

CHILD-FRIENDLY JUSTICE IN ACTION!

Country report - Belgium

Implementing child-friendly justice principles
in the international protection procedure in Belgium

Co-funded by the European Union's Erasmus+ programme



National Library deposit number: D/2020/14.132/7D

ISBN

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List of acronyms used

CCE: Conseil du Contentieux des Etrangers (Foreigners' Litigation Council)

EC: Council of State

CoE: Council of Europe

CeDH: European Court of Human Rights

CGRA: General Commissariat for Refugees and Stateless Persons

CIDE : International Convention on the Rights of the Child, or Convention on the Rights of the Child

FEDASIL: Federal Agency for the Reception of Asylum Seekers

MENA: Unaccompanied foreign minor

OE: Office for Foreigners

TFEU: Treaty on the Functioning of the European Union

Glossary

- **Child**

In this report, we will use the term "*child*" in the sense of the *International Convention on the Rights of the Child*, hereafter CRC, which defines a **child** as "*every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier*"¹(Article 1).

- **Accompanied child**

Accompanied child² :

- is under 18 years of age
- stays with his parent(s) or (legal) guardian(s) in Belgium
- he/she or his/her parent/legal guardian(s)/guardian(s) has/have applied for international protection

- **Unaccompanied child**

Unaccompanied children are children who are separated from both parents and other family members, and who are not cared for by any other adult who by law or custom is responsible for their care³.

- **Administrative Jurisdiction**

An administrative court is a court competent to settle disputes between the administration and the citizens (individuals, legal entities of private law and more rarely legal entities of public law).

In Belgium, the only administrative court of a general nature is the Council of State (CE).

There are several administrative courts with special competence, i.e. whose role is to decide a certain type of dispute. In this report, we will focus on the Aliens Litigation Council (CCE).

- **International protection**

There are two statuses of international protection which can be granted to a person by Belgium according to the Law of 15 December 1980⁴:

¹ **United Nations** (UN), General Assembly (1989), *International Convention on the Rights of the Child*, or *Convention on the Rights of the Child*, 20 November 1989. Available online at: <https://www.ohchr.org/fr/professionalinterest/pages/crc.aspx>

² Definition taken from the CGRA website consulted in May 2020.

³ Office of the United Nations **High Commissioner for Refugees**, Inter-Agency Guiding Principles on Unaccompanied and Separated Children <https://www.unhcr.org/fr/4b151b95e.pdf>

⁴ 15 December 1980 - Law on access to the territory, residence, establishment and removal of foreigners, available online:

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1980121530&table_name=loi

- **Refugee status** (Law of 15 December 1980, Article 48/3)

The 1951 Geneva Convention relating to the Status of Refugees and amended by the 1967 New York Protocol defines a refugee as a person who *"owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it"*⁵ (Article 1).

- **Subsidiary protection status** (Law of 15 December 1980, Article 48/4)

According to the European Directive 2011 /95/EU "Qualification" article 2, Belgium recognises the status of subsidiary protection according to Article 48/4 of the Law of 15 December 1980, which provides in § 1 that : *"Subsidiary protection status is granted to a foreigner who cannot be considered as a refugee and who cannot benefit from Article 9 ter⁶, and in respect of whom there are serious grounds for believing that, if he were returned to his country of origin or to his country of asylum, he would be in danger of persecution, in the case of a stateless person, in the country of former habitual residence there would be a real risk of suffering serious harm as referred to in paragraph 2 and who is unable or, owing to such risk, unwilling to avail himself or herself of the protection of that country [...] »*.

- **Council of Europe**

The Council of Europe is not an institution of the European Union⁷. It is an International Organisation (IO) created in 1949, bringing together 47 Member States, including the 27 members of the EU, and with a legal personality recognised in public international law. The Council of Europe promotes the protection of human rights, the strengthening of democracy and the rule of law in Europe, through legal standards and tools aimed at strengthening cooperation and harmonisation of standards and practices between member states.⁸

- **Child-friendly justice**

Child-friendly justice is defined as follows by the *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*, adopted on 17 November 2010.⁹

⁵ **Office of the United Nations High Commissioner for Human Rights**. Convention relating to the Status of Refugees, 28 July 1951. Available online at

<https://www.ohchr.org/FR/ProfessionalInterest/Pages/StatusOfRefugees.aspx>

⁶ Application for regularisation of residence on medical grounds submitted by foreigners who are already in the territory. It is submitted on the basis of Article 9ter of the Law of 15 December 1980.

⁷ Not to be confused with the *Council of the European Union* and the *European Council*, which are EU institutions.

⁸ More information about the Council of Europe and how it works can be found at :

<https://www.coe.int/fr/web/about-us/who-we-are>

⁹ **Council of Europe**. Leaflet on the Council of Europe guidelines on child-friendly justice. Available online at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168045f5aa>

actors involved in proceedings concerning children. This principle is one of the most widely enshrined in the international legal framework, notably in Article 3§1 of the CRC.

- **Dignity**

The principle of dignity includes the need for children to *"be treated with care, sensitivity, fairness and respect throughout the proceedings or case, with particular attention to their personal situation, well-being and special needs"*¹⁴. It also reaffirms that children shall not be subjected to torture or inhuman or degrading treatment or punishment.

- **Protection against discrimination**

The principle of protection against discrimination, enshrined in Article 2 of the CRC, reaffirms the need for equal treatment of all children in the justice system without discrimination on the basis of sex, race, colour or ethnic origin, age, language, religion, political or other opinion, national or social origin, socio-economic background, status of parent(s), membership of a national minority, property, birth, sexual orientation, gender identity or any other status. It also implies that the most vulnerable children, in particular migrant, refugee and asylum-seeking children, may be granted special protection appropriate to their situation.

- **The rule of law**

The principle of the rule of law implies that in all judicial, non-judicial and administrative proceedings, the rule of law and all elements of the procedural guarantees deriving from it (principles of legality and proportionality, presumption of innocence, right to a fair trial, right to legal counsel, right of access to the courts, right of appeal) must apply to children as well as adults. It explicitly adds that respect for these guarantees must in no way be minimised in the name of the best interests of the child.

¹⁴ *Ibid.*

Introduction

a. Purpose of the report

The *Child-Friendly Justice in Action (CFJ in Action)* project is a European project co-funded by the European Commission's Erasmus+ programme and aims to promote the adaptation of administrative procedures (international protection, residence, alternative care) to the specific needs of minors, as set out in the *Council of Europe Committee of Ministers' Guidelines on child-friendly justice*¹⁵.

The CFJ in Action project is part of the ***Child-Friendly Justice European Network***¹⁶ (CFJ EN), coordinated by DCI-Belgium and currently comprising 15 members. This network aims to promote the fundamental principles of child-friendly justice, by improving the visibility of expertise in this field, and by fostering the exchange of good practices between European partners.

This project coordinated by Defence for Children International (DCI)-Belgium and the Defence for Children International - World Service Foundation was carried out jointly in Belgium and six other European Union Member States, in partnership with DCI-Spain, DCI-France, DCI-Greece, DCI-Italy, DCI-Netherlands and DCI-Czech Republic.

Defence for Children International (DCI) - Belgium is an independent association founded in 1991 and a member of the worldwide movement of the same name. In line with the DCI movement's mission to promote and defend all children's rights, DCI-Belgium mainly focuses its action and attention on violence against children, deprivation of liberty, juvenile justice, children in migration situations and child participation. DCI-Belgium conducts action research (involving documentary and field research), trains professionals, develops continuing education activities and tools, supports strategic litigation and carries out advocacy activities.

This report reports on the results of the Belgian national research carried out within the framework of the CFJ in Action project. Its aim is to evaluate the implementation of the Council of Europe Guidelines, hereafter CoE, for child-friendly justice at the different stages of the administrative procedure for the application for international protection of an accompanied child in Belgium. It intends to highlight the obstacles to the implementation of these guidelines at the different stages of the procedure, but also to highlight the inspiring practices used in Belgium. This report will be combined with the national reports of the other six project partners in order to produce a European report which will be used to develop a practical information tool for professionals in contact with children. This tool aims to promote the principles of child-friendly justice among professionals.

¹⁵ **Council of Europe**, Committee of Ministers, *Council of Europe Guidelines on child-friendly justice*, adopted on 17 November 2010, at the 1089th meeting of the Ministers' Deputies. Available online at: [https://www.coe.int/fr/web/children/child-friendly-justice#{%2212440309%22:\[0\]}](https://www.coe.int/fr/web/children/child-friendly-justice#{%2212440309%22:[0]})

¹⁶ More information is available on the network's website: <https://www.cfjnetwork.eu/>.

b. Research methodology

In Belgium, as in all the partner countries, the national research combined documentary research and field study, based on the reality of Belgian procedures for applying for international protection.

Documentary research was carried out continuously throughout the project.

The field research involved, firstly, professionals in contact with accompanied children at the different stages of the procedure (lawyers, magistrates, staff of the different administrative services); then, secondly, a group of children who have experienced these procedures in Belgium.

