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## **EUROPEAN SOCIAL CHARTER**

Comments by Federal Institute for the protection and promotion of Human Rights, Kinderrechtencommissariaat and Delegate-General for Children's Rights on the 15<sup>th</sup> National Report on the implementation of the European Social Charter

submitted by

**THE GOVERNMENT OF BELGIUM**

Follow-up of collective complaints

Comments registered by the Secretariat  
on 13 July 2021

**CYCLE 2021**



# Report to the European Committee of Social Rights (ECSR)

## Report on the fifteenth periodic report of Belgium

**30 June 2021**

Federal Institute for the protection and promotion of Human  
Rights

Kinderrechtencommissariaat

Délégué général aux droits de l'enfant

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## **Report by the Federal Institute for the Protection and Promotion of Human Rights, the Kinderrechtencommissariaat and the Délégué général aux droits de l'enfant to the European Committee of Social Rights (ECSR)**

### **Report on the fifteenth periodic report of Belgium – 30 June 2021**

#### **The Federal Institute for the Protection and Promotion of Human Rights**

The Federal Institute for the Protection and Promotion of Human Rights (FIRM/IFDH) is an independent institution created by the law of 12 May 2019 in accordance with the Paris Principles on national institutions for the promotion and protection of human rights, in order to help protect and promote human rights in Belgium.

#### **The Kinderrechtencommissariaat**

The Kinderrechtencommissariaat (Children's Rights Commission, KRC) was established as an independent institution by the Flemish Parliament and monitors children's rights in Flanders. It detects signals from children, youth, parents and professionals. It investigates complaints about violations of children's rights and, on the basis of the Convention on the Rights of the Child, gives advice to the Flemish, Brussels or Belgian authorities and parliaments.

#### **The Délégué général aux droits de l'enfant**

The Délégué général aux droits de l'enfant (Delegate-General for Children's Rights, DGDE) is an independent public institution established in the French Community by the decree of 20 June 2002 and the order of 19 December 2002.

Its overall mission is to safeguard the rights and interests of children.

Within the framework of his mission defined by the decree of 20 June 2002, the Délégué général can, in particular:

1. provide information on the rights and interests of children and ensure the promotion of children's rights and interests;
2. verify the correct application of laws and regulations concerning children;
3. recommend to the Government, Parliament and any competent child protection authority any proposal for adapting the regulations in force with a view to achieving more robust and effective protection of children's rights and interests;
4. receive information, complaints or requests for mediation relating to infringements of the rights and interests of children;
5. at the request of Parliament, conduct investigations into the operation of the administrative departments of the French Community concerned by this mission.

## 1. Introduction

The Federal Institute for the Protection and Promotion of Human Rights (FIRM/IFDH) was created by the Act of 12 May 2019 with a view to providing Belgium with a national human rights institution in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles)<sup>1</sup>. The Kinderrechtencommissariaat (KRC) and the Délégué général aux Droits de l'Enfant – DGDE are mediation services for children. This opinion is part of the Institute's, the KRC's and the DGDE's cooperation with United Nations bodies and regional human rights organisations, within the framework of which they can submit reports on the human rights situation in Belgium.

The FIRM/IFDH carries out this mission within the limits of its mandate, which covers all matters relating to the protection of human rights within federal jurisdiction and for which no other sectoral body for the protection and promotion of human rights has been designated. The KRC and the DGDE are independent institutions created by decree by the Communities.

As part of the annual reporting processes, the provisions of the European Social Charter have been grouped into four thematic clusters<sup>2</sup>. Each year, the State concerned submits a report on one of these four groups to the European Committee of Social Rights. On 15 December 2020, the Belgian federal government submitted to the Council of Europe secretariat its fifteenth national report on the implementation of the European Social Charter, relating to the "Children, Families, Migrants" Group.

More specifically, this report concerns the follow-up of four collective complaints which ended in a decision of non-compliance against Belgium. Three of these claims fall mainly within the competence of the Belgian federated entities: the Regions, concerning the lack of available land for Travellers (complaint No. 62/2010<sup>3</sup>), and the Communities, concerning the right to inclusion of persons with disabilities in housing and education (complaints no. 75/2011<sup>4</sup> and 109/2014<sup>5</sup> respectively). Only complaint No. 98/2013<sup>6</sup>, concerning the lack of an explicit ban on corporal punishment, falls under federal jurisdiction. Given the federal mandate of the FIRM/IFDH, and the competences of the KRC and the DGDE in the area of children's rights, this report focuses only on the latter decision.

