



UNIVERSITÀ
DEGLI STUDI
DI PADOVA



INTERDEPARTMENTAL CENTRE
ON HUMAN RIGHTS
AND THE RIGHTS OF PEOPLES

EUROPEAN MASTER'S DEGREE
IN HUMAN RIGHTS
AND DEMOCRATISATION

**The right to protection against noise
nuisance as a threat to the right of the
child to play.**

An analysis of the case of Belgium.

Supervisor: Prof. Paolo De Stefani

Candidate:
Amandine Vanden Eede

A.Y. 2011/2012

Abstract

Complaints about noise made by playing children are increasing worldwide. This thesis analyses this topic from a human rights point of view. Both the right of the child to play and the right to protection against noise nuisance are discussed. The focus is put on the case of Belgium, and more particularly Flanders, and the reactions of the Flemish Community to this issue. The analysis is mostly done on the basis of concluding observations of the Committee on the Rights of the Child, judgements of the European Court of Human Rights, national jurisprudence and policy documents. On the basis of this review, it is examined whether a new law is necessary or desirable to regulate this topic.

The responses by the Flemish Community focused on the sensitisation of adults and communities towards the rights of the child. These actions seem to be in conformity with the obligations of the State both under the Convention on the Rights of the Child and the European Convention on Human Rights. New legislation does not seem desirable in view of avoiding over-regulation and the juridification of social relations. It is suggested however to develop measures in order to encourage the use of alternative dispute settlement instead of juridical proceedings to deal with cases of children and youth that cause noise nuisance.

Acknowledgments

This thesis would not have been possible without the support and guidance of several people. I therefore would like to take this opportunity to thank them.

I firstly want to thank Professor De Stefani for giving me the opportunity to analyse this topic and for giving me the necessary guidance and supervision during the entire process of writing this thesis. I also want to thank my parents and my brothers for always supporting me, for their encouragements and for always being there for me. I furthermore want to thank my fellow masterini in Padova and my flatmates for the necessary recreation and distraction from time to time. Last but not least, I want to thank all the masterini for making this year the wonderful year it was!

Table of Acronyms

a.o.	Amongst others
Cf.	Confer, see
Committee	Committee on the Rights of the Child
CRC	United Nations Convention on the Rights of the Child
dB	Decibels
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
<i>Ibid.</i>	Ibidem
<i>Id.</i>	Idem
UN	United Nations
WHO	World Health Organisation

Table of Contents

Abstract.....	i
Acknowledgments	ii
Table of Acronyms	iii
Table of Contents.....	iv
Introduction	1
Chapter 1. The right of the child to engage in play and recreational activities	4
1.1 Introduction.....	4
1.2 The importance of the right to play	4
1.3 Article 31 CRC	8
1.3.1 Introduction	8
1.3.2 Legislative history	9
1.3.3 What does article 31 CRC protect?	11
1.3.4 State obligations	12
1.4 Organisations dedicated to the right to play	22
1.4.1 Right to Play	22
1.4.2 International Play Association.....	22
Chapter 2. The right to protection against noise nuisance.....	24
2.1 Introduction.....	24
2.2 The importance of protection against noise	25
2.3 The protection against noise from a human rights point of view	27
2.4 The protection against noise nuisance in the case law of the European Court of Human Rights	28
2.4.1 Introduction	28

2.4.2	Principles established by the European Court of Human Rights.....	31
2.5	The application of the principles of the European Court of Human Rights to noise nuisance caused by children playing.....	36
2.5.1	The relevance of the case law of the European Court of Human Rights in the Belgian Context	36
2.5.2	The application of the principles established by the European Court of Human Rights to noise nuisance caused by playing children	37
2.5.3	The right to play and the European Court of Human Rights.....	40
Chapter 3.	The threat of the right to protection against noise to the right of the child to play. The case of Belgium	44
3.1	Introduction.....	44
3.2	Article 31 CRC in the reviewing process by the Committee on the Rights of the Child	44
3.3	The Belgian judgements concerning complaints about the noise of children playing	48
3.3.1	A discussion of the Belgian judgments	48
3.3.2	The legal grounds invoked to support complaints against noise made by children.....	51
3.4	Reactions to the complaints about the noise of children in Belgium.....	58
3.4.1	Reactions of child rights organisations.....	58
3.4.2	Reactions of the Flemish government and parliament	59
3.5	An evaluation of the reactions to complaints about the noise of children	65
Conclusion.....		70
Bibliography		73

Introduction

The sound of children playing. According to some people it is the most beautiful sound in the world. Others however have (successfully) complained about this noise because they considered it to be nuisance. As a consequence, judges had to decide whether playgrounds and nurseries could remain open or had to close down after neighbours had complained about the noise children made when they were playing. Other people have reacted to these lawsuits with disbelief and found the neighbours intolerant.

This thesis will analyse this topic from a human rights point of view since this has not been done before. The research will mainly be done from a legal perspective.

