go to court, he must be considered as having the full exercise of his legal capacity for legal actions related to the acts that he is legally capable of accomplishing without the intervention of his legal representatives.

B. Minimum livelihood allowance (minimex)

1. At the federal level

351. The principle of a guaranteed minimum income was established in Belgium by the Act of 7 August 1974 introducing the right to a minimum livelihood allowance, i.e. a minimum means of subsistence (minimex). This law was considered by some to indicate that our social security system had reached perfection. It is in any case the culmination of a lengthy development in social assistance in our country which led the Legislature to lay down a strict definition of a genuine subjective right that can be compared to the right to social security benefits. The right to appeal against decisions by

the public social assistance centre is available before an independent judicial authority, namely the labour court (art. 10 of the Act).

352. Entitlement to the minimex has been designed as a residual right and aims in principle at guaranteeing a minimum income for categories of the population that are excluded from the social security systems, for example because they have little or no work. Article 6, paragraph 2, of the Act stipulates that in order to begin and continue to receive the minimum livelihood allowance, the person in question must claim entitlement to the social benefits available to him under Belgian or foreign social legislation. The very term "minimum means of livelihood" necessarily implies that the law sets a sum of money under which human dignity, perhaps even the person's physical existence, are at risk (the Act currently provides for four categories of minimex beneficiaries, with the amount varying for each category). From that point of view, and also in the Legislature's mind, the minimum livelihood is a vital minimum figure introduced in order to protect human dignity. The minimex legislation is also considered to be of a public nature.

353. Under article 1, paragraph 1, of the Act of 7 August 1974, every Belgian who has attained full age is entitled to the minimum livelihood allowance, provided he or she actually resides in Belgium, lacks sufficient means and is not able to obtain them. Minors emancipated by marriage and single people with one or more dependent children are recognized as having the same right. Besides the requirement of inadequate resources, he must also show that he is willing to be put to work, unless that is impossible for reasons of health or equity.

354. Since the Act granted the Crown the possibility of extending, under conditions set by the Crown, the right to the minimum livelihood to persons not holding Belgian nationality, the following have been recognized as having this right:

(a) Nationals of member countries of the European Economic Community, who are subject to application of Council of the European Communities regulation No. 1612/68 of 15 October 1968, concerning the free movement of workers within the Community;

(b) Stateless persons (including persons of indeterminate nationality);

(c) Recognized political refugees.

355. Following a recent amendment introduced by the Act of 12 January 1993 containing an emergency programme for a more mutually supportive society and making it mandatory for every applicant for the minimex under 25 years of age to sign and fulfil a contract containing a personal social integration project, a new philosophy was born. In a spirit of challenge, a philosophy of assistance was gradually replaced by a philosophy more resembling a partnership. Against this background, the minimex beneficiary has a series of rights, but also obligations that should encourage him to provide himself with prospects other than indefinite recourse to assistance.

356. The integration contract does not necessarily mean that there will be a job or vocational training, but that might be the case. The integration

contract can cover both housing, health, education of children, financial counselling, etc. The contract sets out the modalities for gradual integration; it is progressive, can be altered at any time and is the subject of evaluations in order to provide an adequate response to any changes in the individual's needs.

357. A minor comes within the purview of certain legal provisions and regulations concerning the right to the minimum livelihood allowance either directly or indirectly. If the young person is a student, case law often considers that the minimex may be granted for reasons of equity. The young person will eventually enjoy a better socio-occupational position, especially if he works hard. Thus an unwillingness to work cannot be argued; this can be demonstrated by night or week-end jobs, which the CPAS sometimes require.

358. The Act makes the requisite distinction in article 2, paragraph 1, between four categories of persons and establishes the annual amounts. The classification criteria are determined on the basis of de facto situations, regardless of the civil status of the person concerned, except for the first category, which covers spouses, who must none the less be living together. As at 1 May 1994, the amounts were as follows:

(1) Spouses living together: BF 315,348 per annum or BF 26,279 per month;

(2) A person living only with either an unmarried dependent child, or with more than one child, including one unmarried dependent child: BF 315,348 per annum or BF 26,279 per month;

(3) A person living alone: BF 236,511 per annum or BF 19,709 per month;

(4) A person living with one or more other persons, regardless of whether they are relatives: BF 157,674 per annum or BF 13,140 per month. These are the amounts payable if the person has no other income. If he does have some income, a sum equivalent to the difference between the minimex and the amount of his income is paid.

359. The minimex amounts are linked to the consumer price index and are also increased on 1 January each year by a re-evaluation ratio specified in a royal decree discussed in the Council of Ministers. The minimex is granted after an examination of financial means. Generally speaking, all resources of whatever kind or origin available to spouses, to a person living with someone else or to a person living alone are taken into consideration in calculating the minimum financial means (art. 5). However, the Act specifically establishes that, in calculating the applicant's financial means, no account is to be taken, among other things, of family allowances payable for children under Belgian or foreign social legislation, or for children who are under age or have reached their majority. On the other hand, if the young person himself receives family allowances and applies for the minimex, this must be taken into account in calculating his financial means.

360. The Crown, by the powers conferred by law, has also specified other resources which are not taken into account, such as:

(a) Maintenance payable for unmarried dependent children and advances of maintenance payable for unmarried dependent children, pursuant to article 68 bis of the Organizational Act of 8 July 1976 on the public social assistance centres. Children who are under age are therefore taken into account. On the other hand, if a young person receives maintenance and applies for the minimex, this will be taken into account in calculating the financial means;

(b) Education allowances granted to the person concerned or for dependent children.

In both instances, these amounts are paid more often than not to the child's mother, regardless of whether the child has been born in or out of wedlock.

361. The financial means of persons living together are taken into account under the terms of article 13 of the Royal Decree of 30 October 1974, containing the general regulations on the minimum livelihood allowance.

362. Article 13 of the Royal Decree of 30 October 1974 distinguishes between three situations:

(1) When the applicant lives, in a de facto household, with someone who does not apply for benefits under the Act, the latter person's resources must be taken into consideration;

(2) When the applicant lives with one or more ascendant or adult descendant, in the first degree, the latter person's resources may (though it is not an obligation) be taken into consideration. Account may therefore be taken of the income of the father, mother or adult children of the person concerned;

(3) In other cases in which persons live with others who do not apply for benefits under the Act, the income of such persons cannot be taken into consideration. This covers brothers or sisters, grandparents, uncles, aunts, persons who are not relatives, etc.

Lastly, the CPAS cannot require the person concerned to assert his rights vis-à-vis persons who owe maintenance (spouses, ascendants and descendants in the first degree; Act of 7 August 1974, art. 6).

363. In order for the minimex to be granted, the CPAS must examine the applicant's social circumstances and guarantee him rights identical to the rights to protection. Before it takes in any decision, the centre must at all times, in the course of the examination, hear the person concerned if the person so wishes. The minimex is granted on application or automatically. The application may be verbal or written and made by the person concerned or by a person appointed for that purpose. The decision must be made within 30 days of receipt of the application, must be substantiated and effective as

from the date of the application. The decision must be notified within a week, by registered mail. An appeal may be made to the labour court within 30 days from notification of the decision.

364. With reference to guaranteed family allowances, see paragraphs 319 to 336.

2. At the Community level

365. The struggle against forms of socio-economic marginalization is also a matter of great concern to the Communities in Belgium.

(a) In the French Community

366. The Government of the French Community has already stated its intention to make better arrangements for foreign children, more particularly by encouraging the employment of Belgian teaching staff or counsellors of immigrant origin and specialization by some teachers in teaching French, and by paying special attention to support for the education of immigrant girls.