The first phase of consultation with professionals took place in Belgium from March 2019 to September 2019. Initially, we designed an online questionnaire together with the project partners, which we then distributed to the various targeted professionals. This questionnaire is based on the structure of the CoE guidelines and has been designed as a common basis that can be adapted to the different national contexts.

The responses to this questionnaire were subsequently supplemented by semi-directive interviews, in order to assess good practices, needs and limitations of professionals and the application of child-friendly justice principles in Belgium. These interviews were based on open-ended questions agreed beforehand by all partners, and then adapted to the different national contexts and to each particular profession, and lasted an average of one hour.

During the second phase, which ran from January 2020 to March 2020, we heard from accompanied foreign minors who had applied for international protection on their own behalf or as part of their parent's application. The aim was to gather their opinion on their experience and feelings during this application and to analyse it in the light of the Council of Europe Guidelines on child-friendly justice. This analysis thus enables us to complete this report by taking into account the child's point of view.

We organised three participatory workshops with children, two of which took place over the course of a day bringing together around sixty children from Fedasil and Red Cross reception centres. A total of 16 children volunteered and participated in the workshops. The workshops focused on the principles of child-friendly justice in the context of the procedure for applying for international protection in the family. After an introduction presenting the principles of child-friendly justice, the project in which the workshops were held, the precautions related to confidentiality and the steps in an application procedure for international protection, we received their feedback by means of a questionnaire.

c. Scope and target of the research

The Belgian national research conducted by DCI-Belgium focused on the application of the principles of child-friendly justice in the administrative procedure for applying for

international protection¹⁷, and more specifically on the journey of accompanied foreign children.

This choice was motivated by the observation of a lack of overall attention, and therefore of information, on the situation of these children accompanied by their parent(s) or legal representative¹⁸(s). Although the situation of unaccompanied foreign minors (MENA) has been a little better documented in European countries, including Belgium, in recent years, the issue of accompanied minors has been left aside.

The situation of MENA is of course worrying and it is necessary that European governments do their utmost to ensure better respect for their rights and specific needs, as these children are particularly vulnerable to the risks faced by all migrants, including violence. Nevertheless, it seems important to recall that they alone do not make up the totality of migrant children, and therefore children seeking international protection.

In 2018 in Belgium, 31% of the registered applications for international protection in Belgium concerned children, the majority of which (27% of the applications for international protection) concerned accompanied children, with MENA applications accounting for 4% of the total number of applications for international protection¹⁹. In Belgium, the majority of children applying for asylum are therefore accompanied.

Minors in migration and when applying for international protection, whether accompanied or not, must first and foremost be considered as children, whose rights and specific needs must be respected, before being considered as asylum seekers.

1. The administrative procedure for applying for international protection for accompanied children in Belgium

In Belgium, the procedure for applying for international protection has recently been thoroughly reformed in order to partially transpose several European Union²⁰ directives and

¹⁷ The procedure for applying for international protection is not the only administrative procedure that can concern foreign minors in Belgium, however, we have focused on only one procedure for the purposes of the *CFJ in Action!* project. Other administrative procedures such as applications for residence on humanitarian grounds (9bis) and on medical grounds (9ter) could be the subject of future research.

¹⁸ **Platform minors in exile**. Minors in families, Definition and statistics. Available at: <http://www.mineursenexil.be/fr/dossiers-thematiques/mineurs-en-famille/definition-et-statistiques/>

¹⁹ **MYRIA Federal Migration Centre**. "La migration en chiffres et en droits 2019", p.49, Brussels, July 2019. Available online at: https://www.myria.be/files/Myria_RAMIG-FR_2019-AS-gecomprimeerd.pdf

²⁰ It is about :

- Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008;
- Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011;
- Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011;
- Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013;
- Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013;
- Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013.

a regulation. The laws of 21 November 2017²¹ and 17 December 2017²², also known as the "Mammoth Laws", came into force on 22 March 2018. They amend the Law on Access to the Territory, Residence, Establishment and Removal of Foreigners (known as the "Aliens" Law) of 15 December 1980, and the Law on the Reception of Asylum Seekers and Certain Other Categories of Foreigners (known as the "Reception" Law) of 12 January 2007²³.

This reform has led to changes in the procedure for applying for international protection for both accompanied and unaccompanied children.

a. The organisations and actors involved in the procedure

In Belgium, the following organisations are involved in the procedure for applying for international protection.

- The Aliens Office

The procedure for applying for international protection in Belgium starts at the Aliens Office, hereafter OE.

The OE is an administration that depends on the Ministry of the Interior, and therefore on the orientations of the migration policy conducted by the Belgian government. This administration is responsible for the registration of the application for international protection, as well as for checking whether Belgium is indeed responsible for the application ("Dublin III Regulation")²⁴. To do so, a person applying for international protection has to go to the EO, where an agent registers his application, and where he fills in a short standardised questionnaire giving information on his identity, his country of origin and the reasons for his application for protection.

- The General Commissariat for Refugees and Stateless Persons

If Belgium is indeed the State responsible for the family's application, the EO forwards the file without delay to the General Commissariat for Refugees and Stateless Persons, hereafter CGRA.

The CGRA is an independent federal administration. The CGRA is responsible for examining the application and determining whether the conditions are met for the recognition of

²¹ 21 November 2017. - Law amending the Law of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners and the Law of 12 January 2007 on the reception of asylum seekers and certain other categories of foreigners. Available online at

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2017112117&table_name=loi

²² 17 December 2017. - Law amending the law of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners. Available online at

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2017121728&table_name=loi

²³ 12 January 2007. Law on the reception of asylum seekers and certain other categories of foreigners. Available online at

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2007011252&table_name=loi

²⁴ EU Regulation 604/2013 of the European Parliament and of the Council of 26 June 2013, in force since 01/01/2014 ("Dublin III Regulation"). Regulation directly applicable in Belgian law.

refugee status²⁵ or for granting subsidiary protection²⁶. This examination is centred around the hearing of the person seeking international protection by a protection officer of the CGRA to whom he or she tells his or her story and specifies the reason(s) for his or her application.

- **The Aliens Litigation Council**

In the event of disagreement with the decision of the OE or the CGRA, a person may lodge an appeal with the Aliens Litigation Council, hereafter CCE.

The ECC is an administrative court of appeal with regard to applications for international protection. The CCE can confirm, reform, or annul a decision of the CGRA (appeal in full litigation) and annul a decision of the OE (appeal for annulment)²⁷.

- **The Council of State**

If the decision of the CCE is contested, a person may lodge an appeal in cassation before the Council of State, provided that the appeal is declared admissible²⁸.

The Council of State is the final instance of appeal for the procedure of application for international protection. It verifies the respect of the procedure and the legality of the decision taken by the CCE. It can overturn the previous decision and refer the case back to the CCE; or it can confirm the decision of the CCE, in which case the person is dismissed from the procedure. If the asylum application has been definitively rejected, the person can be issued with an Order to Leave the Territory (OQT), and can also initiate other procedures to remain in the territory.

- **The Federal Agency for the Reception of Applicants for International Protection**

The Federal Agency for the Reception of Applicants for International Protection, hereafter FEDASIL, does not intervene directly in the procedure for applying for international protection and has no decision-making power. Nevertheless, it does play an important role in the asylum process, as it is responsible for the reception of asylum seekers in various structures, access to medical, psychological, social and legal support, as well as the organisation of voluntary returns to the country of origin as provided for by the Law on the reception of asylum seekers and certain other categories of foreigners of 12 January 2007²⁹.

- **The Lawyer**

²⁵ Conditions of the Geneva Convention (48/3 of the Law of 15/12/1980). Available online at: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1980121530&table_name=loi

²⁶ Conditions of subsidiary protection (48/4 of the Law of 15/12/1980). Available online at: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1980121530&table_name=loi

²⁷ For more details, see the schematic overview of the appeal procedures before the ECC in the annex.

²⁸ This "filtering" procedure for appeals in administrative cassation was introduced by the Law of 15 September 2006 reforming the Council of State and creating the CCE.

²⁹ 12 January 2007. Law on the reception of asylum seekers and certain other categories of foreigners. Available online at http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2007011252&table_name=loi

The Advocate has no decision-making power during the procedure of the application for international protection. Nevertheless, this professional is present at the different stages of the procedure to represent the person applying for international protection.

b. The different stages of the procedure for applying for international protection

A child arriving on Belgian territory with his/her parent(s) or legal guardian is considered as an accompanied minor in any residence procedure, including the procedure for applying for international protection.

For an accompanied foreign minor applying for international protection in Belgium, there are two separate procedures:

1. Accompanied children follow the procedure of their parents.

This concerns the majority of cases, since in the procedure for applying for international protection, an accompanied child normally follows the procedure of his/her parent(s) or legal guardian and is included in the annex to their application. In this case, the child is therefore considered to be part of the same application as his or her parent(s) or legal guardian, and therefore of the decision, positive or negative, taken in respect of them³⁰.

- Registration of the application for international protection

The child's parent(s) or legal guardian(s) go(s) to the Aliens Office, where their application for international protection is registered, after checking that Belgium is the country responsible for the application. The accompanied child is registered as an annex to the application of his/her parent(s) or legal guardian and is therefore not directly included at this stage of the procedure.