It will be examined how the right to protection against noise nuisance can pose a threat to the right of the child to play. Both sides of the story, namely on the one hand the right of the child to play and on the other hand the right to protection against noise nuisance will be analysed. The research will focus on the issue as it exists in Belgium and more particularly in Flanders. It is mainly in Flanders that the issue occurs and it is at the level of the Flemish Community that action has been taken as a response.

The issue however is not limited to the case of Belgium. In other countries complaints about the noise of children are also increasing. It concerns inter alia the People's Republic of China (namely in the Special Administrative Region Hong Kong)¹, the United States of America², the United Kingdom³, Germany⁴ and the Netherlands⁵. The

¹ Cf. a.o. Mail & Guardian, 'You want the right to play? Fine, just keep the noise down', 1 November 2011, available at <http://mg.co.za/article/2011-11-01-you-want-the-right-to-play-fine-just-keep-noise-down/> (last visited 28 May 2012).

² Cf. a.o. Karush Rogers, Teri, 'The noise children make', *The New York Times*, 6 July 2008, available at <http://www.nytimes.com/2008/07/06/realestate/06cov.html?pagewanted=all> (last visited 28 May 2012).

³ Cf. a.o. Ross, Corey, 'Children's play park leads to noise complaints', *Salisbury Journal*, 11 January 2012, available at http://www.salisburyjournal.co.uk/news/9464407.Children_s_play_park_leads_to_noise_complaints/ (last visited 28 May 2012).

⁴ Cf. a.o. The Local, 'Berlin to quash noise complaints caused by children', 4 August 2009, available at <http://www.thelocal.de/society/20090804-21017.html> (last visited 28 May 2012); The Local, 'Loud children no longer considered noise pollution', 16 February 2011, available at <http://www.thelocal.de/society/20110216-33155.html> (last visited 28 May 2012).

Children's Commissioner of the United Kingdom, for instance, has pointed out in its alternative report to the Committee on the Rights of the Child (Committee) that "In one survey in England, two-thirds of children said they liked to play outside daily, mostly to meet friends. However, 80% have been told off for playing outdoors, 50% say they have been shouted at for playing outside and 25% of 11 to 16-year-olds were threatened with violence by adults."⁶

The aim of this research is to examine whether the initiatives that were developed in Flanders are sufficient to reconcile two human rights issues, namely the right of the child to play and the right to protection against noise nuisance, and whether they are in conformity with the obligations of the State with respect to these issues. It will be researched whether a new law is necessary or desirable to regulate this topic.

In a first chapter the right of the child to play will be examined. This right is protected under international human rights law in article 31 of the United Nations Convention on the Rights of the Child (CRC).

The implementation of the right of the child to play is an important example of the application of the rights of the child in practice. Although it may seem as a less important right and as a luxury right compared to the other rights protected in the Convention on the Rights of the Child, playing can fulfil an important role during childhood. It is important for the development, health and even social position of the child.⁷ Furthermore, playing is characteristic for children and is (or should be) part of their daily life. Ensuring the right to play is therefore important since it ensures the right to be a child.⁸

In this chapter, it will be examined what the right of the child to play encompasses and why it is important to implement this right. Furthermore it will be analysed what obligations this right entails for a State. This research will be based on article 31 of the

⁵ Cf. a.o. Binnenlands Bestuur, 'Schoolpleinen dicht na klacht geluidsoverlast', 2 February 2010, available at <http://www.binnenlandsbestuur.nl/sociaal/nieuws/nieuws/schoolpleinen-dicht-na-klacht-geluidsoverlast.146671.lynkx/> (last visited 28 May 2012).

⁶ UK Children's Commissioner, *Report to the UN Committee on the Rights of the Child*, June 2008, available at http://www.niccy.org/uploaded_docs/UNCRC_REPORT_FINAL.pdf (last visited 25 June 2012), p. 29.

⁷ Van Gils, 2007, p. 362.

⁸ *Id.*, p. 373.

Convention on the Rights of the Child, the concluding observations of the Committee and a study of existing literature.

Thereafter, in chapter 2, it will be examined how the protection against noise nuisance can pose a threat to the right of the child to play. In today's society, increasing noise pollution can be determined. This leads to an increased number of complaints, for instance, as was the case in Belgium, against the noise children make when they are playing. Complaints about noise, like other environmental concerns, are more and more seen as a human rights issue. In this section, it will be discussed why the protection against noise is important. Then it will be examined how this issue can be seen as a human rights concern. The emphasis will be put on the case law of the European Court of Human Rights (ECtHR) with regard to noise nuisance. It will be examined what obligations a State has with regard to the protection of individuals against noise. The principles that can be derived from this case law will then be applied to the specific case of noise caused by playing children.

In a last chapter, chapter 3, the specific case of Belgium will be examined. The judgments with respect to complaints about the noise of children will be analysed. It will furthermore be examined what initiatives have been taken by the Flemish government and parliament as a response to the lawsuits. These initiatives will then be examined in light of the Convention on the Rights of the Child and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

Chapter 1. The right of the child to engage in play and recreational activities

1.1 Introduction

The right of the child to play is protected in article 31 of the United Nations Convention on the Rights of the Child.⁹ The CRC is the first legally binding, international instrument that protects the right of the child to engage in play and recreational activities. The same right is included in article 12 of the African Charter on the Rights and Welfare of the Child, adopted by the Organisation of African Unity in 1990.¹⁰ This article is expressed in the same wording as article 31 CRC. Because of its protection in these legally binding documents, the right to engage in play and recreational activities is internationally recognised as a fundamental human right.

