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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

DECISION ON ADMISSIBILITY

7 December 2011

**Defence for Children International (DCI)
v. Belgium**

Complaint No. 69/2011

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 254th session attended by:

Messrs Luis JIMENA QUESADA, President
Colm O’CINNEIDE, Vice-President
Mrs Monika SCHLACHTER, Vice-President
Mr Jean-Michel BELORGEY, General Rapporteur
Mrs Csilla KOLLONAY LEHOCZKY
Messrs Andrzej SWIATKOWSKI
Lauri LEPPIK
Rüçhan IŞIK
Petros STANGOS
Mrs Jarna PETMAN
Mr Giuseppe PALMISANO
Mrs Karin LUKAS

Assisted by Mr Régis BRILLAT, Executive Secretary

Having regard to the complaint dated 16 June 2011, registered on 21 June 2011 as number 69/2011, lodged by Defence for Children International (« DCI ») and signed by the President of DCI-Belgium, Mr Benoît Van Keirsbilck, requesting the Committee to find that Belgium is not in conformity with Articles 7, 11, 13, 16, 17 and 30 of the Revised European Social Charter (“the Charter”), as well as with Article E in conjunction with each of these provisions;

Having regard to the documents appended to the complaint;

Having regard to the observations of the Government of Belgium (“the Government”) received on 28 September 2011;

Having regard to the Charter, and in particular to Articles 7, 10, 11, 13, 16, 17, 30 and E which read as follows:

Article 7 – The right of children and young persons to protection

Part I: “Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed”

Part II: “With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

(...)

10 to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.”

Article 11 The right to protection of health

Part I: “Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.”

Part II: “With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in co-operation with public or private organisations, to take appropriate measures designed *inter alia*:

- 1 to remove as far as possible the causes of ill-health;
- 2 to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
- 3 to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.”

Article 13 – The right to social and medical assistance

Part I: “Anyone without adequate resources has the right to social and medical assistance.”

Part II: “With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

- 1 to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;

- 2 to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;
- 3 to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;
- 4 to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.”

Article 16 – The right of the family to social, legal and economic protection

Part I: “The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.”

Part II: “With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.”

Article 17 – The right of children and young persons to social, legal and economic protection

Part I: “Children and young persons have the right to appropriate social, legal and economic protection.”

Part II: “With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

- 1 a to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;
 - b to protect children and young persons against negligence, violence or exploitation;
 - c to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family’s support;
- 2 to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.”

Article 30 – The right to protection against poverty and social exclusion

Part I: “Everyone has the right to protection against poverty and social exclusion.”

Part II: “With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

- a. to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty,

as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;

b. to review these measures with a view to their adaptation if necessary."

Article E – Non-discrimination

"The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status."

Having regard to the Additional Protocol to the European Social Charter providing for a system of collective complaints ("the Protocol");

Having regard to the Rules of the Committee adopted by the Committee on 29 March 2004 at its 201st session and revised on 12 May 2005 at its 207th session, on 20 February 2009 at its 234th session and on 10 May 2011 at its 250th session ("the Rules");

Having deliberated on 7 December 2011;

Delivers the following decision, adopted on the above-mentioned date:

1. DEI alleges that the situation in Belgium of unaccompanied foreign minors unlawfully present or seeking asylum and accompanied foreign minors unlawfully present amount to a violation of Articles 7, 11, 13, 16, 17, 30 et E of the Charter. Even though they are legally entitled to receive social assistance in Belgium, they are currently being denied such assistance in practice.
2. DEI, in particular, claims that :
 - a) the lack of reception facilities for foreign minors and families prevents them from exercising their right to appropriate social, legal and economic protection (Article 17);
 - b) these young people and families have extremely limited or no access to medical services and face increased risks to their health (Article 11);
 - c) these families do not enjoy the conditions for a full development (Article 16);
 - d) street children accompanying parents who are in the country unlawfully and engage in begging are not protected by Belgian State (Article 7§10)
 - e) effective access to housing for persons who live or risk living in a situation of social exclusion is not ensured (Article 30);
 - f) the non-asylum-seeking unaccompanied foreign minors, who are over the age of 13, are being denied the right to reception and all the entitlements that flow therefrom, on the basis of their administrative status. (Article E in conjunction with the substantive rights cited above).
3. The Government does not contest that the complaint meets the conditions for admissibility laid down in Article 1 b) and Article 4 of the Protocol. This is without prejudice to its arguments on the merits.

THE LAW

4. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by Belgium on 23 June 2003 and entered into force for this State on 1 August 2003, the complaint has been submitted in writing and concerns Articles 7, 11, 13, 16, 17, 30 et E of the Charter, provisions accepted by Belgium when it ratified this treaty on 02 March 2004 and to which it is bound since the entry into force of this treaty in its respect on 1 May 2004.

5. Moreover, the grounds for the complaint are indicated.

6. The Committee notes that, in accordance with Articles 1 b) and 3 of the Protocol, DCI is an international non-governmental organisation with participative status with the Council of Europe. It is included in the list, established by the Governmental Committee, of international non-governmental organisations that are entitled to lodge complaints before the Committee

7. The Committee has already considered DCI has particular competence for the purposes of the collective complaints procedure within the meaning of Article 3 of the Protocol (DCI v. the Netherlands, complaint No. 47/2000, decision on admissibility of 23 September 2008, § 5). It confirms this decision since no significant change has taken place in this regard.

8. The complaint submitted on behalf of DCI was signed by Mr Benoît Van Keirsbilck, President of DCI-Belgium. The Committee notes that a letter authorising DCI-Belgium to lodge a complaint on behalf of DCI was attached to the complaint. The Committee has already considered that the President of a national Delegation of DCI was duly authorised to represent DCI in the complaint procedure (DCI v. Netherlands, complaint No. 47/2008, decision on admissibility of 23 September 2008, §10). The Committee therefore considers that the complaint complies with Rule 23.

9. For these reasons, the Committee, on the basis of the report presented by Mr Giuseppe PALMISANO and without prejudice to its decision on the merits of the complaint,

DECLARES THE COMPLAINT ADMISSIBLE

In application of Article 7§1 of the Protocol, requests the Executive Secretary to notify the complainant organisation and the Respondent State of the present decision, to transmit it to the parties to the Protocol and the states having submitted a declaration pursuant to Article D paragraph 2 of the Revised Charter, and to make it public.

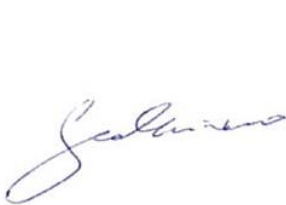
Requests the Executive Secretary to publish the decision on the Internet site of the Council of Europe.

Invites the Government to make written submissions on the merits of the complaint by 3 February 2012.

Invites DCI to submit a response to the Government's submissions by a deadline which it shall determine.

Invites parties to the Protocol and the states having submitted a declaration pursuant to Article D paragraph 2 of the Revised Charter to make comments by 3 February 2012, should they so wish.

In application of Article 7§2 of the Protocol, invites the international organisations of employers or workers mentioned in Article 27§2 of the Charter to make observations by 3 February 2012.



Giuseppe PALMISANO
Rapporteur



Luis JIMENA QUESADA
President



Régis BRILLAT
Executive Secretary