367. The Government is also committed to continuing and developing experiments in priority education areas, largely socially disadvantaged urban areas, with integrated projects in a number of schools and local associations. The French Community also continues to support various inter-cultural experiments with the cooperation of persons who teach the languages and culture of origin.

368. Initiatives have been taken to support specific associations or projects to train and counsel the most disadvantaged children, such as:

(a) Organizing recreation grounds and vacation centres;

(b) Supporting associations for children;

(c) Establishing creativity centres to foster artistic expression in keeping with the child's environment and culture and the national culture with which he is faced. Special programmes are arranged with artists, performers, community leaders, children and adolescents;

(d) Children's homes, including some ranked as youth centres;

(e) Developing schools for remedial classes, identifying learning and other difficulties. These initiatives take the form of action programmes in organized immigrant circles, either through associations set up by the various communities or by voluntary associations of the French Community. They are funded under special programmes or programmes implemented by further education organizations;

(f) The "Young People's Summer" operation for the poorest children during the school holidays.

369. The French Community's Births and Children's Office (ONE) has played an active part in the work of the inter-departmental group to deal with poverty and social marginalization. A representative of International Movement ATD

Fourth World participates in meetings of ONE's Board of Administration, on an advisory basis. Under a special programme, suggestions have been made for improvements in ONE's consultations and to arrange better facilities for disadvantaged populations. Many local activities are undertaken to achieve the integration of immigrants.

(b) In the Flemish Community

370. The new Flemish Government's programme includes the campaign to overcome social marginalization. A large number of persons in Flanders face an insecure livelihood and this is unacceptable. The Flemish Government will be making the struggle against marginalization one of its first priorities. Overcoming poverty necessarily calls for a comprehensive policy. In this regard, the Flemish Government will, in the years ahead, implement a programme of social priorities in communes in which the Flemish Fund for the Integration of Disadvantaged Populations operates. Further finances will be allocated for this purpose.

371. The policy to overcome poverty will be worked out in geographical terms, down to district level. Consultation and collaboration between all the parties concerned will thus lead to district development plans, so as to pursue an integrated policy, down to the local level. The policy will be based on experience gained under the programme of the Flemish Fund for the Integration of Disadvantaged Populations. Through the Fund, the Flemish Government supports the establishment of district centres as local social and cultural meeting points. The Fund's resources will be increased and its criteria and procedures will be evaluated and updated so as to bring the policy to deal with social marginalization into line with local needs and make it more effective.

372. Apart from the Flemish Fund for the Integration of Disadvantaged Populations and the Fund for Assistance to Immigrants, additional financing will be assigned to objectively identified districts. The policy to deal with social marginalization is, in addition, inseparable from the problem of the indebtedness of the cities, which calls for radical readjustment. In the communes where the Flemish Fund for the Integration of Disadvantaged Populations operates, "problem" primary and secondary schools will be designated on the basis of relevant "little chance" criteria. At the secondary level, special emphasis will be placed on vocational and part-time training.

373. The schools will also be refurbished and efforts will be made to continue to organize social-educational work in school and appropriate counselling by the networks concerned. The work of the district protection teams (Weerwerk) will concentrate on the priority areas in the communes in which the Flemish Fund for the Integration of Disadvantaged Populations operates. Local small-scale projects will also help to modernize districts and bring new life to them.

374. To combat the marginalization of young people, the Flemish Government will increase the funds for social assistance to young persons. In addition, local social institutes will increase their allocations for the policy to deal with social marginalization. Special activities will be undertaken for

disadvantaged women, such as single women with children, in regard to training, employment and housing. Kind en Gezin will, in its ante- and post-natal work, provide guidance for the disadvantaged, for high-risk and for immigrant groups and will concentrate also on disadvantaged districts.

(c) In the German-language Community

375. Like the other regions the German-language Community has built, and encouraged the communes to build, low-cost housing for families or persons in difficult circumstances. Such families may therefore obtain decent housing at rents they can afford.

Part VII

EDUCATION, LEISURE AND CULTURAL ACTIVITIES

I. Education, including vocational training and guidance (art. 28)

A. In the French Community

376. Like the regulations in the other two Communities, school attendance is compulsory as from the age of six. Education is free of charge throughout the period of compulsory school attendance, including non-compulsory pre-school education. It should none the less be noted that a system of grants and loans provides financial assistance, under certain conditions, for the most disadvantaged schoolchildren.

377. Secondary education is split into general, technical, vocational and artistic education. By and large, secondary education has two streams: one called "transition", to prepare the child for higher education yet preserve the option to enter working life, and the other known as "qualification", which emphasizes entry into working life yet preserves - under certain conditions - access to higher education. Furthermore, there is "special" education for peoples with physical, sensory, psychological or mental handicaps. These schools issue, under equal conditions, diplomas equivalent to those issued in regular secondary education.

378. Freedom of education and the provisions of the law ensure the greatest possible access to higher education. In the French Community, the forthcoming elimination of the Higher Education Entrance Certificate (DAES) will make it easier to move into the higher level. In Belgium, the attendance ratios in higher education (short or long type) are very high and a clear sign of the general trend to stay in education longer.

379. The psychological-medical-social centres (CPMS) are independent of the schools but work in close cooperation with them and with pupils and parents. Their tasks include psychological and medical counselling for children from pre-school education through to the secondary level. In this regard, they provide everyone who so wishes with information and advice about studies, training and careers opportunities. In the French Community, two software programmes have been developed for easier vocational guidance; the first,

called "Choice", is intended largely for children in secondary school, and the second, "Socrates", teaches students about the opportunities available in higher education.

380. A number of initiatives have been taken to encourage regular school attendance and to cut down drop-out rates. They involve:

(a) The introduction of general measures:

A new procedure for monitoring school enrolment (introduction of a bar code "student" card);

Gradual organization of two-year education, with a switchover to another level on the basis of the principle of an educational assessment;

The opportunity, as from 15 or 16 years of age, to take up part-time education;

The recent signing of a "Changeover Charter" for technical and vocational education;

(b) Better consideration of specific needs:

The creation, since 1989, of priority education areas (ZEP), where the feature of the social and economic environment was the number of school failures and drop-outs;

The assignment, since 1993, of 27 persons to 22 schools to prevent and solve conflicts.

381. In the case of the schools it organizes itself, the French Community has adopted new regulations on the rights and duties of each partner in the school establishment. The regulations are publicized in the school newspaper.

382. Lastly, the French Community, as a member of the Conference of Ministers of Education in French-speaking Countries still regularly produces special teaching material (more particularly in mathematics) for use in French-speaking Africa. Under many bilateral cultural agreements, it has strengthened its ties of cooperation and, for the most part, they involve a substantial element connected with education.

B. In the German-language Community

383. Children may, as from two and a half years of age, enter non-compulsory pre-school education. Practically all children receive such education free of charge up to the age of six. An official programme of activities is drawn up for information purposes. In secondary education, the poorest children can obtain annual financial assistance in the form of grants. There is also a school aid department for sick children who are unable to attend school on a regular basis.

C. In the Flemish Community

384. The Flemish Community is now able to organize education and, by means of special decrees, it adapts or refines previous federal legislation when deemed necessary. Under the terms of article 23, paragraph 3, of the Constitution, "Everyone is entitled to education, with respect for fundamental rights and freedoms". Education is free of charge throughout the compulsory period. In the Flemish Community, compulsory education lasts until the age of 18. In principle, public education is free of charge. In denominational schools, however, a financial contribution may be required from the parents. Scholarships are available for children from low-income households. In primary education, logistic support is provided by the organizing authority (commune, province, Community). In secondary education, books must be bought. Certain schools sometimes have textbooks which pupils may, with a modest contribution, borrow for their period in school. Again, an emerging trend is to ask pupils for a contribution for the use of computers, certain software and the use of sports facilities.