- Examination of the application for international protection

If an accompanied child follows the procedure of his/her parent(s), he/she is in principle not heard individually at the CGRA.

Nevertheless, these children are sometimes invited by the CGRA to be heard individually "*if there are particular reasons for this and if it is in the interest of the foreign minor*". This invitation is not compulsory, and a child may refuse to attend without this having any consequences on the outcome of the procedure. Moreover, children also have the right to ask to be heard by the CGRA if they personally wish to be heard, and if their capacity of discernment allows it³¹.

³⁰ **General Commissariat for Refugees and Stateless Persons.** *The accompanied child.* Available online at <https://www.cgra.be/fr/lenfant-accompagne>

³¹ Article 57/1 § 1 of the Law of 15th December, 1980, as amended by the Law of 21st November, 2017.

If the CGRA protection officer interviews the accompanied child, this is done without his/her parent(s) or legal guardian(s). However, the child must be accompanied by his or her lawyer, and can also request the presence of a person of trust³². If the child is under 16 years old, the hearing at the CGRA takes place in a room specially adapted for children.

After the hearing, the CGRA can recognise the refugee status or grant subsidiary protection, or reject the application for international protection. In principle, the CGRA takes a single decision common to the parent(s) or legal guardian and the child. However, a separate decision specific to the child may be taken exceptionally in the case of particular elements, and if it is in the best interests of the child.

- **Recourse**

○ *Full recourse to the CCE*

If the appeal concerns a decision taken by the CGRA, it is a full appeal. A full appeal is suspensive (i.e. it suspends the decision rejecting the application for protection and its effects for the duration of the appeal).

The procedure is mainly written, but the applicant is heard at the hearing. The CCE is then competent to confirm the decision of the CGRA; to recognise refugee status or grant subsidiary protection; or to annul the decision and refer the file back to the CGRA for clarification.

○ *Action for annulment at the CCE*

The actions for annulment mainly concern decisions taken by the EO, in particular the decision on the liability of Belgium in relation to the application (Dublin III).

In an action for annulment, the procedure is entirely written and there is no hearing. The applicant, whether a child or an adult, is therefore not heard directly.

In an action for annulment, the ECC rules on the legality of the decision and does not rule on the content of the application for international protection. The ECC may confirm the decision, in which case the application for protection of the person(s) concerned is rejected; or the ECC may annul the decision and the CGRA must re-examine the file.

○ *Appeals to the Council of State:*

The appeal in cassation concerns a very small number of applications for international protection³³.

³² The support person must not be a member of the child's family. He/she must, in principle, be trained by his/her profession in personal assistance or in the law of foreigners (special educator, teacher, etc.).

³³ For a definition of the role of the Council of State, see *above*.

2. Accompanied children apply for international protection on their own behalf.

Since 22 March 2018 and the entry into force of the "*Mammoth*" laws, an accompanied minor can also apply for international protection on his/her own behalf. He/she can make this application himself/herself, or through his/her parent(s) or legal guardian.

If a final decision has not yet been taken on the application of the parent(s)/legal guardian(s), the child's application will be processed together with that of his/her parent(s)/legal guardian(s).

If a final decision has already been taken on the application of the parent(s)/legal guardian(s), the child's application will be considered as a 'subsequent' application, with a special filter: the child must invoke facts specific to him or her which justify a separate application. If a separate application is not justified, the CGRA will take a decision of inadmissibility on behalf of the child. If the child invokes facts which are specific to him or her and which justify a separate application, the application will be deemed admissible. Thereafter, the application will continue to be dealt with on the merits.³⁴

- **Registration of the application for international protection (OE)**

An accompanied child may apply for international protection on his/her own behalf or through his/her parent(s)/legal guardian(s). Registration of the application for international protection of an accompanied child in his/her own name is done in the same way as for the registration of any other person; through the 'Office des Etrangers'³⁵.

- **Examination of the application for international protection (CGRA)**

In the event that he or she applies on his or her own behalf, the accompanied child is summoned to an individual interview at the CGRA. The hearing of a child who has lodged an application in his or her own name takes place with a specialised protection officer, without the presence of his or her parent(s) or legal guardian, with his or her lawyer and, if the child so wishes, with a person of trust.

The examination of the application of an accompanied child on his/her own behalf must be adapted in the same way as that of an unaccompanied child³⁶. The child should be given the benefit of the doubt, his or her best interests should be a primary consideration and language appropriate to his or her age and level of understanding should be used both during the interview and in the decision.

- **Recourse**

³⁴ **General Commissariat for Refugees and Stateless Persons.** *The accompanied child.* Available online at: <https://www.cgra.be/fr/lenfant-accompagne>

³⁵ *ibid*

³⁶ *ibid*

The remedies available to accompanied children who make their own application are the same as those available to accompanied children who follow the application made by their parent(s) or legal guardian (see above).

2. Consultation of professionals and children - The implementation of the Council of Europe Guidelines on child-friendly justice in the procedure for applying for international protection in Belgium

We distributed our questionnaire among professionals working with minors at different decision-making stages of the international protection application procedure. Between January and June 2019, we obtained a sample of 31 fully completed questionnaires with responses from :

- 16 protection officers (POs) of the CGRA ;
- 7 lawyers ;
- 6 judges of the CCE.

In addition to these responses to the questionnaires, we supplemented our research with qualitative interviews (4 interviews conducted with a litigation judge; a coordinator of the CGRA protection officers and two female lawyers) and a documentary research on Belgian procedures and case law.

In order to cover all the stages of the procedure, we have also repeatedly requested the assistance of the 'Office des Etrangers', which did not wish to grant our request. We did not apply to the Council of State because, in view of the limited time available to us and the rarer intervention of the Council of State in this area, we preferred to focus on the decision-making authorities concerned by the majority of cases.

Between January and March 2020, we also interviewed 16 accompanied children, aged between 11 and 16 years old, on their experience and feelings during the different stages of the international protection application procedure. A series of precautions were taken to ensure the effective and voluntary participation of the children. To this end, the workshops followed a very specific methodology, with an informative moment focused on participation and interaction with children and a time to answer the questionnaire. The first part therefore aimed to inform children about their rights; about the procedure for applying for international protection and its stages; about the rules of confidentiality linked to participation in the workshop; and about the stakes of their participation. Once informed, the children therefore had the necessary elements to best implement their participation in our questionnaire. It was during this second stage that we interviewed them in small groups of two/three children. In this way, a person in charge of the project was available to answer questions and rephrase them if necessary. If the child agreed to answer the questionnaire, this did not prevent him or her from ending the interview as soon as he or she wished.

This study, carried out on a small sample and in a limited period of time, does not aim to be exhaustive, but rather to provide an initial overview of the implementation of the principles

of child-friendly justice presented in the CoE guidelines at the different stages of the administrative procedure for the application for international protection of accompanied children in Belgium.

As a first step, this chapter provides an overview of the application of child-friendly justice principles. We then analyse in more detail the degree of implementation of these principles in Belgium on the basis of answers to questionnaires, interviews with professionals and children's professionals and the documentary research we have completed.

a. General comments on the application of the principles of child-friendly justice in the procedure for applying for international protection in Belgium

Although over the last fifteen years or so there has been a growing awareness of the need to adapt the procedure for applying for international protection to the specific needs and rights of children, first visible through the international and regional legal framework and then through the European³⁷ Community, the implementation of the principles of child-friendly justice in the procedure for applying for international protection in Belgium remains partial. As mentioned in the introduction, DCI-Belgium has chosen to pay particular attention to the procedural path of foreign children accompanied by their parent(s) or legal representative(s). This choice is based on the observation of a lack of information concerning the particular situation of these children and on the hypothesis that the effort to adapt the procedures in which they are involved has been less significant than for MENA. The conclusions of the analysis carried out within the framework of this project are in line with our hypothesis. They highlight a lesser consideration of the situations, rights and specific needs of accompanied children, despite some recent improvements.

In the remainder of this chapter, we have highlighted three phenomena which, if properly addressed, could significantly improve overall compliance with the principles of child-friendly justice.

Adoption of a comprehensive approach by all authorities concerned

The principles of child-friendly justice are not uniformly applied by the different actors in the procedure of applying for international protection, with the result that, on the one hand, the special status of children with special rights and needs is overlooked and, on the other hand, differences in treatment between children are created. The lack of a common framework for the different professionals that the child is likely to encounter in the course of the procedure can be observed at several levels and has a direct impact on the course of the procedure.

³⁷ **Commission européenne.** Child-friendly justice. Disponible sur : https://ec.europa.eu/info/policies/justice-and-fundamental-rights/rights-child/child-friendly-justice_fr?fbclid=IwAR0eqfd4fch0B-txsaZbkgZxO10V789AFmCMvQATnmtwbPxL85QnLc914yQ

Firstly, the legislator has not yet integrated the principles of child-friendly justice into the legal framework concerning applications for international protection. Therefore, there is no common framework within which internal guidelines, adapted to the functioning of each administration and the role of each profession, could be incorporated as part of a common logic for the implementation of these principles of child-friendly justice. The lack of a common framework and clear internal guidelines leads to a lack of homogeneity in the consideration of child-friendly justice principles.