Before examining the implementation of the Committee's decision, the FIRM/IFDH would like to make a few comments on Belgium's non-acceptance of several provisions of the European Social Charter relating to the "Children, Families, Migrants" group.

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<sup>1</sup>The FIRM/IFDH has been an associate member of the [European Network of National Human Rights Institutions](#) (ENNHRI) since April 2021.

<sup>2</sup> Governmental Committee of the European Social Charter, [New system for the presentation of reports on the application of the European Social Charter](#), decision of 3 May 2006, 963rd meeting, CM (2006)53.

<sup>3</sup> ECSR decision on the merits of 21 March 2012, [International Federation of Human Rights \(FIDH\) v. Belgium](#), complaint no. 62/2010.

<sup>4</sup> ECSR decision on the merits of 18 March 2013, [International Federation of Human Rights Leagues \(FIDH\) v. Belgium](#), complaint no. 75/2011.

<sup>5</sup> ECSR Decision on the admissibility and merits of 16 October 2017, [Mental Disability Advocacy Centre \(MDAC\) v. Belgium](#), complaint no. 109/2014.

<sup>6</sup> ECSR decision on the merits of 20 January 2015, [Association for the Protection of All Children \(APPROACH\) Ltd. v. Belgium](#), complaint no. 98/2013.

## 2. General remarks on the ratification of the European Social Charter by Belgium

The Charter's ratification system allows states not to accept all of the rights enshrined in the Charter provided that government authorities agree to be bound by a majority of the Charter's provisions<sup>7</sup>. Belgium has exercised this option by refusing seven of the Charter's 98 provisions. Five of these seven non-accepted provisions belong to the "Children, Families, Migrants" group, namely<sup>8</sup>:

1. Article 19.12: *"the Parties undertake (...) to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker."*;
2. Article 27.3: *"the Parties undertake (...) that family responsibilities shall not, as such, constitute a valid reason for termination of employment."*;
3. And Articles 31.1: *"the Parties undertake to take measures (...) to promote access to housing of an adequate standard"*;
4. 31.2: *"to prevent and reduce homelessness with a view to its gradual elimination"*;
5. And 31.3: *"to make the price of housing accessible to those without adequate resources"*.

The missions of the FIRM/IFDH, as defined by the act of 12 May 2019, provide that it must *"encourage the ratification of or accession to new international instruments for the promotion and protection of fundamental rights"*<sup>9</sup>. As part of this function, the FIRM/IFDH examined the obstacles to the acceptance of the above five paragraphs of the Charter.

### **Articles 27.3 and 31.1, 31.2 and 31.3: family responsibilities and the right to adequate housing**

In its third report on the provisions not accepted by Belgium, the European Committee of Social Rights notes that there is no contradiction between Belgian law and Articles 27.3 and 31.1, 31.2 and 31.3 of the Charter<sup>10</sup>.

Workers with family responsibilities are currently not explicitly protected against dismissal, except through the sanctions attached to unfair or manifestly unreasonable dismissals. Neither federal anti-discrimination legislation nor any other form of protection is specifically aimed at these workers, despite a recommendation to that effect by the Institute for the Equality of Women and Men<sup>11</sup>. However, since 2019 the Walloon Region has prohibited any form of discrimination based on family responsibilities<sup>12</sup>, and the legislation does provide for some forms of protection based on maternity

<sup>7</sup> Article A, Part III, of the Revised Social Charter specifies that the State Party to the Charter is bound at least by Part I of the Charter, which sets out its objectives, and by at least 16 articles or at least 63 paragraphs of Part II, which specifies the rights concerned. Furthermore, the State Party must accept all of the rights enshrined in the original 1961 European Social Charter, which are already included in the revised Social Charter.

<sup>8</sup> See the Council of Europe report, Directorate General of Human Rights and Rule of Law, European Social Charter Department, "[Belgium and the European Social Charter](#)", March 2021.

<sup>9</sup> Art. 5, 4°, Act of 12 May 2019 establishing a Federal Institute for the Protection and Promotion of Human Rights, *Belgian Monitor (M.B.)*, 21 June 2019.

<sup>10</sup>ECSR [Third report on the non-accepted provisions of the European Social Charter – Belgium](#), 3 September 2019.