II. Aims of education (art. 29)

A. In the French Community

385. In addition to the basic principles set out in the Constitution, mention should be made of three objectives for education as defined by the Education and Training Board of the French Community, namely:

> "Education must foster the development of the personality of each student;
>
> Education, by enabling young people to build on their knowledge, should induce them to play an active part in economic life;
>
> Education should induce young people to become responsible citizens in a free society."

Accordingly, most curricula, apart from setting out cognitive objectives, also aim at integrating knowledge and behaviour.

386. As to respect for human rights and international understanding, a number of activities have been undertaken in the French Community, such as philosophy classes (non-denominational ethics, religion, ...), and history, geography and language classes. For example, a number of non-denominational ethics teachers have had an opportunity to undergo training in the School of the World Association for the School as an Instrument of Peace, in Geneva. Interdisciplinary activities on the introduction of the European dimension will also move in this direction (Atlas of the European Dimension).

387. The increase in school exchanges under Council of Europe and European Union Programmes has also made for cooperation and understanding between pupils, teachers and the schools involved. The activities initiated by the Minister of Education in preparation for the celebrations of the fiftieth anniversary of the allied victory over Nazism are typical of this kind of endeavour.

388. The problems of equal opportunities regularly form the subject of a general appraisal with other ministerial departments or with European institutions (Council of Europe and European Union). It should be remembered that the principle of a coeducational system is now recognized in all schools at all levels in the French Community.

389. Respect for national values and the development of greater awareness of one's identity are matters that naturally have a place in history and geography classes. Furthermore, steps are taken together with local associations to encourage pupils in basic education, on a purely optional and voluntary basis, to learn dialects (Walloon and the Picardy and Lorraine dialects).

B. In the German-language Community

390. In the "School for Life", efforts are being made to coordinate the various departments for children and young persons. Personal responsibility, independence, health and security and respect for the social and natural environment are an integral part of the curriculum in each school.

C. In the Flemish Community

391. The Flemish system takes on various forms and the curricula take account of the particular interest of the schoolchildren and their personal abilities. The Community education programme (ARGO) safeguards tolerance, respect for others and pluralism. School planning may go deeper into these matters and develop them in the school's curriculum. The various organizational authorities can develop a programme of their own and emphasize matters they deem important.

392. The public education and pluralist education systems are required to offer a choice. Parents may opt for instruction in one of the recognized religions or in non-denominational ethics. In the denominational system, there is no free choice and the only option is for a religious education.

393. In reorganizing education, the Flemish Community took the step of imposing the same terms on all systems, namely the same aims, which are specific to each level and checked by inspectors from the Flemish Community. The terms are in part pluri-disciplinary, but may also deal with such matters as cooperation and tolerance.

394. In official education, which covers 30 per cent of schoolchildren, the schools have been mixed schools for more than 20 years. Boys and girls can take any courses and options available, without distinction. This is also starting to emerge in the denominational system, but a large number of parents are opposed to it.

395. Belgium does not have compulsory schooling, but a child must receive an education. In the case of the Flemish Community, the Community's basic education inspectors keep a check on observance of this obligation. If it is found that the obligation has not been fulfilled, the parents are liable to a fine.

396. The law ensures a free choice by the child's parents or guardian. They choose the system, a particular school, the kind of education and the specific religious or ethical classes. In recent years, special attention is also being paid to absenteeism and measures have been taken to curb it. School discipline is in conformity with the terms of the Convention, and corporal punishment is forbidden. Schools have regulations on discipline that are prepared in conjunction with the pupils, the teaching body and the local school boards.

397. The move to higher education requires only the relevant school certificate. Certificates may also be obtained outside the conventional school system, through the central examining board or by means of correspondence courses.

398. The Flemish Community participates in the various international exchange programmes. Students from developing countries can, through the Federal Ministry of Cooperation for Development, come to study in Belgium, and we send teachers to those countries.

399. The Federal Constitution states in article 24 that:

> "Education is free: adherents of any philosophy or ideology may take the initiative of organizing an educational system under the law in force;
>
> All pupils subject to compulsory education are entitled, at the cost of the Community, to an ethical or religious education".

In the Flemish Community, religious or ethical classes are stipulated in primary education for not less than two and not more than three hours a week, with two hours a week at the secondary level. The public and the pluralist systems are required to offer a choice between a religious or ethical education (see the comments concerning art. 14, paras. 138-142). In denominational education, religious education or classes in the relevant culture and religion are offered (Islamic or Jewish schools, for example).

400. Further to opinions expressed by the Immigrants Education Commission, on 15 May 1991 the Flemish Executive introduced a new education policy for immigrants. Schools which fulfil the conditions receive more class allowances, more guidance, support in terms of curriculum content and strengthening of the psychological-medical-social centres. The Flemish Government has issued a Decree concerning immigrants and promotional education, including inter-cultural education and education in their own languages and culture. To increase the chances of a child making the best of his schooling, and enabling him to catch up, education must be better suited to the group's social and cultural characteristics. Furthermore, the purpose of promoting education is to help the integration of immigrants.

III. Leisure, recreation and cultural activities (art. 31)

A. In the French Community

401. Various laws and initiatives cover the social and cultural activities of young people:

(a) The Royal Decree of October 1971, establishing the criteria for the approval and subsidization of youth centres. These associations are an essential tool in the French Community's cultural policy. They are set up in generally poor districts and young people are thus able to play an active part in the various stages of development projects. Hence they are excellent places for developing a young person's personality as a critical and responsible citizen. An Advisory Commission for Youth Centres advises on all matters in this sector;

(b) The Decree of 1980, establishing conditions for the approval and subsidization of young people's organizations. Such organizations are understood to mean services for young people (information for the young, training, and so on), young people's movements and coordinating bodies. The Youth Council, made up of all recognized young people's organizations, is the advisory body for youth policy;

(c) The Circular of 1976, regulating the approval and subsidization of centres for creative expression;

(d) The Government of the French Community has, for six years, organized the "Young People's Summer" operation during the school holidays. Local associations and local public authorities are encouraged to join in as partners;

(e) During the holidays, holiday camps are organized by associations and the public authorities;

(f) Along with regular education, the French Community has developed, artistic courses (plastic arts, music, and so on) and diplomas are issued at the secondary and higher levels. Music and plastic arts academies also provide classes for persons wishing to take up an artistic education or by providing facilities for amateurs. A modest registration fee has been introduced recently.

In the school system itself, apart from drawing and music classes, steps have been taken to place more emphasis on the cultural dimension. They are by and large taken by the school itself in its curriculum (visits to museums, participation in theatre performances, films, etc.). Others are taken by the Community: classes on the artistic heritage, the environment, and so on.

B. In the German-language Community

402. The German-language Community, mindful that schools are important as far as recreation and cultural activities are concerned, has taken concrete steps to encourage teachers and parents associations to include cultural activities in school and to incorporate literature, singing and music, and the plastic arts in school curricula. In holiday camps, recreation and sports events are arranged in some communes. In each commune, libraries and audio visual centres constantly provide a great choice.

C. In the Flemish Community

403. In addition to schooling, social activities for young people play an important role in the way the free time of children and adolescents is used. A long tradition of private social initiatives for young people has produced a broad range of social activities: recreation grounds, workshops, youth movements, and so on. Local youth policy also establishes the various matters to be included in social activities for young people, namely meetings, information, creative activities, and so on. In this regard, the communes, provinces and the Community complement each other in supporting such activities.

404. With regard more specifically to social activities for disadvantaged children and young people, special measures have also been adopted.

