

Belgian legal framework and policies on child welfare and protection

Regulations and practices

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Introduction

The aim of the PANDA project is to promote the participation of young children (aged 12 years and under) in decision making in a transnational context through strengthening professionals' collaboration with young children known to social services, especially in child welfare and child protection.

Led by 8 partner organisations comprising social workers, managers, policy officers, academics and trainers from four countries, Belgium, Spain, Norway and Northern Ireland, the project has three objectives:

- to increase the skills and knowledge of professionals by creating a media library;
- to support organisations to create the conditions necessary for participatory social work with young children by providing a framework for policy officers and managers to support the implementation of a participatory approach;
- to provide trainers with new tools and methods in this area.



Figure 1 PANDA concept (2022)

In this text, you can read about the main legal framework in the four participating countries. It are four examples of how International legislation is translated into regional child welfare and child protection systems.

Each country has structured the presentations somewhat differently, but all have described how the authorities take care of and include the most vulnerable children in their country.

Text based on the supporting paper for the workshop ‘Intersectoral approach to children’s rights – the decree regarding the rights of children in Flemish Youth Care at the Conference ‘Full Inclusion of children and young people with disabilities into society’, Brussels 21-22 Nov 2013: *Integrated Youth Care and the decree regarding the rights of children in Flemish Youth Care. Context, strategies and logistic framework* by Jole Lowagie, Executive staff assistant Integrated Youth Care, Ministry of the Flemish Community, Department of Welfare, Public Health and Family.

This text is actualised and adapted to the context of March 2021.

1. Federal state

Belgium is a federal state that is divided in three communities and three regions.

The communities are important for child welfare and child protection because among other things than language, culture, education, audiovisual, the communities have jurisdiction of “aid to people in need”.

The communities are language based. In Belgium we have three official languages: German (East of Belgium), French (Wallonia, South of Belgium) and Dutch (Flanders, North of Belgium).

This text is about youth care in Flanders, the Flemish community which is thus different than the youth care in the French and German community.



<https://www.flemishparliament.eu/about-the-flemish-parliament/structure-belgium>

2. Integrated Youth Care

2.1. What is integrated youth care?

Integrated youth care in Flanders (IYC) is a policy line and a policy project which aims to create preconditions to improve the quality of youth care. These preconditions have successively been

examined, tested out in pilot regions, laid down in legislation by a decree in 2013 and are implemented in Flanders since 2014.

Youth care in Belgium is a complex matter because many people and institutions are involved. Moreover, there is a division of competences on the different government levels, as well federal, e.g. residential mental health care, as community level, e.g. ambulant mental health care. IYC is on the level of the communities, therefore it covers only services within the scope of the Flemish Community. IYC thus entails social services provided by centres for general welfare work, youth care facilities and services for disabled children, social services for parents and young children, centres for integrated residential family support, pupil guidance centres, special youth assistance agencies, services for foster care and centres for mental health.

2.2. Policy of IYC

Important reference framework is the Convention on the Rights of the Child (CRC). This Convention on the Rights of the Child became law in Belgium in early 1992.

2.2.1. Guiding principles

Integrated Youth Care follows some guiding principles:

- Ensuring **appropriate (special) care** within the available resources: the right to care of minors, their parents and their caretakers is formulated as a working principle and as a policy option. In practice it implies that youth care services have a shared responsibility in guaranteeing help. It also means that the supply of youth care (facilities) answers the needs for youth care, therefore, an intersectoral registration of needs and demands is necessary.
- **Context oriented care**, in the most effective and efficient way. Youth care is mostly effective when family and context is involved. This also means a maximised focus on the strengths of minors, parents and other caretakers.
- **Demand orientation**: youth care services should be attuned to the actual demand of the client, the skills and the language of the clients rather than being focused on the supply side of the service. It also means that help should not depend on coincidence as to where the client might end up in care. The aim of IYC is to be able to help clients more adequately by offering them the most appropriate service, regardless of where they formulate their initial question for help.
- **Subsidiarity of care measures**: when equivalent alternatives are available in the field of youth care, preference should be given to the least radical alternative.

Children should grow up in their families. When confronted with crisis or difficult situations, families should receive the necessary, appropriate assistance. The placement of a child should remain the exception and have as primary objective the best interests of the child and his successful social integration or reintegration as soon as possible. When placement is necessary, foster care is the first option to consider. Voluntary youth care is preferable to compulsory care.