<sup>11</sup> Institute for the Equality of Women and Men, Recommendation No. 2018-R/001 [on protection against discrimination for workers of both sexes with family responsibilities](#).

<sup>12</sup> Walloon Decree of 2 May 2019 amending the Decree of 6 November 2008 on combating certain forms of discrimination, *M.B.*, 20 August 2019.

or, now, paternity<sup>13</sup>. The Belgian government states that it cannot accept Article 27.3 because its legislation does not yet provide for protection against dismissal for workers with family responsibilities<sup>14</sup>. However, no obstacle is cited by the government to explain the impossibility of adopting such a provision in domestic law. Accepting Article 27.3 would strengthen the rights of workers with family responsibilities, and would also allow Belgium to bring its law in line with the International Labour Organisation's Convention No. 156 on workers with family responsibilities<sup>15</sup>, which it ratified in 2015.

As with Article 27.3 of the Charter, it is unclear why the Belgian government does not accept the three paragraphs of Article 31. The right to adequate housing is currently guaranteed by article 23 of the Constitution and by several instruments of international law, such as article 11 of the International Covenant on Economic, Social and Cultural Rights. Although Article 31 of the Social Charter is more precise, it does not impose a results obligation on states. It does, however, require them to take the necessary measures to give concrete and effective form to the right to housing<sup>16</sup>. In view of this, the Belgian objections to accepting the three paragraphs of Article 31 would benefit from clarification. The Belgian government's report itself states that: *"Belgium's acceptance of Article 31 of the Charter depends solely on political will, as the legislative and practical conditions for such acceptance have been met."*<sup>17</sup>

The Committee therefore strongly encourages Belgium to accept these provisions in order to strengthen the protection of workers with family responsibilities and to improve the guarantees of the right to housing. **The FIRM/IFDH joins the European Committee of Social Rights in recommending that the Belgian authorities adopt a declaration accepting Articles 27.3, 31.1, 31.2 and 31.3 of the European Social Charter.**

#### **Article 19.12: promoting the teaching of the mother tongue by migrant workers**

The question of the acceptance of Article 19.12 is more complex<sup>18</sup> and comes exclusively under Community and regional competence. As the FIRM/IFDH's competence is currently limited to federal matters, it is not competent to pronounce on this question.

However, the FIRM/IFDH notes that the explanations given by the Federal State to the European Committee of Social Rights in this respect are unclear, the Committee concluding that further information is needed. **The FIRM/IFDH therefore encourages the Belgian State to publish the reasons for the difficulties in accepting Article 19.12 of the Charter and to undertake all necessary efforts to encourage the compatibility of community and regional legislation with the article in question with a view to its adoption.**

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<sup>13</sup> Act of 10 May 2007 to combat discrimination between women and men, *Belgian Monitor*, 30 May 2007, as amended by the law of 4 February 2020, *M.B.*, 28 February 2020.

<sup>14</sup> ECSR [Third report on the non-accepted provisions of the European Social Charter – Belgium](#), *op. cit.*, p. 10

<sup>15</sup> International Labour Organisation, [Workers with Family Responsibilities Convention no. 156](#), adopted in Geneva on 23 June 1981.

<sup>16</sup> ECSR [Third report on the non-accepted provisions of the European Social Charter – Belgium](#), *op. cit.*, pp. 11-12.

<sup>17</sup> *Ibid.*

<sup>18</sup> ECSR [Third report on the non-accepted provisions of the European Social Charter – Belgium](#), *op. cit.*, p. 5.

### 3. Claim No. 98/2013 Association for the Protection of All Children (Approach) Ltd. v. Belgium, 20 January 2015

#### *Status of the situation: lack of explicit prohibition of corporal punishment in Belgian law*

Belgium has not explicitly prohibited the use of corporal punishment, sometimes called "ordinary educational violence". However, it considers that its legislation already contains an implicit prohibition of corporal punishment<sup>19</sup>. Nevertheless, all the independent public institutions for the defence of children's rights – the Kinderrechtencommissariaat<sup>20</sup>, the Délégué général aux droits de l'enfant<sup>21</sup>, the Advisory Body of the National Commission on the Rights of the Child<sup>22</sup> – consider that the Belgian legal framework is insufficient to protect children's rights.