Besides the attention and protection given to this right at the international and regional level, some international organisations are dedicated to the right of the child to play.

In this chapter first the importance of the right to play will be discussed before addressing article 31 CRC and the organisations dedicated to the right to play.

1.2 The importance of the right to play

The right to play is sometimes described as a ‘forgotten right’.¹¹ The rights protected by article 31 CRC are rarely at stake before domestic, regional or international jurisdictions.¹² Originally, the Committee on the Rights of the Child as well only addressed article 31CRC in a minority of its concluding observations.¹³

Several reasons can be found for the lack of attention for these rights. States Parties for example pay little attention to these rights in their reports and the Committee needs to

⁹ United Nations Convention on the Rights of the Child, 20 November 1989, art. 31.

¹⁰ Organisation of African Unity African Charter on the Rights and Welfare of the Child, 11 July 1990, art. 12.

¹¹ Hodgkin & Newell, 2007, p. 465; David, 2006, p. 17.

¹² David, 2006, p. 17.

¹³ *Ibid.*; Davey & Lundy, 2011, p. 12.

prioritise because of time pressure.¹⁴ At the basis of this lack of attention and prioritisation of other rights lies the idea that the rights protected by article 31 CRC are luxury rights in comparison to the other rights of the CRC.¹⁵ On the one hand, this is understandable since the consequences of not respecting the right to play are less visible than the consequences of infringing other rights of the CRC. On the other hand, the right to play, as will be shown, is an important right that cannot be neglected.

Despite of these views, there is an increasing recognition of the importance of the right to leisure, play and culture in order to ensure the full development of the child.

Play is essential for the mental, emotional, social and physical development of the child. On the one hand it contributes to the development of social skills, negotiation and sharing and on the other hand it can lead to more physical exercise.¹⁶ The Committee on the Rights of the Child has confirmed this in its concluding observations where it established the link between the lack of implementation of article 31 CRC and increasing child obesity.¹⁷ Furthermore, play and recreational activities are essential to stimulate the curiosity and creativity of children.¹⁸ Play also teaches children values and qualities, such as respect, cooperation and leadership.¹⁹ According to research, play furthermore has a positive impact on learning and academic performance.²⁰

Moreover, play can fulfil an important role in a conflict or post-conflict situation.²¹ In this context, play can give children a feeling of normalcy and can give them hope. Furthermore, it can help to process and express their feelings of fear and pain and to regain self-confidence and trust.

¹⁴ David, 2006, p. 17.

¹⁵ *Ibid.*; Hodgkin & Newell, 2007, p. 469.

¹⁶ Hodgkin & Newell, 2007, p. 472.

¹⁷ United Nations Committee on the Rights of the Child, *Concluding Observations: Mexico*, CRC/C/MEX/CO/3, 2 June 2006, available at <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.MEX.CO.3.pdf> (last visited 23 April 2012), para. 58.

¹⁸ United Nations Office of the High Commissioner for Human Rights, *Manual on Human Rights Reporting under Six Major International Human Rights Instruments*, HR/PUB/91/1 (Rev.1), 1997, available at <http://www.unhcr.org/refworld/docid/428085252.html> (last visited 18 April 2012), p. 469.

¹⁹ UNICEF, *Sport, recreation and play*, August 2004, available at http://www.unicef.org/publications/index_23560.html (last visited 20 April 2012), p. 5.

²⁰ *Id.*, p. 17.

²¹ *Id.*, p. 2 and pp. 20 – 21.

The Committee on the Rights of the Child has pointed out another positive aspect of playing by stating that providing children with places where they can exercise their right to engage in play and recreational activities is important as a preventive measure, in order to avoid recruitment by criminal organisations.²²

In general it can be said that the right to play and engage in recreational activities is a right that ensures that a child can be and act like a child and that furthermore ensures the full development of the child.

The Committee on the Rights of the Child has acknowledged this importance of the right to play and has paid increasing attention to this right.

In its concluding observations, for example, the Committee has pointed out that States Parties need to implement article 31 CRC, “inter alia by educating parents on the importance of these activities for the development of the child.”²³ Other caregivers as well need to be trained “on the value of creative play and exploratory learning aimed at encouraging children to play.”²⁴

Furthermore, on 17 September 2004 the Committee organised a Day of Discussion on ‘Implementing Child Rights in Early Childhood’. On the occasion of this day the Committee stated that it “has noted over the years that in general, insufficient attention is given and measures taken to implement the provisions of article 31 of the Convention (...). This is a concern as these rights have proved to be crucial at an early age for the sound development of each child. The right to rest is essential for children and failure to respect it can generate serious negative physical, psychological, cognitive and social consequences. The rights to leisure, play, and to a cultural and artistic life are also key

²² United Nations Committee on the Rights of the Child, *Concluding Observations: El Salvador*, CRC/C/SLV/CO/3-4, 17 February 2010, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/406/86/PDF/G1040686.pdf?OpenElement> (last visited 23 April 2012), para. 70.