- **Participation:** one of the major challenges for IYC is to give shape to a participatory youth care. A participatory youth care practice assumes that everyone can bring their own perspectives and opinions into debate. It also implies for the professional to have a permanent reflection on his position in his relationship with the minor, his parents and society.

This principle also implies that youth care in an extrajudicial context only can be offered with consent of minors and parents.

Youth care always respects the **religious, ideological and philosophical persuasions** of minors, parents and caretakers. It also shows consideration with their cultural identity, socio-economic situation and handicap.

2.2.2. Objectives of Integrated Youth Care

The decree stipulates six objectives to realise and reinforce an integrated youth care.

a) Socialisation of youth care

Socialisation is an appeal to look beyond the regular and professional aid services. It means that youth care facilities should search how the social network, network of family, the context...can play a stronger role in supporting minors and parents in need. It also implies a focus on the strengths of clients and an appeal to stimulate their emancipation and participation in society. The use of several methodologies reinforces this new (renewed) view on (youth) care, e.g. Signs of Safety.

b) Early access to youth care when necessary

Youth care facilities should have a transparent policy in what they can do for people so that persons in need of help or seeking help for others have an adequate knowledge of youth care supply.

A good access to youth care means that youth care is useful, accessible, available, comprehensible and affordable. The supply of low-threshold, direct accessible care is a crucial factor within youth care.

c) Guarantee continuity within care

All youth care services have a shared responsible to offer continuity by avoiding referrals, making clear agreements when referral is necessary, by consultations between caregivers in close dialogue with minors and parents, mediation, by mutual support between professionals of different youth care facilities, ...

d) Deal with disturbing situations in an appropriate way

'Disturbing situations' are the broad area of situations in which people (social workers, clients, and others involved) worry about the development of a minor. The ambition of youth care is to react in an appropriate way. Every professional is responsible and must be able to deal with problematic family situations, by discussing his concerns directly within the care he offers and by searching with his client how the situation can be improved.

If this is not sufficient, professionals can refer to or be supported by two specialised services. They have the mandate to work in 'alarming situations'. Both services also can refer to the judicial services. These 'mandated services' are the 'Support Centre for Youth Care' en the 'Child Abuse Centres'.

e) Provide with a supply of crisis youth care

Youth care must assure that every minor in crisis receives quick and appropriate care.

By uniting the supply from different sectors, it is possible to organise a 'care-programme'. This care-programme consists of four fixed elements: contact point (hotline) that can be reached 24 hours and 7 days, and dispatches to three fast deployable type of modules: crisis intervention (short-term intervention of a few days in the context of the minor), crisis coaching and supervision (a mobile and/or ambulatory guidance of a month), and crisis (day) care (residential care of 7 days, renewable for 1 time).

f) Participation

Next to a principle, participation is also an objective in and through youth care. Participation of minors, parents and caretakers is important in three levels.

The individual case in youth care: how strong is the participation of child and parents in that what happens with him/her within this process of assistance?

Second, the level of the youth care facilities: what about the involvement of children and parents in the decisions that the organisation or care service makes?

And third, the structural policy level: what about the participation of clients with regard to policy decision making and tendencies within or across sectors?

2.2.3. Decree regarding the rights of children in youth care [and within the framework of the decree on juvenile delinquency law]

Children, young people and their parents are explicitly recognised as subjects of law since the decree guarantees them participation in youth care and respect for their fundamental rights.

The decree regarding the rights of children in youth care became operational on July 1st 2006, and was extended to participation of minors under juvenile delinquency law in 2019.

2.3. Competence of children

The decree stipulates that every minor, regardless of their age and maturity is regarded as a person with rights and is entitled to be an active partner in deciding what should be done in their best interests. This does not mean that competence is a matter of all or nothing.

Competence is both a legal and a psychological concept. Competent persons have decisional authority in a certain domain. The psychological concept of competence refers to a set of reasoning and decisional abilities that a person may have (or fail to have) to a certain degree.

The legal concept of competence is a threshold concept: persons are judged to be either competent or incompetent to make a certain decision.

In the decree children are competent to exercise most of the stipulated rights autonomously since most of the rights suppose factual acts. However, for two of the stipulated rights the guiding principle is that the professional must assess the child's competence to exercise their rights. That is the case with the right to informed consent to youth care (including the right not to be separated

from one's parents) and the right to access to one's file. When a child is not found competent to exercise (one of) these rights, this right can be exercised by those who have parental authority. In the context of severe conflict of interests between the child and their parents, children are entitled to get assistance from another person.