Within the administrations and the administrative court, the lack of internal guidelines to adapt procedures to the needs of children results in a differentiated treatment of cases in this respect. Indeed, the consideration of the principles of child-friendly justice varies according to the professionals in charge of the cases and is partly based on personal initiatives, with, therefore, limited effects. As for lawyers, there are no common guidelines for their profession to implement the principles of child-friendly justice in international family protection proceedings.

As a result, it appears that the system as a whole is not conducive to taking into account the specific needs and rights of accompanied children. The procedure as a whole is not organised to be adapted to accompanied children.

"It's a bit like searching and experimenting because there aren't really any lines I can draw on. ...] By reading judgments from other countries, especially England and the Netherlands, I try to find ways to conduct hearings [taking into account the principles of child-friendly justice]. »

Litigation Judge

1. Training of professionals

The analysis of the questionnaires and interviews revealed the extremely variable nature of the training of professionals working in contact with accompanied children during the asylum procedure. From the answers to the questionnaires and the clarifications we obtained during the interviews, two things stand out.

The first is a great disparity in training, and therefore knowledge, in children's rights between the different professions in contact with children at the different stages of the procedure. Thus, to the question *"Does your training include a module on children's rights?"* 68.75% of the protection officers (POs) of the CGRA, 83.33% of the litigation judges of the CCE and only 42.86% of lawyers answered positively.

The second is that this disparity in training on children's rights is also found within the same authority or profession. This is particularly evident in the case of lawyers and judges in the CCE. The initial training of judges of the CCE and that of lawyers *-foreign lawyers-* who intervene in the context of procedures for applying for international protection in contact with children does not automatically contain a module on the rights of the child. Moreover, the continuing education of lawyers is not the same between the Ordre des barreaux francophones et germanophone (OBF) and the Orde van Vlaamse Balies (OVb), the order of

the Dutch-speaking bars of Belgium, and even varies from one bar to another, as it does between the 11 bars of the OBFGB. However, although many of them (33.33% of the CCE judges questioned; 57.14% of the lawyers questioned) have subsequently followed at least one other professional training course related to the rights of the child, here again the figures are far from being homogeneous in terms of training follow-up, despite the existing framework of a continuing training obligation for lawyers. This can be explained by the fact that although professionals have a duty to follow training, they are free in their choice of training in question, and do not prioritise training relating to the rights of the child. Moreover, as the range of training courses on children's rights is quite varied and provided by different organisations, there is no guarantee that the different professionals who take them will have the same level of knowledge. There is no obligation to train judges. An internal memo invites them to attend five days of training per year on a subject of interest to them.

In this respect, the General Commissariat for Refugees and Stateless Persons is an exception. Indeed, of the various professionals concerned by our analysis, the protection officers of the CGRA responsible for the hearings of children, although they come from very diverse initial training backgrounds (*Law, International Relations, Criminology, Political Science, Geography, Anthropology, etc.*), are the only ones to benefit from systematic and common training set up by the CGRA, and then monitored by superiors. These professionals follow the "Interviewing Children" module of the European Asylum Support Office³⁸ as well as the CGRA's internal guidelines on the rights of the child.

2. Valuing the advisory work of lawyers

The remuneration of pro deo lawyers, calculated on a lump sum basis, does not take into account the presence of children when the main client is the parent, which does not encourage these lawyers, already short of time, to increase their workload in order to request to meet and take into account the children.

b. Detailed analysis following the basic principles of child-friendly justice:

This chapter presents an analysis organised according to the five basic principles of the Council of Europe Guidelines on child-friendly justice.

1. Participation

According to the Guidelines on Child-friendly Justice, children have the right to be heard in decisions that affect them and adults must take their views seriously.

In Belgium, according to Article 57/1, §1, paragraph 2 of the Aliens Act, the minor may request to be heard by the CGRA even if he/she follows the procedure of his/her parent(s) or the

³⁸ The European Asylum Support Office (EASO) is an agency of the European Union, created by Regulation 439/2010, whose aim is to strengthen cooperation on asylum between EU Member States, to assist them in the management of asylum applications, to implement the Common European Asylum System and to support those States where migratory pressure is the greatest.

person exercising parental authority. Moreover, the CGRA has recently published a brochure for parents and guardians accompanied by minors in order to make them aware of the right of children to be heard in the framework of the international protection procedure before the CGRA³⁹.

However, in practice, the participation of accompanied children in the procedure for applying for international protection in Belgium remains rather limited. This is mainly due to the fact that these children are included in the '*family*' package, and therefore very rarely have their wishes and needs taken into particular consideration.

Of the children we interviewed, more than half of them would like to receive more information about their rights, including their right to participation. The right to information is intrinsic and necessary for the realisation of the right to participation. By providing information on children's right to participation, the guide "*The Right to be Heard*" could contribute to reducing the phenomenon of their exclusion from the procedure, provided that it is made accessible from the very beginning of the procedure and that its understanding by children is ensured by the actors in the procedure if necessary.

1.1. The right of children to be informed of their rights

Access to understandable information about the procedure and their rights in it is a prerequisite for ensuring the right to participation of children in the procedure. Despite significant improvements, the exclusion of children from the procedure goes hand in hand with poor access to such information.

The CGRA has recently published a *Guide for accompanied children in the asylum procedure in Belgium*, aimed at the accompanied children themselves and written to make the functioning of the procedure understandable. This guide is distributed by the Aliens Office at the beginning of the procedure. However, in order to ensure that accompanied children are optimally informed about their rights at the beginning of the procedure, it should be possible to control the conditions under which these children come into contact with the brochure, for example, it should be checked whether someone explains its contents to them to ensure that it is understood.

As far as the professionals involved in the procedure are concerned, their role with regard to children's right to information is not clear. Indeed, they do not always seem to be aware of the information to be communicated to children and their role as informants. It appears that some information is not given because these different professionals believe that the information has already been given or will be given at another stage of the procedure.

Accompanied children involved in the procedure are therefore generally unaware of their rights. Thus, to the question "*Do you have the impression, at the time of the procedure in which you intervene, that minors know their rights?*" the professionals interviewed all answered that they do not think that children know their rights.

³⁹ "The right to be heard", CGRA, May 2019. Available online: https://www.cgra.be/sites/default/files/brochures/asiel_asile_-_minors_-_parents-accompagnes-enfants-mineurs_-_fr.pdf

This lack of information is confirmed by the wish of more than half of the children interviewed to receive more information about their rights in the procedure. With regard to their rights and their asylum procedure, the questionnaires revealed that children generally prefer to be informed by people they can trust: they do not wish to be informed by professionals working at the 'Office des Etrangers' or the CGRA but rather by their parents, the educators in the reception centres or their lawyer. However, this does not mean that they only wish to be in contact with these persons of trust. For example, those who would like to tell their story would then prefer direct contact with the OE agents or with the protection officers of the CGRA. In terms of sources of information, according to them, leaflets, websites, even television could be useful to them, whereas social networks do not seem to them to be a good channel of information.

In addition, among the information they would like to receive, children would like to be better informed about the consequences of a negative decision. The uncertainty of their situation has a significant impact on their mental well-being and development as they cannot build a future without knowing what will be done tomorrow.

According to the information collected through the questionnaire and the interviews, an interpreter is always present at the different stages of the procedure. However, there is no guarantee that information communicated in a language that the child speaks is also communicated in a language that takes into account his or her level of understanding and maturity. At the CGRA, protection officers who conduct hearings with children are trained to better communicate with them and are evaluated by a supervisor and by a unit specialised in minors. However, the other professionals consulted stated that they have very little training on the issue.

The psychological side of knowing how to talk to a child, how to have an accessible language, etc.". It's not at all easy for lawyers. We tend to talk in a very complicated way. And also about what to ask a child. Because for an adult it's quite simple, we say: "explain to us your risks of persecution in case of return", but a child doesn't understand that".

Lawyer

1.2. Children's right to be consulted and heard

Consultation with children at the different stages of the procedure is far from systematic, to the extent that the majority of the children interviewed believe that they have not been taken into account in the final decision on their application for international protection. Less than a quarter of the children interviewed had a discussion with the EO officer or the CGRA officer, none of them had a conversation with a judge of the CCE. However, three quarters of them felt it was important that their point of view was heard directly by the person making the decision. Thus, a majority of the children would have liked to be heard and express frustration at the lack of opportunity given to them.

"Children are regularly completely left out."

Lawyer

While measures have been put in place to ensure the possibility for accompanied children (even at the request of their parents) to be heard individually, this is still far from being generalised to all children, as recommended in the Council of Europe Guidelines.

"What happens a lot with accompanied children, if they have not filed an asylum application in their own name, is that they are not taken into account a lot. »

Litigation Judge

Indeed, the only case in which an accompanied child is systematically included in the procedure, and heard by the administrative authorities (depending on his or her age and degree of maturity) is the case in which he or she has lodged his or her own application for international protection distinct from that of his or her family. This possibility, limited to the recognition of reasons specific to the child, remains very rarely used.

In the vast majority of cases, the child is included as an appendix to the parents' application. The child is then often left out of the application at the various stages of the procedure, from the registration of the application to the final decision.

If I could go back in the procedure, "I would like to express myself better, tell my problem and my story".