405. With reference to the provisions of article 31 of the Convention, Kind en Gezin tells parents of the importance of play and educational toys and establishes quality criteria for day centres, where a great deal of importance is attached to play (creativity, learning process, and so on).

Part VIII

SPECIAL PROTECTION MEASURES

I. Children in situations of emergency

A. Refugee children (art. 22)

406. Over the last few years, there has been a definite increase in the number of young refugees arriving in Belgium without their parents (21 in 1990 and 108 in 1992). The Act of 15 December 1980 on entry into Belgian territory and the stay, residence and removal of foreigners makes no special provision for minors seeking asylum. They therefore have to follow the same procedure as the adults in applying for asylum. Upon arrival on Belgian territory, these minors are placed in a refugee reception centre. The centre, which sometimes takes in up to 600 refugees per month, in principle gives these children only temporary accommodation. As far as possible, they are placed, with the cooperation of the Belgian Red Cross and different placement centres, in specialized centres or else in host families. While there, the young refugees are followed up as regularly as possible by psychologists and social workers. During this period of supervision, they are able to talk about their problems and their experiences and meet other adolescents who have met a similar fate. Refugee minors registered in Belgium must attend school in the same way as nationals. No derogation from the general principle is possible. If the minor must leave Belgian territory, an order to escort him back is sent to any member of his family who may be residing in Belgium. In the other cases, an order to leave Belgian territory is sent to him. When the prescribed period for voluntary departure has expired, the Aliens Office initiates the repatriation formalities and ensures that the aircraft or ship personnel will take charge of the minor. The Aliens Office also ensures that the Belgian Embassy in the country of return or a non-governmental organization takes the child back to his family under the best possible circumstances.

407. Despite the existence of these measures, many others need to be taken in order to improve the situation of young refugees.

(a) At present, further subsidies are essential in order to find new host families for these young people and to create new specialized centres, especially in the French-language part of the country;

(b) Provision should also be made to grant financial assistance as well as family benefits to these minors. The three linguistic communities currently grant financial assistance only to the families that host young people placed with them, pursuant to the policy for the protection of or assistance to young persons. For the moment, the young person is entitled to the equivalent of the minimex rate paid to someone living alone or with others, but he will only obtain this assistance after several months and after he has lodged at least one appeal, given the current CPAS practice of refusing this assistance. If the host family lives in one of the communes which have the legal right to refuse any new registration of foreigners, the young person receives nothing from the CPAS.

408. A coordination unit has been set up for the various Ministries to devise a consistent policy for applicants for refugee status, whether minors or adults. To that end, the Act of 30 December 1992, which contains social and various other measures (Moniteur belge of 9 January 1993) sets out various measures to assist applicants for refugee status and persons living illegally in Belgium.

409. The applicants for refugee status are recognized as having the right to social assistance. Advances may be granted if the right to the guaranteed family allowances is denied. The Ministry of Public Health also makes the following reimbursements to those CPAS which make payments to applicants for refugee status:

(a) The membership expenses and the contributions to an insurance agency (AMI);

(b) The medical and pharmaceutical costs of treatment for the person entitled thereto or an under-age dependant, when provided outside a treatment institution, up to a maximum for the reimbursement under the sickness-disability insurance;

(c) The accommodation expenses up to a maximum of the monthly minimex rate for a person living alone, if the CPAS has signed an agreement with the State.

410. In the Flemish Community, the competent authorities were notified by the Kind en Gezin of the problem of the refugee children, of illegal residents or other refugees accompanied by children. At present, the Kind en Gezin is working together with national and international non-governmental organizations on this matter to work out a strategy and lobby the authorities to keep this problem on the agenda.

B. Children in armed conflicts (art. 38), including physical and psychological recovery and social reintegration (art. 39)

411. On 3 September 1952, Belgium ratified the 1949 Geneva Conventions for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, the Treatment of Prisoners of War, and the Protection of Civilian Persons in Time of War.

412. For Belgium, which has also ratified the two Protocols Additional to these Conventions (Geneva, 8 June 1977), the provisions of article 41 of the Convention on the Rights of the Child will apply (priority of the most favourable clause, i.e. article 4, paragraph 3 (c) of the Second Protocol, which absolutely forbids the participation in hostilities of children who have not attained the age of 15 years). Belgian legislation also establishes this prohibition (see the observations relating to article 1 of the Convention and paragraph 58 in particular).

II. Children in conflict with the law

A. The administration of juvenile justice (art. 40)

1. Procedure

413. The organization of the juvenile courts, territorial jurisdiction and procedure are matters which have remained in the hands of the national authorities. When a case involving a minor is brought before a juvenile court, the court may initiate all the proceedings and begin all the relevant inquiries into the personality of the minor and the environment in which he was brought up in order to determine in his best interests and to decide on the most suitable measures to be adopted for his education and treatment. Therefore, the juvenile court can have a social study undertaken and have the minor undergo a medical and psychological examination.

414. If necessary, the juvenile court may take temporary custody measures, which will either be to leave the minor with the persons in whose custody he is and submit him to the supervision of the competent social service, or to place him with a trustworthy person, or an institution, or else in a public institution for observation and State-supervised education. If it is physically impossible to find a person or an institution to take the minor in immediately, he may be kept temporarily in a local prison for a maximum of 15 days.

415. The juvenile court may at any time revoke or amend these temporary measures in the interest of the minor. These temporary measures are taken by a decision of the juvenile judge. According to a study, these temporary measures could easily last from one to three years, depending on the judicial circuit. The Protection of Young Persons Act of 8 April 1965 contained no provision on either the procedure to be followed in taking these decisions or the duration of such measures.

416. Regarding the standard procedure the situation is quite different. It is regulated in detail by articles 54 to 57 of the Act, which provide for

adversarial proceedings, the personal appearance of the minor and his right to be represented by a lawyer. If the minor has no lawyer, one is appointed for him by the president of the Bar Association or the Consultation and Defence Office. The minor and his lawyer may consult the file at least three days before the hearing. However, the documents concerning the personality of the minor and the environment in which he lives may be communicated only to his lawyer and not to him. During the hearing, the juvenile court may, at any time, hear the minor, the experts and the witnesses in the presence of the minor's lawyer.

417. The Act of 2 February 1994 amending the Protection of Young Persons Act, provides for substantial improvements in the legal situation of the minors within the framework of the Act of 8 April 1965:

(a) As soon as a matter is submitted to the juvenile court, a lawyer is appointed for the minor, even when only interim measures are required. To that end, the Procurator's Office immediately informs the Bar President that the matter has been referred to the juvenile court. The President, where necessary, proceeds, through the Consultation and Defence Office, to appoint a lawyer within not more than two working days so as to defend the interests of the minor. A lawyer therefore assists the minor whenever he appears before the court;

(b) It is mandatory for the minor to be heard personally by the judge before any interim measure is taken, unless he is under 12 years of age, if it has not been possible to find him or unless it would be ill-advised because of the minor's state of health or if he refuses to appear;

(c) The decision imposing an interim measure must contain a summary of the information concerning the minor's personality or his environment or, where necessary, a summary of the acts which are described as offences and form the basis for the submission by the Procurator's Office;

(d) Furthermore, if a temporary custody measure has been ordered, the parties and their lawyer must have access to the file during the time for appeal. When a minor is a party to the proceeding, he obviously has the right of appeal.

The Act of 2 February 1994 therefore attempts to give specific guarantees as to communication between the minor and his lawyer, as well as access to the file and the young person's right to be correctly informed about the acts of which he is accused and his rights.