²³ United Nations Committee on the Rights of the Child, *Concluding Observations: Mauritania*, CRC/C/15/Add.159, 6 November 2001, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G01/457/48/PDF/G0145748.pdf?OpenElement> (last visited 21 April 2012), paras. 45 – 46.

²⁴ United Nations Committee on the Rights of the Child, *Concluding Observations: Maldives*, CRC/C/MDV/CO/3, 13 July 2007, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/432/55/PDF/G0743255.pdf?OpenElement> (last visited 23 April 2012), para. 84.

human rights enabling every single young child to fully develop its potential skills, abilities and personality.”²⁵

As a result of the discussions that took place at the Day of Discussion, the Committee has made recommendations and has developed a General Comment²⁶ on Implementing Child Rights in Early Childhood. With this General Comment the Committee wants to draw the attention of States to the importance of respecting the rights of young children. With regard to article 31 CRC, the Committee starts by confirming that States have paid little attention to this article.²⁷ The Committee then emphasises the importance of play in early childhood for the development of the child. Play is necessary for children to enjoy and challenge their capacities.²⁸ The Committee furthermore points out the fact that the right to play is more and more put at risk because of urban environments, domestic chores and competitive schooling.²⁹ It concludes by stating that States should pay more attention and allocate adequate resources to the implementation of article 31 CRC.³⁰ In this context, the views of the child should be taken into account in accordance with article 12 CRC.

Although the attention paid to article 31 CRC must be applauded, it is problematic that the Committee draws these conclusions in relation to ‘early childhood’. This only concerns children below the age of 8 years.³¹ As a consequence, the false impression could arise that the right to play is less relevant for adolescents. The right to play is, under international law, recognised however with regard to all children, namely persons

²⁵ United Nations Committee on the Rights of the Child, *Report on the Thirty-Fifth Session*, CRC/C/137, 11 May 2004, available at [http://www.unhcr.ch/tbs/doc.nsf/0/8fd17ba0e5fe7dd8c1256ec90051a83c/\\$FILE/G0441537.pdf](http://www.unhcr.ch/tbs/doc.nsf/0/8fd17ba0e5fe7dd8c1256ec90051a83c/$FILE/G0441537.pdf) (last visited 17 April 2012), Annex II, para.10.

²⁶ United Nations Committee on the Rights of the Child, *General Comment No.7 (2005). Implementing Child Rights in Early Childhood*, CRC/C/GC/7/Rev.1, 20 September 2006, <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/GeneralComment7Rev1.pdf> (last visited 9 March 2012).

²⁷ *Id.*, p.15, para.34.

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Id.*, p. 2, para. 4.

below the age of 18.³² Some authors are even of the opinion that the right to play would also need to be ensured with regard to adults.³³

Paolo David established that after this Day of General Discussion the Committee has paid more attention to article 31 CRC in its concluding observations.³⁴ Davey and Lundy agree with this conclusion but add that, in comparison with the other rights of the CRC, the Committee still gives low priority to the right to play in its concluding observations.³⁵

The United Nations General Assembly as well has given some attention to the right of the child to play. In order to create a world that is fit for children, the General Assembly committed itself to “promote physical, mental and emotional health among children, including adolescents, through play, sports, recreation, artistic and cultural expression.”³⁶

1.3 Article 31 CRC

1.3.1 Introduction

The right of the child to play is internationally protected under article 31 of the Convention on the Rights of the Child. This article states: “1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. 2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic and leisure activity.”³⁷

³² David, 2006, p. 3.

³³ Baptiste, 1995, p. 33.

³⁴ David, 2006, p. 18.

³⁵ Davey & Lundy, 2011, p. 12.

³⁶ United Nations General Assembly, *A world fit for children*, A/RES/S-27/2, 11 October 2002, available at http://www.unicef.org/specialsession/docs_new/documents/A-RES-S27-2E.pdf (last visited 26 April 2012), p. 11.

³⁷ United Nations Convention on the Rights of the Child, 20 November 1989, art. 31.

The Convention on the Rights of the Child has been ratified by all but two countries in the world. The only two States that have not (yet) ratified are Somalia and the United States of America. Of all the States that have ratified the Convention, none has made a reservation to article 31 CRC.³⁸ In principle all States therefore have an obligation to implement article 31 CRC and to ensure the protection of the right of every child to play and engage in recreational activities.

For a better understanding of the article, first the legislative history of article 31 CRC in particular with regard to the right to engage in play and recreational activities will be discussed. Then will be analysed what article 31 CRC encompasses and what obligations this article generates for States Parties.

1.3.2 Legislative history

In the first draft of the Convention on the Rights of the Child, which was submitted by Poland to the UN Commission on Human Rights in 1978, not all the elements of the current article 31 CRC were mentioned. No reference was made to the right to rest and leisure or to the right to participate freely in cultural and artistic life.