A child included in the annex to his parents' asylum application

If I could go back in the procedure, "I would like to be able to explain my situation better. People speak for me, you can't say anything, so I can't explain my problem".

A child included in the annex to his parents' asylum application

When registering the application at the Aliens Office, accompanied children are not subject to a differentiated analysis.

At the level of the examination of the application at the CGRA, children accompanied at the request of their parent(s) are only heard individually if the CGRA invites them (this decision is the responsibility of the protection officer in charge of the file), or if the child takes the step himself to ask to be heard and this request is accepted by the CGRA.

If an appeal is lodged with the CCE, again accompanied children following the request of their parent(s) are not automatically present and are rarely heard. The lawyer who represents and defends a family does not systematically meet the child(ren) either.

The participation of these children depends in particular on the factors described below.

Firstly, the country of origin can be of great importance. Indeed, all the professionals interviewed told us that they are particularly vigilant with regard to children from specific

"There are countries where we pay extreme attention to the presence of children, such as Afghanistan, for example, or when we think of countries where there is a risk of excision for little girls, there we will say "Ah Madame, you have a child, you have a little girl, could I also meet her? ".»

Lawyer

countries because of the prevalence of certain practices that may target children, such as female genital mutilation. Awareness of country-specific realities that may have a particular impact on children is positive. In this sense, the specialisation of CGRA protection officers and some lawyers on a region of the world or a limited number of nationalities can be positive.

Second, the age of the child and the professionals' perception of the child's level of understanding and maturity (often based on the child's age) also have a great influence on their participation. For example, a child of 6 years of age or younger will generally be included very little in the procedure, as professionals believe that due to his or her young age, his or her level of understanding would not allow him or her to bring significant elements to the case. However, a child's actual level of understanding is not always indexed to his or her age, and cannot always be assessed without meeting the child.

"This week I went to the Office with a MENA, she was 8 years old, so we were sure she wouldn't say anything (...). She told us a thousand things, she even defined xenophobia for us. It's unpredictable. »

Lawyer

As regards more specifically the consideration of children by lawyers, the interviews also highlighted the influence of children's schooling. Indeed, getting in touch with children who are in school is much easier than getting in touch with newly arrived children. In the first case, school children have learnt the language and often gradually take on the role of interpreters who accompany their parents through all the administrative procedures. They are therefore present at the first appointment with the lawyer and will sometimes explain the family's case, which facilitates contact. Conversely, in the case of children of new arrivals who have just started school, or children too young to attend school, contact is more difficult to establish since the children are not often present, as one of the lawyers we met explained to us.

In our discussions with professionals about the participation of accompanied children in the procedure, a very present point was the willingness not to put the burden of the procedure on the shoulders of the child, and therefore the idea that participating in the procedure is not necessarily in the best interests of a child, an idea we will come back to later in the section of the analysis devoted to the best interests of the child.

While children's participation depends in particular on these different factors, the main obstacle lies in the organisation of the procedure, which does not automatically promote or

organise their particular consideration. These children are neither consulted nor automatically heard.

"There was a lot of noise, a lot of people. A lot of time to wait. The parents came in but not the children".

A child included in the annex to his parents' asylum application

For example, the environment in which the child expresses him/herself must be appropriate and provide a climate of trust. We have observed a positive practice, even if not systematic, at the CCE which aims to adapt the procedure to the public of MENA and children in families who have lodged an application in their own name. The hearings of these children are held during the same time slots in order to avoid the presence of too many adults in the room. This grouping aims to create a calm and trusting atmosphere in which children can express themselves without being disturbed by the comings and goings and the presence of other applicants and their lawyers. Such adaptations are necessary for all children, including those who are accompanied.

"The difficulty for [the children] who are accompanied is to make a difference. To differentiate them from their parents, which was never done before. It's a reflex that we started to have here [in his office] a few years ago because we did some work on it [...] so for us it became a reflex to say "Madam, Sir, I see that you have three children, could I see them too". But this is not the case for all lawyers. [...] It's not a criticism of lawyers, it requires work, you really have to think about it yourself, the current system is not made for lawyers to think about it. »

Lawyer.

This difficult identification of accompanied children, their particular needs and rights, can have serious consequences on the decision taken by the authorities, as pointed out by a lawyer interviewed, who went so far as to say, referring to a study carried out on the files of Afghan and Pakistani families who had been *present in the territory* for a long time, that the decision-making authorities were *"not aware of the presence of the children"*.

"At the level of the parents' procedures, the CGRA, the CCE, the Aliens Office were simply not aware of the presence of the children. So in the administrative decisions, while the children were indicated in the appendix, there was nothing about the children. Whereas these were countries where children's rights are really problematic... For countries like Afghanistan, they would have to make a differentiated analysis, which they did not do.

"Lawyer

On the whole, therefore, accompanied minors are not systematically heard and consulted.

2. Best interests of the child

According to the Council of Europe's Guidelines *on child-friendly justice*, "*countries must ensure the effective implementation of the right of children to have their best interests prevail over all other considerations in all matters affecting them*". The assessment of these best interests requires consideration of the child's point of view, as well as respect for all these rights, including the right to dignity, equal treatment, a comprehensive approach adopted by all authorities concerned and a multidisciplinary approach, necessary to take into account the psychological and physical well-being, as well as the legal, social and economic interests of the child.

The best interests of the child is both a substantive right (the child has the right to be assessed and taken into account) and a procedural rule to be respected whenever a child is concerned. It is also a fundamental interpretative legal principle: it must be taken into account when interpreting the law. It is a dynamic concept, which requires an assessment adapted to the specific context. For decisions on individual cases (including decisions relating to a family), the best interests of the child must be assessed and determined taking into account the concrete situation of the child concerned.

In Belgium, Article 37 of the Reception Act provides that the best interests of the child shall be paramount in all decisions concerning the minor. It is specified that the assessment of the best interests of the child must take due account of this:

- Possibilities for family reunification ;
- The welfare and social development of the minor ;
- The personal situation of the minor ;
- Safety and security considerations, particularly where the minor is likely to be a victim of trafficking;
- In the opinion of the juvenile, depending on his or her age, maturity and vulnerability.

It is therefore appalling that a majority of the children we interviewed believe that they have not been taken into account in the final decision on their application for international protection.

This sentiment is in line with the majority opinion of the lawyers we interviewed. On average, they consider that the child's opinion, education or social environment have very little weight in the decision and that the preservation of family life, the child's security and his or her vulnerabilities have only a medium weight in the decision.

However, professionals directly involved in decision-making on international protection for families claim to take fairly strong account of the elements of the best interests of the child. Indeed, on the weight given to the child's point of view, the preservation of his or her family environment, social environment, access to care, protection and security, vulnerabilities and education in the decision, on a scale ranging from 1 (very low weight) to 5 (very high weight), the results vary between 3.2 and 4.4.

The ECC considers that taking into account the best interests of the child is not a sufficient element to grant the family member of a child beneficiary of international protection the right

to benefit also from this protection. Indeed, in December 2019, the ECC refused to grant the mother of a young refugee girl a derived status. This decision was justified by the absence of a provision recognising the ascending family unit in Belgian legislation⁴⁰.

There are therefore very different perceptions of how the authorities take into account the best interests of the child. However, the best interests of the child is a primary consideration as it aims to ensure both the full and effective realisation of all their rights and their overall development. Consequently, and taking into account the major impact that a decision to reject international protection has on the life of a child (lengthening of the duration of the procedure due to the lodging of an appeal, living in Belgium without the right of residence, risk of expulsion etc.), a mixed assessment is not sufficient. It is very important that the best interests of the child are systematically assessed and taken into account.

The child's participation in the procedure: always in his or her best interests?

The issue of linking child participation with the best interests of the child is an issue that, as mentioned above, animates a significant part of the professionals interviewed. Is the best interest of the child always to be found in his or her participation in procedures that directly concern him or her? Some, mainly judges and lawyers, noted a concern about the emotional burden and stress that the participation of children in the proceedings could cause.

"The question of preserving children and innocence should still be asked. That is to say: is it really useful for all children to add to them, in addition to this community life in centres, the insecurity, the psychological stress of the parents... Is it going to help or worsen their situation to involve the child in the procedure, to make him or her a little responsible? (...) To what extent should we not leave him a little bit of innocence and put him aside? I am talking about cases where children have no grounds for asylum. »

Lawyer

In this respect, the CGRA's website, which presents the possibility for accompanied minors - now *enshrined in law* - to file their own application for protection, states: *"This practice, which was already in use at the CGRA, is now enshrined in law. For most accompanied minors, it is not necessary to make declarations in addition to those of their parents. This is why it is **not advisable to encourage children to do so when it is not absolutely necessary, as this places an additional burden and responsibility on them.** »*⁴¹

⁴⁰ See the article by Christine Flamand, entitled "Le conseil du contentieux des étrangers a tranché: le parent d'un enfant reconnu réfugié n'a pas de droit au statut de réfugié dérivé... une occasion manquée", in the EDEM notebooks, April 2020.