418. When a case involving measures for the protection of minors is brought before the juvenile court, the parties and their lawyer are informed that the file has been placed with the clerk of the court and they can read it once the summons has been served. The parties and their lawyer may also consult the file when the Procurator's Office calls for a measure under articles 52 and 53, and also during the time of appeal against the court order imposing such measures. However, the documents referring to the minor's personality and the environment in which he lives may not be communicated either to the minor or to a claimant for compensation. The complete file, including these documents, must be placed at the disposal of the minor's lawyer.

419. When the minor is absent from the hearing, the court decision or judgement is rendered by default and an appeal must then be entered through a judicial marshal, within 15 days after the decision is known (notification). In practice, notice is never given of decisions rendered by default, by the judge's chambers, and it is almost always possible to object to it or appeal against it if one has been absent from the first hearing. The minor can always appeal against a measure affecting him when it is taken during a proceeding to which he is deemed to be a party.

420. If the minor is present at the hearing or in the judge's chambers, the period for appeal begins to run immediately on the day the decision is rendered. An appeal launched on the sixteenth day is inadmissible. The procedure followed in the court of appeal is identical to the one in the juvenile court. Consequently, if a minor wishes to appeal against a decision by the juvenile court, he may ask the appeals judge to take a decision in chambers which will regulate the situation until the public audience is held. The minor may then go to the Court of Cassation and subsequently even to the European Court of Human Rights.

421. The Act of 2 February 1994 amending the Protection of Young Persons Act provides that the minor is entitled to the assistance of a lawyer whenever he appears before a juvenile court. To ensure that the minor is treated in court proceedings as fairly as possible and in a manner befitting his youth, Belgian law respects the seven principles and fundamental rights examined in the following subsections:

(a) Principle of the legality of the accusation

422. The principle of the legality of the accusation is established in article 12 of the Constitution: "No one may be prosecuted except in the cases specified by the law and in the forms prescribed therein". The judge may not therefore condemn any acts which are not qualified as offences by law, whatever his opinion may be or their morality or however dangerous he may think they are. In his decision he must establish the existence of the conditions required by the law for its application and state the legal provisions on the basis of which he declares the facts established.

(b) Principle of the presumption of innocence

423. Under this fundamental principle of Belgian law, any person suspected or accused of an offence must always be presumed innocent until his guilt has been legally established.

(c) Right to be informed promptly and directly of the charges against him

424. A minor has the right "to be promptly and directly informed of the charges against him or her". This right is positively applied in the right to be heard and the right to have access to his file. In this connection, the Protection of Young Persons Act of 8 April 1965, however, poses a major problem: during the pre-trial examination of the case, the judge may summon the minor but he is not bound to do so.

425. A minor also has the right "to have legal or other appropriate assistance in the preparation and presentation of his or her defence". However, as on the issue of access to the file, article 55 of the Act of 8 April 1965 is limited to ensuring the presence of a lawyer at the hearing, whereas the important debate takes place before that, in other words at the time of the pre-trial and of the interim measures. Later, the minor is also deprived of assistance, for article 60 does not make provision for the presence of the lawyer in the procedure for review of the measures. The child is therefore entitled to have a lawyer even when measures concerning him are decided by a judge in chambers but if he has not requested one and if there is none, the procedure is in order!

(d) Right "to have the matter determined without delay by a competent, independent and impartial authority or judicial body, in a fair hearing, according to the law"

426. The Act of 8 April 1965 set no limit on the time spent in the preparatory inquiries and drawing up of the file. The juvenile courts often work on an interim basis without both parties being heard. In fact, the decisions in chambers are "temporarily enforceable", which means that they are effective as long as they have not been reviewed by the judge or the court of appeal. Since they are not limited in time, they remain in force until the judgement is delivered. The juvenile court may also change the measures which it has taken, at any time.

427. The Act of 2 February 1994 solves this problem:

(i) In theory, the preliminary procedure is limited to six months as from the submission made by the Prosecutor's Office up to the time when the court communicates the file to the Prosecutor's Office, after the investigations have been concluded. Provision is, however, made for an exception in the special case referred to in article 52 quater of the Act, inserted under article 18 of the bill, which allows a temporary measure to place a minor in a closed institution to be extended for more than six months if the preliminary inquiry is complex because of the close relation of the acts or because there are several perpetrators;

(ii) The Act also provides that a minor is entitled to the assistance of a lawyer whenever he appears before a juvenile court;

(iii) Lastly, the juvenile court is bound to hear a minor over 12 years of age, even if he is not a party to the proceedings, whenever his interests are directly affected by disputes involving the persons vested with parental authority over him.

(e) Right to remedies at law

428. At present, a minor can always appeal against any decision concerning him, when it has been taken during proceedings to which he is deemed to be a party. In fact, the appeal can only be made by the one "considered as a party to the proceedings". Consequently, if the Procurator's Office has referred the matter to the court to rule on measures vis-à-vis the parents - for

example, placement - he cannot appeal! According to the law, the minor can only appeal when the measure has been expressly taken against him.

(f) Right to have the free assistance of an interpreter

429. The Act of 15 June 1935, concerning the languages used in judicial proceedings, states that the accused, the party with civil liability, the parties appearing in person and the witnesses, use the language of their choice in all their depositions and statements, both during the questioning at the inquiry and during the pre-trial proceedings and before the examining judge and in all civil and commercial courts. If the judge does not understand the language used he calls for an interpreter. The cost of interpretation is borne by the Treasury.

(g) Right to respect for privacy

430. Respect for privacy is positively reflected in article 63 of the Act of 8 April 1965, which prohibits communication to individuals or to administrative authorities, notaries or judicial marshals of the loss of parental authority and of measures taken in respect of a minor, except when the measures need to be known for the application of a legal provision or a regulation, in which case the communication is made under the supervision of the judicial authorities. This respect is again reflected in article 77, which makes "anyone who, for any reasons whatever, contributes to the application of the present law, a depositary of the secrets entrusted to him in the performance of his duty and any secrets relating thereto"; article 80 also forbids the publication and circulation of the report of the proceedings of the juvenile courts and of any text, drawing, photograph or picture which may reveal the identity of the minors being prosecuted or in respect of whom a protection measure is applied.

431. Besides, article 8 of the Act of 8 December 1992, on the protection of privacy in the processing of personal data, prohibits the processing of personal data on measures taken in respect of minors under the Protection of Young Persons Act of 8 April 1965 or of decrees and court decisions on the protection of young persons, loss of parental authority or educational assistance measures ordered by the juvenile courts or the juvenile divisions of the courts of appeal pursuant to the Act of 8 April 1965. The exceptions to these provisions are cases in which the data are processed for purposes determined by law or when the processing is done by the central court records office in the Ministry of Justice, when it is done by a person for the sole purpose of handling his own litigation proceedings, or again when it is done under the supervision and responsibility of a lawyer who requires it to assist him in defending the interests of his clients.

432. More generally speaking, both the Act of 8 December 1992 on the protection of privacy with regard to automatic processing of personal data and Convention No. 108 of 28 January 1981 of the Council of Europe for the Protection of Individuals with regard to Automatic Processing of Personal Data, ratified by Belgium on 28 May 1992, which seek to establish a high level of protection for personal data, are applicable to the personal data on both minors and adults.

433. Finally, it should be added that Belgian law contains no specific provision establishing a minimum age below which a child is presumed to be incapable of infringing the penal law. Belgian penal law, however, does not need any such provision. Article 36, paragraph 4, of the Protection of Young Persons Act of 8 April 1965, as amended by the Act of 19 January 1990, which lowers the age of majority to 18, as well as article 1 of the Act of 24 December 1992, implies, save for some exceptions that the minor is incapable of infringing the penal law. Anyone under 18 years of age who has committed an "act described as an offence", theoretically comes within the competence of the juvenile court.