The right to engage in play and recreation however was already mentioned in this first draft. It was protected in the same provision as the right to education. The idea was that the purposes of play and recreational activities should be the same as the purposes of education.³⁹ This first draft used the same wording as article 7 of the United Nations Declaration on the Rights of the Child⁴⁰ of 1959 and stated “The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right.”⁴¹

Several countries commented on this article with regard to the right to play. France for example stated that, to ensure the full development of the child, the right to play should

³⁸ Cf. http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (last visited 25 June 2012).

³⁹ Detrick, 1999, p. 551.

⁴⁰ United Nations Declaration on the Rights of the Child, 20 November 1959.

⁴¹ United Nations, 2007, p. 683.

not be restricted to educational games.⁴² New Zealand pointed out the vagueness of the terms ‘play’, ‘recreation’ and ‘full opportunity’.⁴³

After this first draft, the right to rest and leisure and the right to freely participate in cultural life and the arts were introduced in a proposal by the government of Canada in 1983.⁴⁴

Furthermore, several new proposals concerning the right to play in particular were submitted after the first draft by Poland.⁴⁵ These proposals emphasised that recreation and play should be in accordance with the age of the child. They also pointed out the role of parents, persons responsible for the care of the child, educational institutions and the State to implement the right to play. The International Federation of Women in Legal Careers and the International Abolitionist Federation even suggested, in 1984, that the provision with regard to the right to play should include “for an area to be reserved for sports and, if necessary, for green spaces to be created for the health of young children.”⁴⁶ The NGO Ad hoc group in its proposal of 1985 also mentioned that States Parties should “ensure that housing and town planning authorities, and other State organs, implement these provisions accordingly.”⁴⁷ As will be discussed later, these proposals all include elements that are now raised by the Committee on the Rights of the Child in its concluding observations.⁴⁸

The representatives of the Federal Republic of Germany and of Japan, on the other hand, both doubted the advisability to proclaim a universal right to play.⁴⁹

Further negotiations and discussions of the different proposals led to the adoption of the final text of current article 31 CRC in 1989.⁵⁰

⁴² *Id.*, p. 684.

⁴³ *Id.*, p. 685.

⁴⁴ *Id.*, p. 689.

⁴⁵ *Id.*, pp. 688 – 690.

⁴⁶ *Id.*, p. 689.

⁴⁷ *Id.*, p. 690.

⁴⁸ Cf. *infra*, pp. 14 – 21.

⁴⁹ *Id.*, p. 691.

⁵⁰ *Id.*, pp. 683 – 692.

1.3.3 What does article 31 CRC protect?

Before discussing the State obligations with regard to article 31 CRC, it is firstly important to determine what this article encompasses.

Article 31.1 CRC protects several rights of the child that need to be distinguished, namely the right to rest and leisure, the right to engage in play and recreational activities and the right to participate freely in cultural life and arts. The Convention itself does not give definitions of the concepts ‘rest and leisure’, ‘play and recreational activities’ and ‘cultural life and arts’. Even though in the context of this research only the right to engage in play and recreational activities is of interest, the other rights will also be shortly discussed in order to be able to distinguish the different rights protected by article 31 CRC.

Although the right to rest has originally been recognised in the context of labour conditions, it does not only apply to working children but also in the environment of the school or the community.⁵¹ It includes fundamental needs, such as physical and mental relaxation and sleep.⁵²

The right to leisure refers to the possibility and freedom to do as the child pleases.⁵³ This right should ensure the possibility to develop the reason and interests of the child.⁵⁴ The right of the child to participate in cultural life and the arts refers both to the right to access to cultural and artistic events and the right to enjoy and undertake these activities themselves.⁵⁵

The right to play and the right to engage in recreational activities, finally, are two rights that also need to be distinguished. While play can be described as “unstructured informal activities of children that are not controlled by adults, though they may be supervised and facilitated by them, and which do not necessarily conform to any

⁵¹ United Nations Committee on the Rights of the Child, *General guidelines for periodic reports*, CRC/C/58, 20 November 1996, available at <http://www.unhcr.ch/tbs/doc.nsf/0/e78f6fffd63fcca2c1256403005754a5?Opendocument> (last visited 16 April 2012), para. 118.

⁵² Hodgkin & Newell, 2007, p. 469.

⁵³ *Ibid.*

⁵⁴ Detrick, 1999, p. 549.