The age level of 12 is introduced as an indicative age limit of competence. This means that from the age of 12 onwards children are supposed to be competent to exercise their rights independently. It does not mean that every 12-year-old is actually seen as capable of exercising their rights; it means that whenever a professional assumes or decides that a child is not capable of exercising their rights, he has to prove it. Thus, the onus of proof does not rest on the child, but on the professional.

2.4. Rights guaranteed by the decree

2.4.1. The right to youth care

It implies that, within the available resources, assistance should be an appropriate and adequate answer to the raised question, adapted to the needs and well-being of the child. Furthermore, the given assistance should not jeopardise other rights of the child, for instance the right to education. When considering solutions, due regard must be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

2.4.2. The right to informed consent to youth care in an extrajudicial context

A child who is capable of forming their own views has the right to consent to youth care. Whenever a professional assesses the need for helping a child but the child does not agree, the professional must inform him about the consequences of denying help.

This does not imply that professionals should not act in crisis situations, for instance in the case of a suicidal child. In that case it is not only a matter of protecting the best interests of the child but also a matter of duty to help.

2.4.3. The right to comprehensive information and transparent communication

A child has the right to be informed properly about youth care supply and about all matters affecting him (such as information about the diagnosed help, the duration of help, complaint procedures and other internal rules, ...). This includes, if applicable, the right to be informed about the sharing of information with one's parents by the social worker.

The (temporary) restriction or withholding of certain information is only possible in the best interests of the child.

2.4.4. The right to respect for his family life

It is articulated in the decree that parents are the child's first caregivers. Therefore, the child's right not to be separated from their parents is stipulated. A child who is capable of forming his own views has the right to consent to youth care. Only by court order can a child be forced to be separated from his family. In the context of a child's placement, his parents and other family members should be involved in the decision-making process.

Children who are separated from their (foster) family have specific rights: the right to maintain regular contact with the (foster) family, siblings and other significant persons. Such contact may be restricted only in the best interests of the child or by a court order.

For unaccompanied asylum-seeking minors the right to respect of his family life also implies the right to support in the search for their parents.

2.4.5. The right to participate in the decision-making process concerning the child

Every child has the right to express his opinion about and perception of the situation and thus has the right to be treated as a partner in youth care. Due weight should be given to their perspective. If the social worker cannot consent with the perspective of the child, he should motivate this in the child's file.

A 'basic participatory attitude' in every professional is essential to elaborate this right.

For children living in residential care, the right to participation also means the right to participate in the living conditions of the institution, to periodic evaluation of the care and to assembly in the institution.

2.4.6. The right to access to one's file

Every child has the right to a carefully kept and safely guarded file. Furthermore, the decree offers an intersectoral framework of access by defining the modes of access and the child's right to oppose to the access of their parent(s) to particular elements of his file.

2.4.7. The right to assistance in exercising one's rights

Every child is entitled to have an assistant person who supports him in exercising his rights.

This person has to meet following standards: he must be appointed by the child, be of age (adult), have a certificate of good behaviour (clean criminal record) and must not be involved in the care process.

2.4.8. The right to privacy

Every child has the right to respect for his privacy: the right to protection of confidential information and the right to respect for his background (ethnic, religious, cultural, social, ...).

2.4.9. The right to an amount of money to be spent freely while in residential care

Children living in residential institutions are entitled to have a free spendable amount of money.

The involved sectoral departments have worked on a regulation and have drawn up a budget and implemented this right since 2008.

2.4.10. The right to be treated with dignity

The measures of control and discipline in residential institutions, for instance restrictions to the freedom of movement and for isolation should be based on public regulations.

The decree makes a difference between measures with the aim of preventing self-inflicted harm and injury to professionals or other children in the institution. For the latter youth care services should have a written protocol.

Children have the right to be informed about this regulation in a transparent and child-friendly way.

2.4.11. The right to complain

Every child has the right to make complaints to an identifiable, impartial and independent body to assert his rights.

Helpful links

Legal position of minors in youth care:

<https://www.rechtspositie.be/>

Organisation of and for children and young people in youth care:

<https://cachetvzw.be>

Information on children's rights:

<https://tzitemzo.be/>

Information site from Flemish government on child welfare:

<https://www.jeugdhulp.be/>