⁴¹ **General Commissariat for Refugees and Stateless Persons**. Transposition of the Asylum Procedure Directive, 21 March 2018. Available online at: <https://www.cgra.be/fr/actualite/transposition-de-la-directive-procedure-dasile>

It is true that the stress of the procedure can have harmful consequences for children, who can sometimes feel responsible for the outcome of the procedure, as illustrated by the words of a magistrate we met regarding a child's application in his own name submitted after his parents' application had been rejected.

"He was there, he was shaking, he was very nervous and you could see that he had all the pressure on his shoulders and that he was thinking "I have to convince the judge for the sake of my parents". You can't put that kind of weight on a child. »

Litigation Judge

To this view, which questions the appropriateness of children's participation in a procedure that creates stress in a period of their lives that is already very complex for their children seeking asylum with their parents, there is another view, according to which children who are already in this very complex situation with all the consequences that it implies, and who are directly affected by the decision taken against their parent(s) or legal guardian, must be included in the procedure.

For example, here are the words of a lawyer about a claim made on behalf of a child after the parents' claim was denied:

"Telling lawyers that they are putting pressure on the child [by filing an application on the child's behalf] is also denying the reality that these children are there and experiencing the same thing as their parents. Some of them, if a new asylum application is made, are heard by the CGRA without their parents, and it is clear that this puts pressure on the child. But in the cases where I have done it, it has almost always ended with a positive decision, and to go and say that it shouldn't be done because it puts pressure on the children, I find it aberrant. Often these are children between 7 and 9 years old, and we think a lot about it. Sometimes I've said to myself "Gee, if it's a negative decision, it's really going to be very heavy for that child". But on the other hand, if the parents get a negative decision, it's going to be very heavy for that child too. And I really think that at least when there has been a process where the child has been heard, where there has been an examination of the fear for the child, it forces the authorities to take it into account. »

Lawyer

The sub-chapter below on the rule of law and its definition in the CoE Guidelines is rather in agreement with the lawyer.

We felt it was important to report on this issue as it illustrates the questions and doubts of professionals about the application of the principles of child-friendly justice in Belgium and, more specifically, the best interests of the child.

The assessment of the best interests of the child is not limited to an assumed consideration of the emotional state in which a child might find himself/herself when participating in a hearing. As noted at the beginning of Chapter 2, this assessment is multi-factorial, based on a series of elements and must be carried out under specific conditions. In the situation

described above, it can, for example, be argued that the child would have a better understanding of his or her hearing if the principles of child-friendly justice were fully respected. Indeed, once the child expresses himself/herself in an adapted environment and has received clear and precise information about the extent of his/her participation, his/her stress would most certainly be reduced and his/her participation improved.

3. Dignity

The principle of dignity implies that children should be treated with care, sensitivity, fairness and respect throughout the procedure, and that particular attention should be paid to their personal situation, well-being and special needs, with full respect for their physical and psychological integrity. This principle should be **applied to them regardless of how they came into contact with the justice system.**

While almost two thirds of the children surveyed believe they have been treated fairly, only one third of them are satisfied with the way they have been treated throughout the process of applying for international protection.

With regard to the implementation of this principle of dignity, Belgium still has a long way to go since it has not yet banned the confinement of families with children in closed centres for migration-related reasons. Even more disappointing is the fact that the Belgian Constitutional Court has not condemned this principle when it had the opportunity to do so (C.C., 19 December 2013).

In April 2019, the Council of State suspended the Royal Decree which had been the legal basis for the detention of these families since the summer of 2018. However, this suspended act is only the one that defines the conditions of such deprivation of liberty. The law of 1980 which is the text that authorises the detention of children in closed centres cannot therefore be applied without this act, but a new decree could be adopted at the end of the procedure and the practice of detaining these children could resume.

However, Belgium was singled out by the Office of the High Commissioner for Refugees (UNHCR) and condemned by the European Court of Human Rights for this practice in 2009, which had led to a moratorium on the confinement of families, until its recent resumption thanks to a so-called adaptation of detention centres to families.

4. Protection against discrimination

The principle of protection against discrimination implies that all children should be treated without discrimination *"on the basis of any ground such as sex, race, colour or ethnic origin, age, language, religion, political or other opinion, national or social origin, socio-economic background, **status of parent(s)**, membership of a national minority, property, birth, sexual orientation, gender identity or other status"*.⁴² It also implies that special protection measures

⁴² Council of Europe. *Council of Europe Guidelines on child-friendly justice*, 17 November 2010. Available online at:

[https://www.coe.int/fr/web/children/child-friendly-justice#%2212440309%22:\[0\]}](https://www.coe.int/fr/web/children/child-friendly-justice#%2212440309%22:[0]})

may be granted to the most vulnerable children, including migrant, refugee or asylum-seeking children. Just as for MENA who benefit from special consideration of their application, accompanied minors should also be given special attention.

"We sanction children because their parents are there, it's not ok. There is really a differentiated treatment that is not justified, it is not because your parents are there that they are able to protect you. »

Lawyer.

It should also be noted that differences in treatment between children according to their age, while they may of course be justified, can also sometimes lead to discrimination against certain children. We note, for example, that most of the innovations put in place to make the procedure more child-friendly *-mainly implemented at CGRA level-* concern only the youngest children, older children are still often interviewed under the same conditions as adults. In this respect, we can cite the example of the child-friendly hearing room, which is used for children under the age of 16. This is understandable, but the usefulness of this room is also to make professionals aware that they are dealing with a child who must be treated as such, which can be forgotten in the case of children aged 16 and over.

5. Rule of law

*The principle of the rule of law is defined by the CoE Guidelines as follows: "All elements of procedural guarantees, such as the principles of legality and proportionality, the presumption of innocence, the right to a fair trial, the right to legal counsel, the right of access to courts and the right of appeal, **should be guaranteed to children just as they are to adults and should not be minimised or denied on the pretext of the best interests of the child.** This applies to all judicial and administrative proceedings. »⁴³*

This definition can provide food for thought on the issue of children's participation and access to proceedings that may be harmful to them: the best interests of the child should not be used as a reason for restricting children's access to legal proceedings. This being said, however, modalities for direct or indirect participation should be explored and proposed on the basis of an assessment of the child's needs and capacities on a case-by-case basis.

3. Inspiring practices

In this chapter, we present the interesting practices developed by the institutional actors involved in the procedure for applying for international protection in Belgium. These have been selected because they are more specifically aimed at accompanied children, the subject of our research.

⁴³ Council of Europe, *Council of Europe Guidelines on child-friendly justice*, 17 November 2010. Available online at: [https://www.coe.int/fr/web/children/child-friendly-justice#%2212440309%22:\[0\]](https://www.coe.int/fr/web/children/child-friendly-justice#%2212440309%22:[0])

- CGRA information guides

The CGRA published in May 2019 the "Guide for accompanied children in the asylum procedure in Belgium"⁴⁴. The authors of this guide have shown a real willingness to produce an information document adapted to children. Of course, the child must be able to read. It represents a very relevant tool to explain to the child the procedure within the CGRA, even if it should be read with an adult competent to communicate in an adapted way with a child, or even a competent interpreter if necessary.

The CGRA also published in May 2019 the "Guide for parents or guardians accompanied by minor children"⁴⁵. This guide informs parents or guardians about the right of children accompanying them to be heard.

These guides are available in eight languages (French, Dutch, English, Arabic, Albanian, Dari, Pashto and Russian).

- Website for asylum seekers developed by Fedasil

Fedasil has put online an information platform that provides asylum seekers in Belgium with objective, correct and reliable information on different elements of their migratory journey. This site is available in twelve languages, eight of which have audio support. It deals with the following topics: asylum and procedure; housing; living in Belgium; return; work; unaccompanied minors; health; and studies. However, it is regrettable that the accompanied child is not (yet) included among the proposed topics.

Website: <https://www.fedasilinfo.be>

- Hearing rooms of the CGRA

The CGRA has recently equipped itself with rooms specially designed for the hearing of children under the age of 16. These rooms have warmer furnishings that make the climate more comfortable, more welcoming and less formal for children's hearing. They include a small lounge with armchairs, chairs and a coffee table as well as a set of adapted teaching tools to help the child share his or her story and emotions. It should be noted that half of the children interviewed replied that the warmer spaces such as these rooms made them feel more comfortable during the interviews.

- Consideration of the child's place in hearings before a judge

We witnessed an interesting practice used by one of the judges of the Aliens Litigation Council. At the beginning of the hearing, depending on the degree of involvement of the child in the case, the child was placed by the judge in an appropriate position to take part in the

⁴⁴ "Guide for accompanied children in the asylum procedure in Belgium", CGRA, May 2019. Available online at https://www.cgra.be/sites/default/files/brochures/asiel_asile_-_minors_-_guide-mineur-accompagne_-_fr_0.pdf

⁴⁵ "Guide for parents or guardians accompanied by minor children", CGRA, May 2019. Available online at https://www.cgra.be/sites/default/files/brochures/asiel_asile_-_minors_-_parents-accompagnes-enfants-mineurs_-_fr.pdf

proceedings. While he was relegated to the second row behind the adults, the judge asked the people to move so that the child could be placed in the first row.