⁵⁵ Hodgkin & Newell, 2007, p. 469.

rules”⁵⁶, recreational activities refer to a “more organised and formal form of activities that in some instances can be framed by precise rules.”⁵⁷ Examples of recreational activities are sports and creative and performing arts.⁵⁸ Both concepts however refer to activities that are executed voluntarily, based on free choice.⁵⁹ Freedom, safety, equality and choice can be seen as essential elements in ensuring the right to engage in play and recreational activities.⁶⁰

As opposed to the first draft, article 31 CRC does not refer to the purposes of education. Play and recreational activities therefore do not have to have certain purposes in order to be protected. It can be deduced from the ‘*travaux préparatoires*’ of the CRC that this article needs to be framed within the wider vision of promoting and protecting the development of the child, within the context of not only the school but also the community and the family.⁶¹

In this context, it is also interesting to look at what children consider to be ‘playing’. On the basis of an analysis of 18 research projects, Van Gils examined the way children themselves perceive the concept of ‘play’.⁶² He points out that it is an open concept that children often use when they refer to activities they cannot describe with a more specific name.⁶³ He also established that when children refer to “playing”, they mostly refer to outdoor activities.⁶⁴ Van Gils furthermore concluded that the social aspect of playing is very important to children. The company and participation of family and friends in play and recreational activities is indicated as essential.⁶⁵

1.3.4 State obligations

Although it may seem that the right to play is a right that needs to be guaranteed by parents, governments as well have a role to play. Article 31 CRC entails certain

⁵⁶ David, 2006, p. 24.

⁵⁷ *Ibid.*

⁵⁸ Hodgkin & Newell, 2007, p. 469.

⁵⁹ David, 2006, p. 24.

⁶⁰ Davey & Lundy, 2011, p. 11.

⁶¹ Detrick, 1999, p. 547.

⁶² Van Gils, 2007, pp. 364 – 372.

⁶³ *Id.*, p. 366.

⁶⁴ *Id.*, p. 367.

⁶⁵ *Id.*, p. 370.

obligations for States Parties. The analysis of these obligations will be limited to the obligations as regards the implementation of the right of the child to engage in play and recreational activities.

Firstly, article 31 CRC does not refer to an obligation of ‘progressive realisation’, in contrast to for example article 24 (which protects the right to health) and article 28 (concerning the right to education) of the Convention on the Rights of the Child. States Parties therefore have an obligation to take all necessary measures to immediately ensure the full realisation of the rights protected by article 31.⁶⁶

Secondly, article 31 CRC only mentions that States Parties “recognise” these rights. Concerning the right to participate freely in cultural and artistic life, States Parties furthermore have an obligation to respect and promote this right. These obligations to recognise, promote and respect have to be seen in the context of article 4 CRC.⁶⁷ According to this article “States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.”⁶⁸

Article 31 of the Convention on the Rights of the Child itself gives some clarifications concerning the steps States Parties need to undertake to achieve the realisation of the protected rights. With regard to all rights protected by this article States Parties have to encourage the provision of appropriate and equal opportunities for the corresponding activities in order to ensure the possibility for children to exercise their rights. With regard to the right to engage in play and recreational activities, the activities furthermore need to be appropriate for the age of the child. Concerning the right to participate fully and freely in cultural and artistic life, article 31.2 clarifies that States have to respect and promote this right.

⁶⁶ David, 2006, p. 12.

⁶⁷ *Id.*, p. 10; Detrick, 1999, pp. 547 – 548.

⁶⁸ United Nations Convention on the Rights of the Child, 20 November 1989, art. 4.

The Committee on the Rights of the Child has also given some clarifications with regard to the obligations of a State concerning article 31 CRC.

In the General Guidelines on Periodic Reports States are asked to “provide information on the measures adopted, including of a legislative nature, to recognize and ensure”⁶⁹ the rights protected in article 31 CRC. States should furthermore indicate “The proportion of the relevant overall budget allocated (at the central, regional, local and where relevant at the federal and provincial levels) for children; The cultural, artistic, recreational and leisure activities, programmes or campaigns developed and provided at the national, regional or local, and where appropriate at the federal and provincial levels, to ensure the enjoyment of this right including in the family, in the school and in the community; The enjoyment of the rights recognized by article 31 in relation to other rights recognized by the Convention, including the right to education; The respect ensured to the general principles of the Convention, namely non-discrimination, the best interests of the child, respect for the views of the child and the right to life, survival and development to the maximum extent; Relevant data on the children concerned, including by age, gender, region, rural/urban area, and national, social and ethnic origin; Progress achieved in the implementation of article 31, difficulties encountered and targets set for the future.”⁷⁰ These elements also occur in the concluding observations of the Committee on the Rights of the Child.⁷¹

It is important to note that article 31 CRC cannot be seen as an isolated right. The Committee on the Rights of the Child has endorsed the principles of universality, indivisibility, interdependence and interrelatedness of human rights. The Committee has confirmed that the CRC assumes a holistic perspective of children’s rights and has stated that “they are indivisible and interrelated, and that equal importance should be

⁶⁹ United Nations Committee on the Rights of the Child, *General guidelines for periodic reports*, CRC/C/58, 20 November 1996, available at <http://www.unhcr.ch/tbs/doc.nsf/0/e78f6fffd63fcca2c1256403005754a5?Opendocument> (last visited 16 April 2012), para. 117.

⁷⁰ *Id.*, para. 118.

⁷¹ Cf. *infra*, pp. 14 – 21.

attached to each and every right recognized therein.”⁷² This approach entails that the Convention does not consist of a list of separate rights but that all rights interact and that the implementation of one right can mean an added value to the implementation of another right.