The Criminal Code prohibits assault and battery<sup>23</sup> and abuse<sup>24</sup> and considers it an aggravating circumstance if such violence is committed by a person with parental authority over a child<sup>25</sup>, whether a parent, teacher, youth leader or any other person in a position of authority. Another important element in the protection of children is Article 22 *bis* of the Constitution, which states that children have the right to physical, mental and sexual integrity<sup>26</sup>. Some authors argue that the recognition of an autonomous normative scope to this article could lead to a judicial prohibition of all so-called "educational" violence<sup>27</sup>. However, such reasoning has not yet become established in the case law<sup>28</sup>, and such case law would provide less legal certainty than the adoption of legislation.

In addition to these federal provisions, the Communities – which are responsible for youth protection and education – have adopted certain specific prohibitions. The Flemish decree of 7 May 2004 prohibits corporal punishment in youth protection institutions<sup>29</sup>. There is no such prohibition in the French Community. The approach of Communities is geared towards the prevention of abuse, without

<sup>19</sup> European Social Charter, [15th national report on the implementation of the European Social Charter submitted by the Government of Belgium](#), monitoring of collective complaints, 2021 cycle, registered by the Secretariat on 15 December 2020, RAP/RCha/BEL/15(2021).

<sup>20</sup> See Kinderrechtencommissariaat, [Alternative report to UN Committee against Torture](#), 22 June 2020, p. 9.

<sup>21</sup> Délégué général aux droits de l'enfant, Opinion of 19 April 2019, [the impacts of ordinary educational violence on the well-being and development of children](#).

<sup>22</sup> Advisory body of the National Commission on the Rights of the Child, April 2018 Opinion, "[Expressly prohibiting the forms of violence known as educational: a legal obligation for Belgium](#)".

<sup>23</sup> Art. 398 ff., Criminal Code.

<sup>24</sup> Art. 417 *quater*, Criminal Code.

<sup>25</sup> Art. 405 *quater*, Criminal Code.

<sup>26</sup> Art. 22 *bis*, Constitution.

<sup>27</sup> J. FIERENS, "Pas panpan cucul papa ! (Don't spank my bottom, Daddy!) Les châtiments corporels et le droit applicable en Belgique" (Corporal punishment and the applicable law in Belgium), *J.D.J.*, n°300, 2010, p. 19.

<sup>28</sup> J. FIERENS, "Pas panpan cucul papa ! (Don't spank my bottom, Daddy!) Les châtiments corporels et le droit applicable en Belgique" (Corporal punishment and the applicable law in Belgium), *op. cit.*, p. 20.

<sup>29</sup> Flemish decree of 7 May 2004 concerning the legal position of minors in integral youth care [and within the framework of the decree concerning the law on juvenile delinquency], *M.B.*, 4 October 2004.

corporal punishment being explicitly defined as abusive behaviour<sup>30</sup>.

Therefore, although Belgian law prohibits certain violent behaviour with a purportedly "educational" purpose, there is no explicit prohibition of corporal punishment in any situation.

This situation enables the continued tolerance of corporal punishment that does not reach a certain threshold of severity. This tolerance is notably expressed by the continuing recognition of a so-called "right of correction" by some courts.<sup>31</sup> On two occasions, the Nivelles criminal tribunal acquitted parents prosecuted for assault and battery against their minor children, even though they had confessed and the violence was serious<sup>32</sup>. These decisions were both overturned by the Brussels Court of Appeal<sup>33</sup>. The Antwerp Court of Appeal issued a ruling in 2012 in another case in which it asserted the existence of an so-called "right of correction" with respect to an "unruly" minor child<sup>34</sup>.

This tolerance is also expressed in some political statements. A study undertaken by UNICEF in 2019 showed that three political parties (Open-VLD, Vlaams Belang and NV-A) were opposed, for different reasons, to a legislative amendment explicitly enshrining the prohibition of violence against children<sup>35</sup>. NV-A MP Theo Franken stated on 6 May 2021 regarding the latest bill<sup>36</sup> introduced: "*associating a disciplinary slap with child abuse means involving the government in private situations.*"<sup>37</sup>.