- Possibility to review the minutes of the hearing at the CGRA

Lawyers have the opportunity to react to the report of the hearing of the CGRA protection officer. Currently the lawyer has 8 days to propose changes to the report.

- Legal clinic

The Université Libre de Bruxelles offers these law students the opportunity to deal with practical cases, thus giving asylum seekers the possibility to receive free legal aid.

- Audiovisual recording of hearings at the CGRA

The CGRA decided to make audiovisual recordings of the interviews at the CGRA in order to improve the direct contact between the child and the Protection Officer. This measure should normally be implemented at the end of 2019, but more likely in 2020.

4. Recommendations

a. The right to information

- At all stages of the procedure, the professionals involved must ensure that the child understands the context in which he/she is situated. This includes explaining to the minor, in appropriate language and adapted to his/her level of maturity and age:
 - The course of each stage of the procedure, in particular the hearing at the CGRA or the hearing at the CCE: how the hearing will be conducted, the probable duration of a hearing or a hearing, which actors will be present and what is their role etc. ;
 - What are the likely waiting times before a decision is taken or the next step in the procedure?
 - What are the decisions that the administration or the judge can take and the consequences that these decisions could have on the child and his or her family?
 - What remedies are available if the decision is negative?
 - What could be the impact of the child's story on the decision of the administration or the judge?
 - In what way(s) he/she can participate in the procedure.
- In order to ensure that children in families do not remain invisible during the examination of an application for international protection, as soon as a professional becomes aware of a case, one of the first reflexes should be to examine the composition of the family in order to pay particular attention to the children concerned where appropriate.
- In the context of an application for international protection lodged on behalf of the family, the accompanied child must be duly informed of his or her rights, including :
 - Right to be heard if he/she wishes to
 - Right to refuse a hearing at the CGRA
 - Right to make an application in one's own name if there are grounds specific to one's person
- In the context of an application for international protection lodged on his/her own behalf, the accompanied child must be duly informed of his/her rights, including :
 - Right to be heard
 - Right to be assisted by a lawyer
 - Right of recourse
- The materials used to inform minors concerned by an application for international protection, such as the "*guide for accompanied minors applying for asylum in*

Belgium" and the brochure "*the right to be heard*" for parents and guardians accompanied by minor children produced by the CGRA are excellent information tools. However, it is not enough to distribute them to the targeted persons but it is also necessary to ensure that they are properly presented by professionals and understood by the persons concerned; that they are given at the right time; and that they are re-used at the different stages of the procedure and not only at the beginning of the procedure (before the EO, the CGRA, the CCE and with the lawyer).

- An interpreter, trained to use child-friendly language, should be present at all stages of the procedure and occupy a neutral place during hearings and hearings in order not to be assimilated to CGRA or OE staff.

b. The right to participate

- Children's participation should not be dismissed solely on the basis of their age, their maturity and willingness to participate should also be taken into account.

c. The right to protection

- Where there is a possible conflict of interest between a child and his or her parent or legal guardian, the child should have his or her own lawyer.
- It is necessary to provide incentives for *pro deo* lawyers to give the necessary attention to the child. Indeed, when a lawyer represents a child or a family, the assistance of his or her young clients requires more time, in particular to properly inform the child and encourage his or her participation. Appropriate funding of the services of *pro deo* lawyers is indispensable when they represent a minor.
- The lawyer who represents a child or children in an application for international protection has a very important role as a "red thread" throughout the procedure. His presence at the different stages of the procedure is therefore key. The lawyer should therefore as far as possible avoid being replaced by another lawyer whom the child does not know, and should in the case of a replacement inform the child in advance.

d. The principle of the best interests of the child

- A child involved in an application for international protection is first and foremost a child, and his or her rights as a child should therefore be respected regardless of his or her migration status.
- The principles of child-friendly justice should be applied at every stage of all procedures relating to applications for international protection involving children,

whether they are unaccompanied or accompanied foreign minors, and in such cases whether the application has been lodged with their parents or on their own behalf.

- In cases where international protection is granted to the child contrary to the rest of his or her family, it is essential to ensure that the family unit is maintained by granting a right of residence to the rest of the family, on the basis that this is in the best interests of the child.
- Where a juvenile's application for international protection, on his or her own behalf, is considered after the rejection of an application by his or her parents or legal guardian during which he or she had been heard, the elements of that first hearing should not be used to cast doubt on the consistency of the juvenile's account in this second procedure.
- In order to ensure that the principles of child-friendly justice are applied and that children's rights, in particular as set out in the International Convention on the Rights of the Child (CRC), are respected throughout this procedure, the professionals involved should receive adequate training. Thus, all professionals involved (in particular lawyers representing children and/or families, judges of the CCE, agents of the CGRA and the Aliens Office) should receive training on :
 - o Children's rights at national, regional and international level and the principles of child-friendly justice;
 - o basic knowledge of psychological issues relating to children, especially children in migration situations;
 - o children's communication needs and levels; how to improve contact with the child;
 - o training should be organised in such a way as to be multidisciplinary, to include children in the process, and to include practical cases, role plays, testimonies and interactive sessions.
- In order to ensure follow-up and continuity in the processing of applications for international protection involving children, we encourage the various professionals involved to collaborate throughout the procedure, in compliance with the requirements of professional secrecy.
- In the event that a negative decision affects a child, other possibilities for residence should be analysed.
- If a return is organised, it should be planned taking into account the best interests of the child and the child should never be deprived of liberty.
- No child should be detained, and certainly not for reasons related to their migration status or that of their parents, whether unaccompanied or with their

family. In particular, families with children should not be detained when they are stopped at the border.

- The impossibility of detaining children for migration-related reasons does not in any case justify the separation of family members in order to detain adults.
- Hearings at the 'Conseil du Contentieux des Etrangers' (CCE) should be conducted with respect for the dignity and privacy of children. Hearings involving children should be separated from other hearings in order to avoid children having to hear the contents of other files. In addition, where the application is submitted by the child's lawyer, the hearing should be able to take place in camera. We also insist on the establishment of an appropriate environment for the hearing of children at the CCE.
- As with all proceedings involving children, the processing of an application for international protection that has an impact on a child should not suffer undue delays. The application should be dealt with as quickly as possible. This requirement for speed should not, however, affect the expeditious processing of the application.

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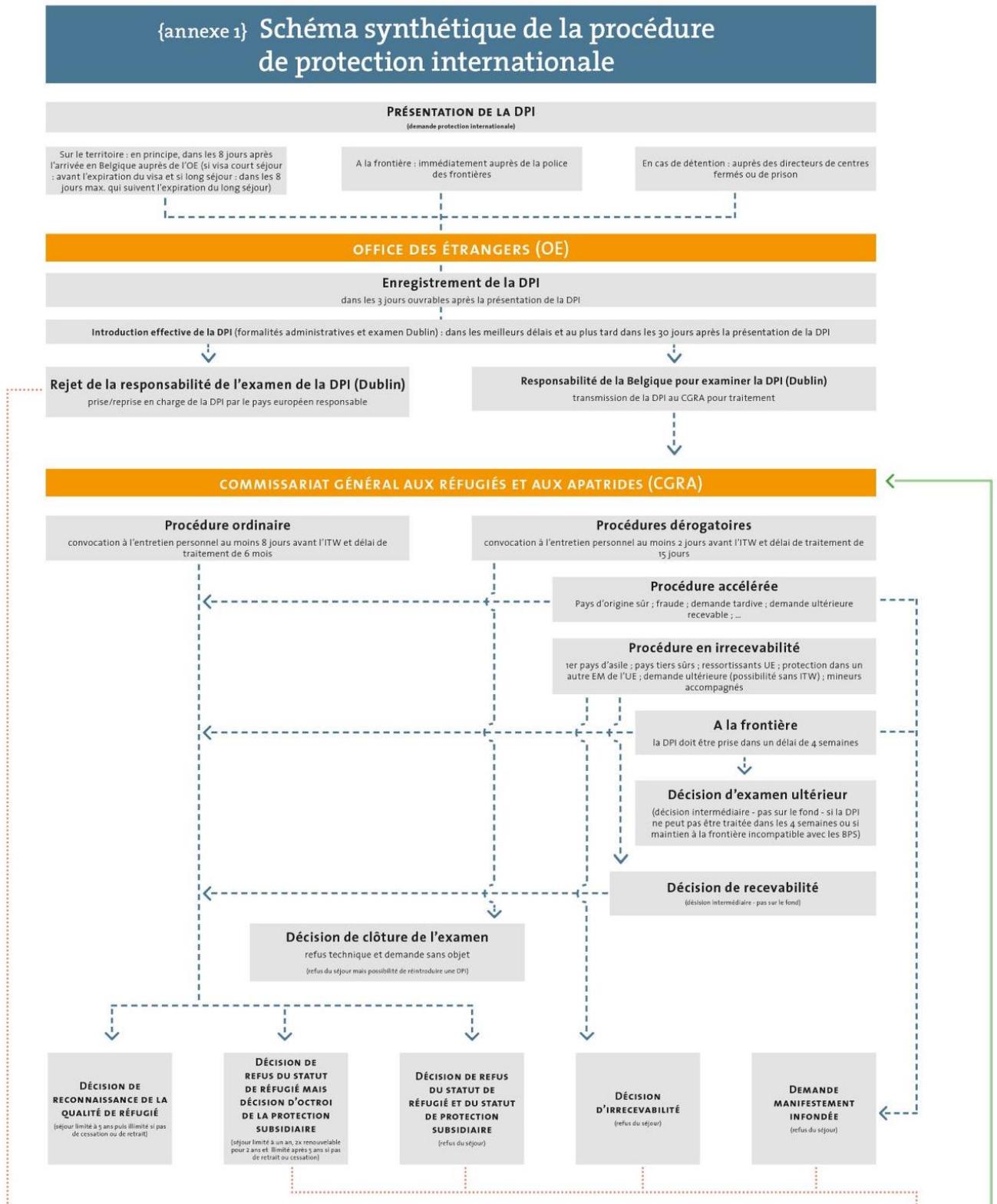
Annexes