2. Measures taken or to be taken at the national and Community level to treat these children without resorting to the judicial procedure

(a) At the federal level

434. Under article 37 of the Act of 8 April 1965, if the Prosecutor's Office brings a matter before the juvenile court judge, the court may order measures for the custody, protection and education of the minors brought before it. The juvenile court is therefore a jurisdiction that provides for protection and education, although some measures may in certain cases appear as fitting punishment for acts qualified as offences, for example, rendering educational and charitable services. Any idea of grading the measures established in article 37 or devising a scale of their seriousness has been ruled out. This concept stems from the fact that the measures must be suited to the child's educational needs and from the desire to remove any hint of a penal measure.

435. For the application of measures vis-à-vis parents, the juvenile court is restricted in its appraisal by the submissions of the Procurator's Office, which brings the matter before the court so that it may order the execution of a specific measure, but in respect of the minors, the court has the broadest latitude because the Procurator's Office places before it a minor who is in one of the situations provided for by the law and leaves the court free to decide what is to be done within the limits fixed by the law. This latitude in making the appraisal must, however, conform to two principles of law, namely, court action presupposes that there is a need for compulsory measures, and that the Legislature was careful, as far as possible, to avoid breaking family ties. Placement of the child outside of the family environment should therefore be avoided, as far as possible.

436. The law provides that the juvenile court "may" order a measure to be taken in respect of the minor, which means that, even if the facts are established, the court may decide that no measures need to be taken. The measures are described in a language which is vague enough to encompass the new methods of education and enable the juvenile court to encourage the trend towards new practices.

437. The judge may consider that community service or an educational measure will be sufficient for the young person who has committed certain types of acts qualified as offences. In that case, the judge may order the minor to complete a certain number of hours of work (up to 240 according to certain reports) in various public agencies or agencies of public interest (Red Cross,

hospitals, city planting service, etc.). These services, designated as "alternative sanctions", are in fact reserved for a minor who has committed an offence. The aim is to make him participate actively in his "reintegration": he will be obliged to perform a specific task at specific hours, which will compel him to be disciplined and at the same time open up a new environment for him. If he does not fulfil his commitments, the judge may punish him more severely. To show his determination to improve, the minor may take the initiative and himself propose this solution to the judge.

438. Besides, mediation, which is still at the experimental stage, could be introduced. Mediation between the perpetrator of the acts and the victim consists of intervention by a third party to help the parties in dispute to find the solution to their dispute themselves, without any constraint. Action by the Prosecutor's Office in this instance is limited to directing the parties to a department specialized in this type of work, and of being informed and of evaluating the results of the mediation.

439. Article 38 of the Protection of Young Persons Act of 8 April 1965 provides that, if a minor brought before the court for an act qualified as an offence was over 16 years of age when the act was committed and if the juvenile court deems custody, protection or education to be inadequate, it can decide, in a substantial ruling, to proceed no further with the case and refer it to the Procurator's Office for prosecution in the competent court, if necessary.

(b) At the Community level

440. There is a fundamental demand for the protection of young persons in Belgium to be dealt with outside of the judicial system. Community responsibility for this protection is a related objective and may even be a way of dealing with the issue. The aim is to clear away the confusion, to try and clarify the role of society and the role of the courts. The action of the courts and the work of society must be differentiated, and hence a boundary must be drawn between what the society should do and what the courts should do. Fully in line with this trend is the determination to have the least possible number of young people go through the courts and to find other ways of settling conflicts.

441. In the French Community each administrative district has a "Youth Assistance Director" who, on the basis of the judicial measure adopted as a matter of principle in respect of a young person in danger, may take administrative-type decisions, without requiring the express approval of the persons concerned. When the Prosecutor's Office receives the official record of the young offender, it may very well feel that it is not necessary to bring the case before the juvenile court and may send the young person, who is cooperative and wishes to mend his ways, to the youth assistance counsellor, who will take appropriate measures. Action by the court is subsidiary and should be taken only if the family environment proves incapable of coping with the problems which arise.

442. In the German-language Community, the draft youth assistance decree also provides for a very clear separation between the juvenile court, the council and the youth assistance department. Only cases of children or young persons

who are in danger, and for whom the consent of the persons concerned cannot be obtained, will be dealt with in the juvenile court.

443. In the Flemish Community, there is a mediation commission.

B. Children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings (art. (b), (c) and (d))

444. Apart from situations in which the juvenile court decides not to proceed with the case, the law also permits the judge to send a minor to prison for a maximum period of 15 days when it is physically impossible to have him taken in by an individual or a home. In that case, the minor will be separated from adult detainees. This step may be taken only on a temporary basis and is subject to appeal. In practice, however, because of the very short duration of the measure itself (15 days), the appeal is always declared inadmissible for lack of a purpose, since the measure has already ended by the time the court of appeal gives a ruling.

445. The legislature of the French Community, by adopting the Decree of 4 March 1991 on assistance to young persons, very definitely wanted to avoid the risk of children who had not committed any acts qualified as offences being imprisoned in a penal institution. Article 53 of the Protection of Young Persons Act of 8 April 1965, however, remains applicable to minors who have committed an act qualified as an offence, because this matter falls under national jurisdiction. Whereas the Act is obviously an exception, for some 15 years now the juvenile court judges have sometimes used and misused this formula. They have obviously used article 53 for reasons other than the need for emergency accommodation.

446. On 29 February 1988, the State of Belgium was condemned by the European Court of Human Rights in the Bouamar decision: the Protection of Young Persons Act should be brought into line with article 5, paragraphs 1 and 4, of the European Convention on Human Rights. The Court held that, since Belgium had chosen the system of State-supervised education in order to conduct its policy of juvenile delinquency, it should adapt its infrastructure to the educational aims of the Act. In the case in point, the Court considered that holding a minor in a local prison as provided for in article 53 did not necessarily infringe article 5 (d) of the Convention, even though it was not likely to provide the State-supervised education of the minor. This provision does not prevent a temporary custody measure which will be a preliminary step towards a system of State-supervised education without itself taking on the appearance of such a system. In such a case, the imprisonment should, however, lead very shortly to the practical application of an educational system within a specialized environment.

447. Consequently, Mr. Bouamar's rights were violated because his placement in nine successive local prisons could not be justified even if each of them taken separately could be considered lawful. From the investigations, it appears that such custody was attributable to a lack of appropriate facilities, especially for young delinquent drug users, or to the lack of the appropriate legal provisions, such as preventive custody and relinquishment of jurisdiction.

448. The Act of 2 February 1994 which amended the Protection of Young Persons Act is designed to regularize the situation. If, within the framework of the preliminary procedure, an order is given for the minor to be placed in a closed institution, some additional guarantees are applicable:

(a) The measure may be taken only for a period of 15 days, renewable only once (scope of the Bouamar decision);

(b) An appeal against such orders must be dealt with within 15 working days of submission of the appeal. If there is no room in an appropriate institution, article 53 is applied (temporary placement), and any appeal lodged must be dealt with within five working days;

(c) In addition, the measure may only be applied in respect of young persons under 14 years of age who are suspected of having committed an act punishable by imprisonment for not less than one year, under the terms of the Criminal Code or of supplementary laws. Article 53 may be applied only once for the same acts.

The lawyer must have access to the file when the judge renders his decision in chambers, at least when the measure contemplated involves deprivation of liberty.