Part of the Belgian population seems to accept the use of so-called "educational" violence. A survey, conducted in March 2020 at the initiative of the Belgian section of the NGO Defence for Children International, shows the persistence of opinions tolerant of violence. 51% of those surveyed, for example, believe it can be appropriate to "give a child a little smack" on a regular basis or under certain circumstances<sup>38</sup>. Even some of the more "serious" forms of so-called "educational" violence remain common: one in ten people feel it is appropriate to punch or kick, and two in ten feel it is appropriate to pull the ears or lock a child in a basement<sup>39</sup>. 22% of respondents believe that physical punishment is beneficial to the child, and 17% see educational value in psychological violence<sup>40</sup>. This survey is in line with scientific studies that find a strong indirect correlation between national family laws and

<sup>30</sup> See in particular the [three-year abuse prevention plan 2018–2020](#), a proposal by the Project Committee to the Steering Committee in relation to the French Community Government Decree of 23 November 2016 to coordinate prevention and child abuse, March 2018.

<sup>31</sup> T. Corr. Nivelles, 13 January 2011, *J.D.J.*, no. 346, 2015, p. 38; C. A. Antwerp, 13 March 2012, *R.W.*, 2012-2013, p. 1592; T. Corr. Nivelles 14 March 2013, *J.D.J.*, no. 346, 2015, p. 38.

<sup>32</sup> G. MATHIEU, "Châtiments corporels : Non, ce n'est pas pour son bien !", *J.D.J.*, No. 346, 2015, pp. 11.

<sup>33</sup> C. A. Brussels, judgements of 7 March 2012 and 11 February 2014, *J.D.J.*, no. 346, 2015, p. 38.

<sup>34</sup> C. A. Antwerp, 13 March 2012, *J.D.J.*, 2013, p. 37.

<sup>35</sup> UNICEF, '[Standpunten politieke partijen rond geweld tegen kinderen \(Positions of political parties on violence against children\)](#)', UNICEF Belgium survey – Elections 2019.

<sup>36</sup> *Parl. Doc.*, House, [proposed law amending the Civil Code to prohibit systematic violence between parents and their children](#), 9 March 2021, DOC 55 1840/001, pp. 6-7.

<sup>37</sup> LN24, "[For or Against Spanking Ban](#)," 6 May 2021.

<sup>38</sup> Survey conducted by the market research company Dedicated on behalf of DCI-Belgium, on a representative sample of 2013 Belgians aged 18 to 75 in March 2020. Dedicated, on behalf of DCI-Belgium, "[Ordinary educational violence, results of the study of the opinions and behaviours of the Belgian population](#)", March 2020.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*



parenting behaviour<sup>41</sup>, as well as a link between violent behaviour by adolescents and the prohibition of corporal punishment<sup>42</sup>.

The absence of an explicit ban on corporal punishment is also defended on the grounds of a preference for awareness-raising and prevention practices for parents. Yapaka, the official programme for the prevention of child abuse in the French Community, advocates greater awareness-raising among parents and opposes an explicit ban on corporal punishment, which is described as counterproductive: *“To want to legislate more than is reasonable is to introduce the law into a situation that must above all be overcome through awareness, listening and dialogue. To want to impose further constraints is to assume that only the threat of punishment has any effect. On the contrary, we believe that support for the parent should be the basic axis of any policy in this area.”*<sup>43</sup>. However, this position can be criticized, since an explicit ban on all forms of so-called "educational" violence does not necessarily exclude awareness-raising and support measures.

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<sup>41</sup> M.G. OLIVARI, E. HERTFLET WAHN, K. MARIDAKI-KASSOTAKI, K. ANTONOPOULOU, E. CONFALONIERI, "Adolescent Perceptions of Parenting Styles in Sweden, Italy and Greece: An Exploratory Study," *Europe's Journal of Psychology*, 2015, vol. 11, no. 2, pp. 244-258.

<sup>42</sup> S. CARIOLI, "Historical legacies and use of corporal punishment of children in the home, in Italy", *Rivista Italiana di Educazione Familiare*, 2020/1, p. 37.

<sup>43</sup> Yapaka.be, "[Should parents be punished for spanking?](#)", press release of 22 June 2015.

### ***Lack of conformity of the legislation with Belgium's international obligations***

The lack of legislation prohibiting corporal punishment is contrary to the case law of the European Court of Human Rights<sup>44</sup> and Belgium's international obligations<sup>45</sup>. These provisions entail an obligation for Belgium to legislate to explicitly prohibit the corporal punishment of children, which the State has failed to do<sup>46</sup>.