Annex 1: Belgian legal framework of the procedure for applying for international protection

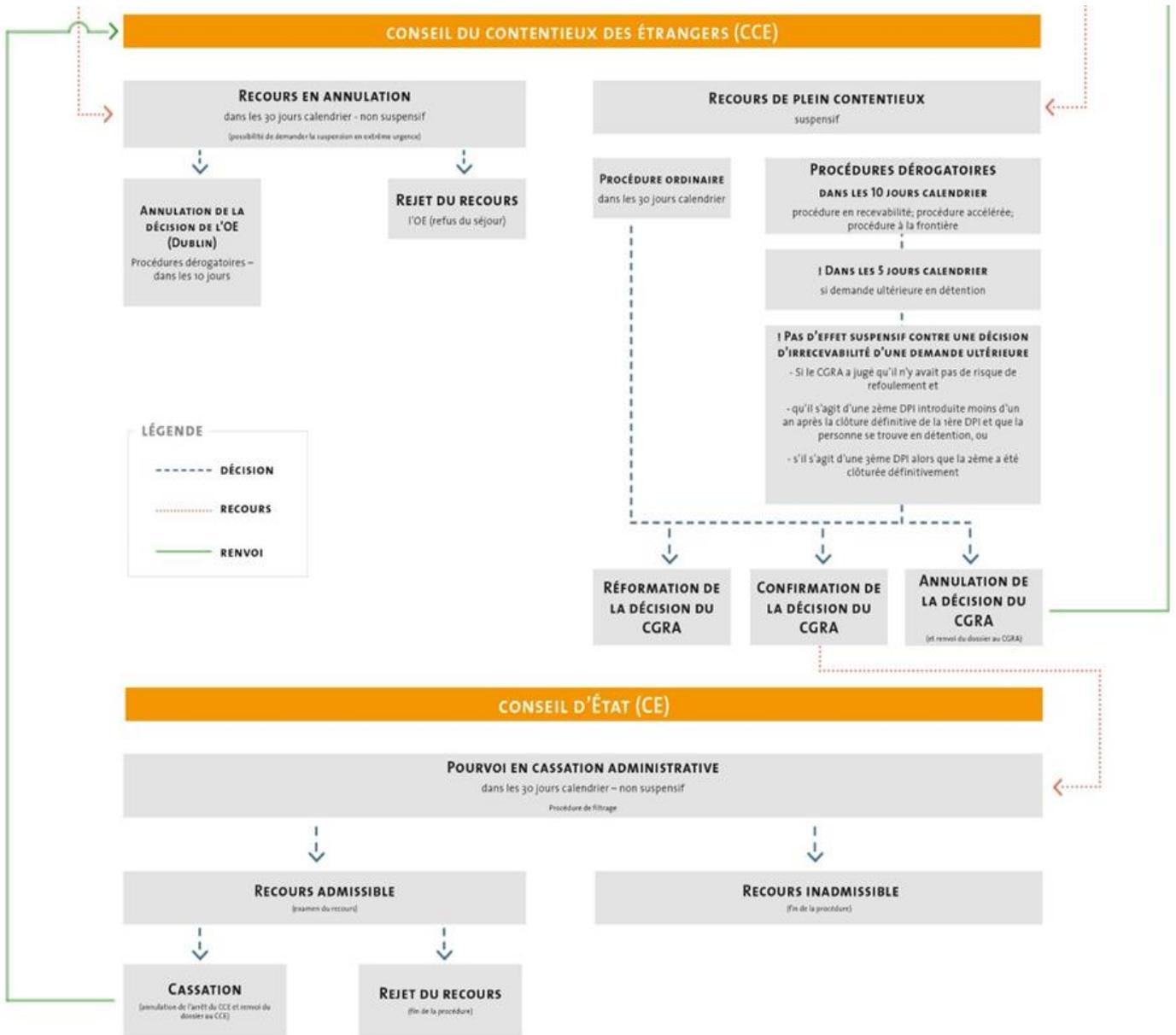
Name and law reference	Date of promulgation	What does the law say?	Or consult the law?
<p>Law amending the Law of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners</p> <p>and the law of 12 January 2007 on the reception of asylum seekers and certain other categories of foreigners</p>	<p>21 November 2017 EV on 12 March 2018</p>	<p>This law partially transposes several directives and a European regulation into Belgian law:</p> <ul style="list-style-type: none"> - Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals; - Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection; - Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection, on a uniform status for refugees or persons eligible for subsidiary protection and on the content of the protection granted (recast); - Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast); - Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of persons seeking international protection (recast). - Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 ("Dublin III Regulation") establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast). 	<p>Available online at: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2017112117&table_name=loi</p>
<p>Law amending the Law of 15 December 1980 on access to the</p>	<p>17 December 2017 EV on 12 March 2018</p>	<p>This law partially transposes into Belgian law the directive</p>	<p>Available online at: http://www.ejustice.just.fgov</p>

territory, residence, establishment and removal of foreigners.		2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing the international protection (recast)	v.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2017121728&table_name=loi
Law on access to the territory, residence, establishment and removal of foreigners, known as the "Aliens" Law.	15 December 1980		Available online at: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1980121530&table_name=loi
Royal Decree of 8 October 1981 on access to the territory, residence, establishment and removal of foreigners	8 October 1981		Available online at : http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1981100831&table_name=loi
Law on the reception of asylum seekers and certain other categories of foreigners, known as the Reception Law.	12 January 2007		Available online at: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2007011252&table_name=loi
Royal decree of 11 July 2003 establishing the procedure before the General Commissariat for Refugees and Stateless Persons and its operation	11 July 2003		Available online at : http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2003071105&table_name=loi
Royal Decree of 26 January 2014 amending the Royal Decree of 21 December 2006 laying down the procedure before the Council for Foreigners' Litigation	January 26, 2014		Available online : http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/2014/01/30/126446.pdf

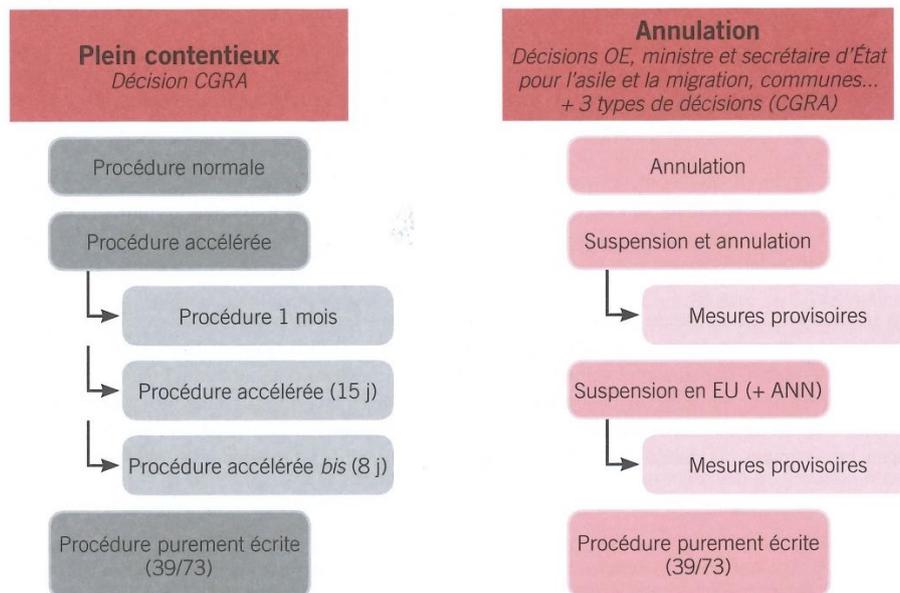
Annex 2: Outline of the international protection procedure in Belgium developed by the CIRE (Coordination et initiatives pour réfugiés et étrangers) in their new guide to the international protection procedure in Belgium⁴⁶.



⁴⁶ Coordination and Initiatives for Refugees and Foreigners (CIRE). *Practical guide to the international protection procedure in Belgium*, June 2019



Appendix 3: Schematic overview of the appeal procedures before the Conseil du Contentieux des Etrangers (CCE) (Foreigners' Litigation Council)



Source: *10 years Council for alien law litigation: effective legal protection. 10 years of the Conseil du Contentieux des Étrangers: effective legal protection*, Di Keure, 2017.