C. The sentencing of juveniles, in particular the prohibition of capital punishment and life imprisonment (art. 37 (a))

449. The reply to this question was already given during consideration of Chapter VIII of Part IV (paras. 153-158).

D. Physical and psychological recovery and social reintegration (art. 39)

450. Only private initiatives are taken for the purpose of reintegrating juvenile delinquents once they leave an open or closed institution. However, a mandatory period in an institution has an educational purpose in preparing young people for better integration into society. If they feel the need these young people will receive continuing care from a psychologist. For the rest, recovery and reintegration measures for children who have been the victims of ill-treatment have been discussed in the sections on this matter.

III. Children in situations of exploitation, including physical and psychological recovery and social reintegration

A. Economic exploitation, including child labour (art. 32)

451. Although child labour is, in principle, forbidden in Belgium, a new Act on the subject came into force on 1 February 1993. The innovation of the Act, compared with that of 1971, is that it takes into account a sector in which children are increasingly in demand, namely advertising. Under these legislative provisions and provided an exception is granted by the appropriate Minister, children are authorized to work in very specific instances such as, for example, roles in the theatre, fashion shows and, very recently, advertising. The new Act specifies that the work must not have an adverse

effect on the children in educational, social or intellectual terms, nor endanger their mental health or morals or be harmful to their well-being.

452. The broad scheme of this Act of 5 August 1992 is as follows:

(a) The cases for which an individual departure from the prohibition on child labour may be obtained are specified;

(b) A new exception has been introduced, namely, participation in photographic sessions;

(c) An opportunity has been provided in the event of breaches, of also penalizing the people in the background, such as managers, impresarios or others;

(d) A number of measures have been taken to curb the creation of "child stars";

(e) In implementation of the Convention on the Rights of the Child (arts. 32 and 36), the Act establishes that the activities may not have an adverse effect on the child's development in educational, intellectual or social terms, may not endanger his physical, psychological and moral integrity, and may not be harmful to any aspect of his well-being;

(f) As to the determination of the hours during which they may exercise certain activities, children have been divided into age categories, i.e. up to 6 years of age, 7 to 11 years of age and 12 to 15 or 16 years of age. In these age categories, the crown has broad discretion to determine additional conditions.

453. In some circumstances, the individual exception to the prohibition on child labour is refused. For example:

(a) Children of 6 and under, from 7 p.m. to 8 a.m. or if the activities exceed four hours a day;

(b) From the ages of 7 to 11: from 10 p.m. to 8 a.m. or if the activities exceed six hours per day;

(c) Between the ages of 12 and 15 (or 16): from 11 p.m. to 8 a.m. or if the activities exceed eight hours per day.

The Royal Decree of 11 March 1993 containing this list also specifies that the interval between ending and resuming the activity must be not less than 14 consecutive hours, and that in no case may the activities be carried out for more than five consecutive days without a break of at least 48 consecutive hours.

454. The legal provisions in this regard also state that:

(a) An application for an individual exception to the prohibition on child labour may only be made by the actual organizer of the work, who must be domiciled in Belgium;

(b) The competent official can order a whole series of specific measures for each activity and can also give the child a hearing;

(c) An Advisory Council for Child Labour has been set up so that, alongside representatives of workers and employers, a contribution can be made by representatives of psychologists and teachers;

(d) Criminal sanctions have been made more severe for all persons who have children working for them or who make them perform activities;

(e) The money to which the child is entitled or which he receives must be paid by the organizer of the work into a blocked savings account in the child's name.

455. The earnings constitute one of the positive results of this legislation; the child's cash earnings must be paid into a separate savings account, opened in the child's name, by the applicant for the exception to the prohibition on work by children. The interest will be capitalized and any other payment is void. Only the child may have access to this savings account. The child may be given customary gifts provided that they are suited to his age, his development and his training.

B. Drug abuse (art. 33)

456. This subject has already been partly discussed in the definition of the child (see Part II, para. 71). However, some details may be noted. When the judicial authorities discover that a young person under 18 years of age manufactures, acquires, holds, sells or is involved in the group consumption of drugs, a file is opened in the juvenile court, which takes the necessary measures of protection (surveillance, placing the young person in the care of a private person or a private establishment, care in a public institution).

457. If a young person between the ages of 16 and 18 is heavily addicted to drugs and commits repeated offences, the juvenile court is liable to stop dealing with the case after making a medical and psychological study. The juvenile will then be brought before a court for adults.

458. Various comments are called for:

(a) The police and the judicial authorities consider that drug-related juvenile delinquency is on the increase;

(b) Drug addiction problems are a factor in the rejection by the various existing services, like problems of violence or problems of a psychiatric nature. The rejection phenomenon is at the root of the growing demand for specialized care;

(c) Large numbers of under-age drug-users are in actual fact found in the State-operated observation and supervised education institutions;

(d) The Act of 9 July 1975 on sleeping drugs and narcotic substances makes it difficult to take in addicts for care in specialized institutions. If the drug addict continues to take drugs in the institution, the authorities

are liable to criminal proceedings and this has led them to specify in their regulations that the person is to be discharged if he is detected in the act;

(e) During adolescence, there is a risk of the young person being labelled as a drug addict, and this may lead to a vicious circle. Diagnosis and guidance of the young person are determining factors which shift the emphasis of the problem to the importance of the time at which the decision is taken rather than on the need to set up special services downstream from the problem.

459. This is why a concerted policy is needed to break the spiral of rejection that snares under-age drug addicts and to encourage appropriate attitudes and care by the first-rank services, before the specialized sector for drug addicts takes over. In order to do this, an information campaign needs to be organized among teachers and psycho-medical and social centres, mental health centres, youth assistance services and general practitioners.

1. In the French Community

460. In keeping with this approach, the French Community's Minister for Social Affairs and Health has decided to conduct a preventive policy by setting up a primary, secondary and tertiary prevention scheme; the various aspects of this policy will be coordinated and it will be integrated, in other words, it will create bridges between the various levels. This policy is based on information, enhanced awareness, prevention and the training of the professionals involved. The underlying approach is that the drug addict as a subject of law and hence a person with access to the traditional services of care and supervision. There is also a working group made up of the Minister of Justice and the Minister of Social Affairs and Health of the French Community to agree on an alternative to the preventive detention of drug addicts, even when they are offenders.

461. The decisions to place individuals in the various types of services must be adapted to the different situations of drug addiction. It would be advisable to include a policy of care for under-age drug addicts in the teaching programme of public institutions for the protection of young persons and to define ethical and professional frameworks in order to be able to work together.

2. In the Flemish Community

462. The Flemish Fund for the integration of the disadvantaged (Vlaams Fonds voor Integratie van Kansarmen - VFIK) provides out-patient assistance for drug users, as part of a more generalized activity.

3. In the German-language Community

463. Primary prevention of addiction is the responsibility of ASL (Arbeitsgemeinschaft für Suchtvorbeugung und Lebensbewältigung), a preventive branch of the mental health centre. The originality of the project lies in the overall approach, which brings together the various social milieux. Each major school has a coordinator whose task is to motivate his colleagues and to prevent drug addiction. Since the conventional framework of warnings against

drugs has become outmoded, stress is placed on developing the individual capacities of each pupil, either in his own private life, or by teaching him techniques to handle his emotional life and cope with possible frustrations.

C. Sexual exploitation and sexual abuse (art. 34)

1. At the federal level

464. In a country like Belgium, sexual exploitation and sexual abuse exist, very often in an insidious form, and many cases are not reported. Recent surveys and arrests have revealed the stages that may lead to the sexual exploitation of young people: signing up children for fashion photos which may become pornographic photo sessions, since these companies are able to supply the paedophile networks.

465. While child prostitution is a well-known phenomenon in poor countries, unfortunately it also exists in Belgium. Prostitution nowadays affects all social milieux. The use of drugs, alcohol, and an unrestrained desire for consumer goods lead young people to prostitute themselves. Some of them are barely 10 years old.