As a consequence, when implementing the Convention on the Rights of the Child, States Parties need to take the four general principles of the Convention into account.⁷³

These general principles are the right to non-discrimination (article 2 CRC), the best interests of the child (article 3 CRC), the right to life, survival and development (article 6 CRC) and the right of the child to express his or her views, which need to be given due weight, freely in all matters that affect the child (article 12 CRC). In the Guidelines for Periodic Reports, the Committee on the Rights of the Child explicitly links article 31 CRC to the respect for the four general principles of the Convention.⁷⁴

The obligation of States Parties to implement both article 31 and article 2 CRC leads for example to the duty to provide all children with opportunities for play and recreation, regardless of whether they live in remote or rural areas, whether they are disabled or not and whether they belong to a vulnerable group or not.⁷⁵ In its concluding observations as well, the Committee on the Rights of the Child has expressed its concern that some categories of children do not have access to adequate and accessible playgrounds, such as children with disabilities⁷⁶, children in psychiatric care⁷⁷, street children⁷⁸, refugee

⁷² United Nations Committee on the Rights of the Child, *General guidelines for periodic reports*, CRC/C/58, 20 November 1996, available at <http://www.unhcr.ch/tbs/doc.nsf/0/e78f6fffd63fcca2c1256403005754a5?Opendocument> (last visited 16 April 2012), para. 9.

⁷³ United Nations Committee on the Rights of the Child, *General Comment No.5 (2003). General Measures of Implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)*, CRC/GC/2003/5, 27 November 2003, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/455/14/PDF/G0345514.pdf?OpenElement> (last visited 17 April 2012), para. 12.

⁷⁴ United Nations Committee on the Rights of the Child, *General guidelines for periodic reports*, CRC/C/58, 20 November 1996, available at <http://www.unhcr.ch/tbs/doc.nsf/0/e78f6fffd63fcca2c1256403005754a5?Opendocument> (last visited 16 April 2012), para. 118.

⁷⁵ United Nations Office of the High Commissioner for Human Rights, *Manual on Human Rights Reporting under Six Major International Human Rights Instruments*, HR/PUB/91/1 (Rev.1), 1997, available at <http://www.unhcr.org/refworld/docid/428085252.html> (last visited 18 April 2012), p. 470.

⁷⁶ Cf. a.o. United Nations Committee on the Rights of the Child, *Concluding Observations: Norway*, CRC/C/15/Add.263, 21 September 2005, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/440/25/PDF/G0544025.pdf?OpenElement> (last visited 23 April 2012), paras. 29-30; United Nations Committee on the Rights of the Child, *Concluding Observations:*

and asylum seeking children⁷⁹, children outside of the educational system⁸⁰, children living in cities⁸¹ or children living in rural and remote areas⁸² and juvenile delinquents who are deprived of their liberty⁸³. When States implement article 31 CRC special attention needs to be paid to these vulnerable groups of children.

As regards article 12 CRC in conjunction with article 31 CRC, the Committee on the Rights of the Child has expressed its concern on the limited involvement of children in

Uzbekistan, CRC/C/UZB/CO/2, 2 June 2006, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/424/84/PDF/G0642484.pdf?OpenElement> (last visited 23 April 2012), paras. 46-47; United Nations Committee on the Rights of the Child, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, CRC/C/GBR/CO/4, 20 October 2008, available at <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf> (last visited 23 April 2012), paras. 68 – 69.

⁷⁷ Cf. a.o. United Nations Committee on the Rights of the Child, *Concluding Observations: Belgium*, CRC/C/BEL/CO/3-4, 18 June 2010, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/430/77/PDF/G1043077.pdf?OpenElement> (last visited 24 April 2012), paras. 70 – 71.

⁷⁸ Cf. a.o. United Nations Committee on the Rights of the Child, *Concluding Observations: Philippines*, CRC/C/15/Add.259, 21 September 2005, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/440/53/PDF/G0544053.pdf?OpenElement> (last visited 23 April 2012), paras. 71 – 72.

⁷⁹ Cf. a.o. United Nations Committee on the Rights of the Child, *Concluding Observations: Denmark*, CRC/C/DNK/CO/3, 23 November 2005, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/451/11/PDF/G0545111.pdf?OpenElement> (last visited 23 April 2005), para. 52.

⁸⁰ Cf. a.o. United Nations Committee on the Rights of the Child, *Concluding Observations: Philippines*, CRC/C/15/Add.259, 21 September 2005, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/440/53/PDF/G0544053.pdf?OpenElement> (last visited 23 April 2012), paras. 71 – 72.

⁸¹ Cf. a.o. United Nations Committee on the Rights of the Child, *Concluding Observations: Guinea-Bissau*, CRC/C/15/Add.177, 13 June 2002, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G02/435/12/PDF/G0243512.pdf?OpenElement> (last visited 21 April 2012), paras. 46 – 47; United Nations Committee on the Rights of the Child, *Concluding Observations: Mongolia*, CRC/C/15/Add.264, 21 September 2005, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/440/18/PDF/G0544018.pdf?OpenElement> (last visited 23 April 2012), paras. 54 – 55.