As early as 2004, in its decision *O.M.C.T. v. Belgium*<sup>47</sup>, the European Committee of Social Rights considered that the Belgian State had violated Article 17 of the European Social Charter by failing to include an explicit prohibition of corporal punishment in its legislation. The Committee noted that although several provisions of Belgian legislation – Article 22*bis* of the Constitution, the prohibition of assault and battery in the Criminal Code, the obligation of mutual respect in the Civil Code – were in line with Article 17 of the Charter, they were insufficient to provide a basis for an explicit prohibition of so-called "educational" violence<sup>48</sup>. The violation of Article 17 of the Charter was again alleged in complaint no. 98/2013 filed by the Association for the Protection of All Children – *Approach*<sup>49</sup>. The Committee founded that the legislation had not changed since its *O.M.C.T.* decision and considered that the Government had not demonstrated the existence of clear and precise case law prohibiting the corporal punishment of children<sup>50</sup>. The Committee unanimously concluded that the Charter had been violated.

This statement is made repeatedly with regard to Belgium. In its Conclusions 2019, relating to the Children, Families, Migrants Group, the European Committee of Social Rights recalled that it had found the absence of an explicit ban to be in breach of the Charter on four occasions since the first Belgian conviction. The Committee states that "*the situation has not changed*" and "*therefore renews its finding of non-compliance on this point*", while noting the existence of an ongoing discussion on this subject<sup>51</sup>.

The absence of an explicit prohibition of corporal punishment in Belgian law is also contrary to other provisions of public international law. Article 19 of the UN Convention on the Rights of the Child creates a positive obligation on States to take measures to protect children from all forms of physical or mental violence<sup>52</sup>. Article 28 of the Convention regulates the use of discipline in schools<sup>53</sup>. Based on these

<sup>44</sup> Notably the judgements in [Campbell and Cosans v. United Kingdom](#) of 25 February 1982, no. 7511/76 and 7743/76; [A. v. United Kingdom of 24 September 1998](#), No. 25599/94, which considers that the "reasonable punishment" allowed under British law is incompatible with the Convention's prohibition of inhuman and degrading treatment.

<sup>45</sup> In particular, Articles 17 of the European Social Charter, 19 and 28 of the International Convention on the Rights of the Child, and 7 of the International Covenant on Civil and Political Rights.

<sup>46</sup> Advisory body of the National Commission on the Rights of the Child, April 2018 Opinion, "[Expressly prohibiting the forms of violence known as educational: a legal obligation for Belgium](#)".

<sup>47</sup> ECSR, decision on the merits of 7 December 2004, [World Organisation Against Torture v. Belgium](#), complaint no. 21/2003.

<sup>48</sup> *Ibid.*, §§ 42-45.

<sup>49</sup> ECSR decision on the merits of 20 January 2015, *op. cit.*

<sup>50</sup> *Ibid.* §§ 53-55.

<sup>51</sup> ECSR, [European Social Charter: Conclusions 2019 on Belgium](#), March 2020, p. 27

<sup>52</sup> Art. 19, UN Convention on the Rights of the Child (UNCRC).

<sup>53</sup> Art. 28, UNCRC.

provisions, the Committee on the Rights of the Child has found that no form of violence against children is compatible with the Convention under any circumstances<sup>54</sup>. Based on this interpretation, the Committee on the Rights of the Child has repeatedly called on Belgium to introduce an explicit prohibition of all corporal punishment of children, including in residential care, in schools, in public youth detention institutions (IPPJ and Gemeenschapsinstellingen) and in the family<sup>55</sup>. It also recommends that Belgium promote non-violent, positive and participatory forms of parenting and discipline<sup>56</sup>.

The UN Committee against Torture also believes that an explicit ban on corporal punishment is required for Belgium. In 2014, it recommended that the Belgian state "*expressly prohibit corporal punishment of children in all settings, and as a priority within the family and in non-institutional childcare settings*"<sup>57</sup>.

### ***Belgium's arguments on the lack of an explicit prohibition of corporal punishment***

These findings of the non-conformity of Belgian law with the provisions of several important conventions protecting human rights have not, for the moment, led the Belgian Parliament to adapt its legislation. However, the State recognises that there is a broad European and international consensus in favour of an explicit ban on corporal punishment<sup>58</sup>. The government defends this lack of prohibition by citing ad hoc – and "ongoing" – progress on this issue, which has so far never led to the explicit enshrinement of the prohibition of corporal punishment required by Belgium's international obligations.