466. The number of disclosures of incest is on the increase. However, very few cases actually reach the courts. The complaint is usually made by a person from outside the family, as a result of confidences by a victim who is in the process of gaining independence, at least partly, from the family. According to the statistics, incest would appear to account for approximately 5 to 10 per cent (depending on a more or less restrictive definition of incest) of all sexual offences judged in court, and alcohol seems to have been involved in 20 to 50 per cent of the cases.

467. From the cases tried, incest is seen particularly in the poorer strata of the population, but is found in all social classes. It is difficult to regard the phenomenon of incest in epidemiological terms; an incestuous situation or a heavily incestuous family environment, which is a source of terrible anguish for the child, is more important than the actual fact of determining whether an act involving sexual relations has taken place. Conversely, it can be said that there are families where incest exists at times, which may not automatically be as catastrophic as in other families where there are no incestuous acts but where the incest problem is very much a crucial factor.

468. For some time now, the Prosecutor’s Office has shown an increasing tendency not to take up the criminal side, in other words, not to institute criminal proceedings against the perpetrator of the incest, so as not to break up the family unit for ever. This explains the major role played by the multidisciplinary teams in supporting the family after trouble within the unit. Along with the essential work done by the multidisciplinary teams at Community level (see consideration of art. 19 of the Convention, in 268-279), the Belgian Criminal Code covers the concerns underlying this article.

469. Protection by criminal proceedings can be achieved by means of various types of charges that cover the situation reasonably closely. Sometimes the family element is part of the constituent elements of the offence, but more often than not, aggravating circumstances linked either to the age of the

victim (with different age thresholds), or the standing of the perpetrator are involved. In this case, protection of the child is tied in with the actual offence in its simplest form, for example, in terms of an attempted offence or participation. In criminal law there is no general system for causes of aggravation but simply aggravating circumstances stipulated by the law in special cases. These are also considered to be "incidental" aspects of the offence and their effect is to make for a harsher penalty.

470. Indecent assault is an attack against sexual integrity and is deliberately committed. It exists once it has started to be committed (art. 374). The provisions of the Criminal Code cover various instances. Article 372, paragraph 1, takes up indecent assault without violence or threats to a child under 16 years of age. The law presumes absence of consent. If the guilty party is an ascendant of the victim, is a person who has authority over the child, has abused the authority or the facilities conferred on him by his duties, or is a doctor and the child was entrusted to his care, the penalties are more severe (art. 377, para. 2). Article 372, paragraph 2, also covers incest indirectly, since it is aimed at indecent assault without violence or threats to a minor by an ascendant, even when the minor has reached the age of 16. Specifically, this provision protects a minor beyond the age of 16 when the act is committed by an ascendant. Indecent assault on a person over 16 years of age is not a criminal offence unless it is committed with violence or threats (art. 373, para. 1). In addition, the penalties are more severe if the victim is a minor over 16 years of age (para. 2), and if the victim is under 16 years of age (para. 3). Status as an ascendant is an aggravating factor in all cases (art. 377, paras. 2, 3 and 4).

471. New criminal provisions concerning rape were incorporated in the Criminal Code by the Act of 4 July 1989. The Legislature uses a number of parameters:

(a) The act: the notion of rape has been extended to all acts of sexual penetration;

(b) The age: the penalties under article 375 vary, depending on whether the victim is an individual (paras. 1, 2 and 3), a minor between 16 and 18 years of age (para. 4), between 14 and 16 years of age (para. 5); between 10 and 14 years of age (para. 6), under 10 years of age (para. 7);

(c) The perpetrator: the status of the perpetrator is an aggravating factor (art. 377, paras. 5 and 6);

(d) The result: death, torture or kidnapping (art. 376).

472. Articles 379 and 380 of the Code cover sexual offences committed "by exciting, soliciting or encouraging, in order to satisfy the passions of others, the corruption or prostitution of a minor of either sex". These provisions distinguish between the perpetrator who knew that the victim was a minor or was unaware as a result of negligence (the thorny issue is the justification for reducing the penalty when the perpetrator was unaware, as a result of negligence, that the victim was a minor). Article 380 bis is on forcing or inciting persons to engage in immoral acts or prostitution. The first paragraph refers to minors, while article 380 quater stipulates the

penalty is doubled if the offence of incitement to immoral acts or prostitution has been committed vis-à-vis a minor. Article 380 ter is restricted to adults, since articles 379 and 380 apply to minors. Articles 386 and 386 bis also punish child pornography.

2. At the Community level

473. In the French Community, the Delegate-General for the Rights of the Child launched a petition in March 1994 requesting the Executive, the Legislature and the Judiciary to take all necessary steps to combat sexual abuse of children. In this context, while giving priority to prevention, different legislative steps should be taken and provision made for measures to deal with the problem.

D. Other forms of exploitation (art. 36)

1. At the federal level

474. This article requires States to adapt their legislation when new forms of exploitation emerge in society. Mention should be made of the crucial role played by the social services in intervening officially when they hear of ill-treatment inflicted on a child and in warning the court.

2. At the Community level

475. In the French Community, a draft decree on coordination of the fight against ill-treatment of children was adopted by the Council of the French Community on 9 May 1994. The Decree sets out among other things, the obligation on all persons who hold responsibility with regard to children to report ill-treatment. It also coordinates the work of professionals in the fight against ill-treatment.

E. Sale, trafficking and abduction (art. 35)

476. There is no specific provision in Belgian law on this subject. Articles 364 and 365 of the Criminal Code cover the abduction and kidnapping of a child under seven, even if the child has voluntarily followed his abductor. This is a serious offence; the fact of receiving or keeping a child known to be abducted is punishable. Despite the general terms used in the Code, such offences are not applicable to the child's parents or to persons who have legal custody of the child.

477. Articles 368 and 369 of the Code directly express the concern of the 1867 Legislature. They seek to protect paternal authority and more particularly the right of custody against any "physical or moral manoeuvre the effect of which is to remove the minor from the control which certain persons may hold over him". By definition, these texts do not apply to the father and mother and are restricted to children who are under age.

478. Article 368 concerns abduction by violence, deception or threats. Article 369 establishes special aggravating circumstances, namely, if the person abducted is a girl under 16 years of age. Lastly, article 370 relates to a separate offence concerning the abduction of a girl under 18 years of age

"who has consented to her abduction or who has voluntarily followed her abductor". This is a case of raptus in virginem, an offence traditionally committed by men. Conversely, the voluntary abduction of a boy under 18 years of age is not punishable.

479. Lastly, reference should be made to the section on article 11 of the Convention, concerning Belgium's international commitments and illegal movement of children (paras. 261-267).

IV. Children belonging to a minority or an indigenous group (art. 30)

480. The constitutional guarantees concerning freedom of expression, assembly, association and religion that Belgian citizens enjoy in Belgium, partly meet the requirements of article 30, on the rights of children belonging to a minority or indigenous group. One of the objectives set out in the Belgian Constitution is to promote measures affording the ethnic, linguistic and religious minorities the opportunity to preserve and cultivate their social and cultural way of life.

481. Article 11 of the Constitution affirms the principle that discrimination in general is prohibited ("the enjoyment of the rights and freedoms recognized to Belgian citizens shall be ensured without discrimination") and requires national and Community legislatures to guarantee in particular the rights and freedoms of ideological and philosophical minorities. The obligation relates to the protection of minorities in general and not only the protection of ideological and philosophical minorities. It exists for all sectors of social life and not only for cultural matters.

482. Article 131 of the Constitution also requires the Federal Legislature to decree all necessary measures to prevent any discrimination on ideological or philosophical grounds within the cultural councils of the Communities.