The Belgian State thus points to the existence of a bill tabled on 24 September 2019 by two majority MPs, which would have enshrined a ban on physical or psychological violence in the Civil Code<sup>59</sup>. However, it appears that the bill was never included on the agenda of the Justice Committee<sup>60</sup>. The Belgian State also refers to a similar bill tabled on 20 April 2016<sup>61</sup>, which met with the same fate<sup>62</sup>. It is therefore difficult, in view of the fate of these bills, to conclude with the Belgian State that "*this matter*

<sup>54</sup> Committee on the Rights of the Child, General Comment No. 8: [the right of the child to protection from corporal punishment and other cruel and degrading forms of punishment](#), CRC/C/GC/8. Committee on the Rights of the Child, General Comment No. 13: [the right of the child to be protected from all forms of violence](#), CRC/C/GC/13.

<sup>55</sup> Committee on the Rights of the Child, [Concluding Observations: Belgium](#), 18 June 2010, CRC/C/BEL/CO/3-4, § 8. Committee on the Rights of the Child, [Concluding observations on the combined fifth and sixth reports of Belgium](#), 1 February 2019, CRC/C/BEL/CO/5-6, § 22.

<sup>56</sup> *Ibid.*

<sup>57</sup> UN Committee against Torture, [Concluding observations on the third periodic report of Belgium](#), 3 January 2014, CAT/C/BEL/CO/3, § 27.

<sup>58</sup> European Social Charter, [15th national report on the implementation of the European Social Charter submitted by the Belgian government](#), *op. cit.*, p. 18.

<sup>59</sup> *Parl. Doc.* House, [bill amending the Civil Code with regard to the child's right to a non-violent upbringing and the prohibition of all forms of violence against the child](#), 24 September 2019, DOC 55K0424/001.

<sup>60</sup> The House of Representatives website no longer reports any progress on the bill just two days after it was introduced.

<sup>61</sup> *Parl. Doc.*, House, [bill amending the Civil Code with regard to the right of the child to a non-violent upbringing and to the prohibition of all forms of violence against children](#), 20 April 2016, DOC 54 1778/001.

<sup>62</sup> According to the House website, this bill lapsed on 23 May 2019.

*is clearly on the political agenda*<sup>63</sup>.

The State further refers to a judgement of the Antwerp Court of Appeal of 30 January 2019, which effectively held that even a mild and time-limited form of educational violence, with the intention of controlling or correcting undesirable behaviour, was prohibited under article 398 of the Criminal Code<sup>64</sup>. This case law is commendable, but the judicial approach does not seem to be a good substitute for legislative amendment: it neither guarantees legal certainty – having only limited *res judicata* – nor does it give sufficient prominence to the classification of all violence as a violation of the prohibition on assault and battery.

Belgium therefore defends its record on explicitly prohibiting corporal punishment by highlighting the persistent interest of the legislature in this issue – three bills in five years – and the existence of an ongoing public debate. However, this explanation reflects above all the lack of support from Belgian public authorities for an explicit ban on corporal punishment. No government initiative has proposed this ban, which is absent from the government agreement of 30 September 2020<sup>65</sup>. The FIRM/IFDH, the KRC and the DGDE also found no statement by a member of the government announcing an intention to ban corporal punishment. Despite increasing calls to explicitly prohibit corporal punishment – from international bodies<sup>66</sup>, Belgian children's rights public institutions<sup>67</sup> or civil society<sup>68</sup> – the Belgian authorities are struggling to present a credible plan for short-term prohibition<sup>69</sup>.

### ***Belgium is one of the last European countries not to explicitly prohibit corporal punishment***

Belgium is one of the last Western European states not to have an explicit ban on corporal punishment. In the European Union, 23 countries have such a ban<sup>70</sup>. Only Italy, Slovakia and the Czech Republic share the absence of an explicit prohibition of corporal punishment with Belgium<sup>71</sup>.

### ***Prospects for improvement***

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<sup>63</sup>European Social Charter, [15th national report on the implementation of the European Social Charter submitted by the Belgian government](#), *op. cit.*, p. 18.

<sup>64</sup>C. A. Antwerp, 30 Jan. 2019, *N.C.*, 2019, vol. 2, pp. 163-164.

<sup>65</sup>Federal Government Agreement of 30 September 2020, "[For a prosperous, united and sustainable Belgium](#)".

<sup>66</sup>For example, Committee on the Rights of the Child: [Concluding observations on the combined fifth and sixth reports of Belgium](#), 1 February 2019, CRC/C/BEL/CO/5-6, *op. cit.*

<sup>67</sup>In particular, the Délégué général aux droits de l'enfant, the Kinderrechtencommissariaat, and the Advisory Body of the National Commission on the Rights of the Child. See footnotes 22 and 24

<sup>68</sup>For example the DCI-Belgium campaign: [So-called Ordinary Educational Violence: for a Positive, Caring and Non-Violent Education](#).

<sup>69</sup>ECSR decision on the merits of 20 January 2015, *op. cit.*

<sup>70</sup>*Parl. Doc.*, House, [bill amending the Civil Code to prohibit systematic violence between parents and their children](#), *op. cit.*

<sup>71</sup>Global Partnership to End Violence Against Children, [Country Report: Belgium](#), End Violence against Children, last updated June 2021.

Several bills have been tabled. The most recent<sup>72</sup>, like the advisory body of the National Commission for the Rights of the Child<sup>73</sup>, proposes an amendment to article 371 of the Civil Code<sup>74</sup> to explicitly prohibit physical or psychological corporal punishment and other forms of humiliating treatment. Favouring an amendment to the Civil Code rather than a criminal prohibition corresponds to the recommendations of the Committee on the Rights of the Child<sup>75</sup>. This makes it possible to favour an approach based on awareness-raising and prevention, rather than a repressive approach that is sometimes ill-suited to the best interests of the child.

However, it should also be noted that the last two bills, dated 2016 and 2019 respectively (*supra*) were never considered by the relevant Committee of the House of Representatives. The FIRM/IFDH, KRC and DGDE note that the most recent bill does not seem to have been put on the agenda of a Commission or forwarded to the Council of State, despite the fact that it was introduced almost four months ago in the House<sup>76</sup>. More effort seems to be needed from the Belgian governmental and parliamentary authorities to make this reform of the Civil Code a reality.

Amending the Civil Code would mainly have the symbolic effect of clarifying that all violence against children is intolerable, even if it is described as "educational". This prohibition could also have certain legal consequences for parents, particularly in the event of a court decision on parental authority, custody or the placement of children.

Accompany the legislative amendment with awareness-raising, prevention and information measures for the general public, as well as training and support measures for education and parenting aimed at parents, teachers, care providers, and anyone working with children and families, professionals in contact with families and youth welfare bodies, judges and lawyers.

## Conclusion

**The FIRM/IFDH, KRC and DGDE invite the Committee to continue to supervise the implementation of the decision *Approach v. Belgium* of 20 January 2015.** It also makes the following recommendations:

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<sup>72</sup>*Parl. Doc.*, House, Bill to amend the Civil Code to prohibit systematic violence between parents and their children, *op. cit.*

<sup>73</sup> Advisory body to the National Commission on the Rights of the Child, "Expressly prohibiting so-called *educational* violence: a legal obligation for Belgium", *op. cit.*

<sup>74</sup> It currently provides that "*the child and his or her father and mother have a mutual duty of respect at all ages.*" (in French, "[l]'enfant et ses père et mère se doivent, à tout âge, mutuellement le respect").

<sup>75</sup> Committee on the Rights of the Child, General Comment No. 8 of 2 March 2007 : *the right of the child to protection from corporal punishment and other cruel and degrading forms of punishment (art. 19, 28 (par. 2) and 37, among others)*, *op.cit.*, § 40.

<sup>76</sup> See in this respect [the House website](#), which does not mention any developments in the procedure for the adoption of this bill since 11 March 2021, the day after it was tabled. By way of comparison, the [Miscellaneous Financial Provisions Bill](#), tabled by the government on 19 April 2021, more than a month later, has already been the subject of several committee sessions, amendments and adoption in committee and adoption in plenary.

1. Adopt an amendment to the Civil Code explicitly prohibiting all so-called "educational" violence, whether physical, emotional or psychological. Ensure the consistency of the prohibition of so-called "educational" violence with the Communities legislation.
2. Accompany the legal amendment with awareness-raising, prevention and information campaigns aimed at the general public, as well as training and support measures on non-violent education and parenting aimed at parents, teachers and care providers. Ensure training and support is provided for all persons working with children and families, professionals in contact with families and youth protection agencies, magistrates and lawyers.