⁸² Cf. a.o. United Nations Committee on the Rights of the Child, *Concluding Observations: Mauritania*, CRC/C/15/Add.159, 6 November 2001, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G01/457/48/PDF/G0145748.pdf?OpenElement> (last visited 21 April 2012), para. 45 – 46; United Nations Committee on the Rights of the Child, *Concluding Observations: Belgium*, CRC/C/BEL/CO/3-4, 18 June 2010, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/430/77/PDF/G1043077.pdf?OpenElement> (last visited 24 April 2012), paras. 70 – 71.

⁸³ Cf. a.o. United Nations Committee on the Rights of the Child, *Concluding Observations: Cambodia*, CRC/C/KHM/CO/2, 20 June 2011, available at <http://www2.ohchr.org/english/bodies/crc/crcs57.htm> (last visited 24 April 2011), paras. 76-77; United Nations Committee on the Rights of the Child, *Concluding Observations: Panama*, CRC/C/PAN/CO/3-4, 21 December 2011, available at <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.PAN.CO.3-4.pdf> (last visited 24 April 2012), para. 78.

the decision-making with regard to the implementation of the right to play.⁸⁴ Children should be used as ‘resource persons’ in the maintenance and creation of playgrounds, sports and youth centres.⁸⁵ Children should take part in the implementation and evaluation of the right to play in States Parties.

As a consequence of the holistic view of the Convention on the Rights of the Child, not only these four general principles need to be taken into consideration in the implementation of the right to play. Article 31 CRC, like all the other rights of the Convention, needs to be implemented and interpreted in light of all other relevant rights of the Convention. It concerns for example the principle of the evolving capacities of the child and the right to receive appropriate direction and guidance (article 5 CRC), the right to freedom of expression (article 13 CRC), the right to freedom of association and peaceful assembly (article 15 CRC), the right to health (article 24 CRC) and the right to access to information (article 17 CRC).⁸⁶

As regards article 5 in the context of article 31 CRC, for example, it is up to adults (such as parents and teachers) to create the environment in which children can enjoy the rights protected by article 31.⁸⁷

Concerning article 24 and article 31 CRC, it is necessary for a child to be healthy in order to exercise its right to play. On the other hand, the implementation of the right to play can fulfil a role in ensuring the right to health. The Committee on the Rights of the Child has for example pointed out the link between the lack of implementation of article 31 CRC and the increase of obesity in children.⁸⁸

⁸⁴ United Nations Committee on the Rights of the Child, *Concluding Observations: Belgium*, CRC/C/BEL/CO/3-4, 18 June 2010, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/430/77/PDF/G1043077.pdf?OpenElement> (last visited 24 April 2012), paras. 70 – 71.

⁸⁵ United Nations Committee on the Rights of the Child, *Concluding Observations: Democratic Republic of Timor-Leste*, CRC/C/TLS/CO/1, 14 February 2008, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/404/72/PDF/G0840472.pdf?OpenElement> (last visited 23 April 2012), para. 69.

⁸⁶ David, 2006, p. 15.

⁸⁷ *Id.*, p. 16.

⁸⁸ United Nations Committee on the Rights of the Child, *Concluding Observations: Mexico*, CRC/C/MEX/CO/3, 2 June 2006, available at <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.MEX.CO.3.pdf> (last visited 23 April 2012), paras. 58 – 59.

Besides the autonomous value of article 31 CRC, the holistic interpretation of the Convention on the Rights of the Child also leads to the obligation to take article 31 CRC into account in the context of the implementation of the other articles of the Convention. Although the Guidelines for Periodic Reports group article 31 and the articles 28 and 29 (which concern the right to education and the aims of education), the rights protected by article 31 cannot be limited to the context of education.⁸⁹ The right to play can, for example, play an important role in the context of article 39 CRC. This article points out the obligations of States Parties with regards to child victims of for example abuse and exploitation. In the process of recovery of these victims, play and recreational activities can contribute to increasing the confidence and self-esteem of the child.⁹⁰

It is up to adults, such as the government and parents, to provide children with the opportunities to exercise their rights under article 31 CRC. Adults therefore need to create both the physical and the social environment that allows children to play.⁹¹

In order to ensure that children can exercise their rights under article 31 CRC, States Parties firstly need to provide safe and accessible areas, where there are possibilities to explore, to exercise and to create things.⁹² Children need to be provided with creative play facilities.⁹³ The Committee has confirmed the requirement that the provided play

⁸⁹ David, 2006, p. 15.

⁹⁰ United Nations Office of the High Commissioner for Human Rights, *Manual on Human Rights Reporting under Six Major International Human Rights Instruments*, HR/PUB/91/1 (Rev.1), 1997, available at <http://www.unhcr.org/refworld/docid/428085252.html> (last visited 18 April 2012), p. 469.

⁹¹ Lester & Russell, 2010, p. xi.

⁹² Hodgkin & Newell, 2007, p. 472; cf. a.o. United Nations Committee on the Rights of the Child, *Concluding Observations: Mongolia*, CRC/C/15/Add.264, 21 September 2005, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/440/18/PDF/G0544018.pdf?OpenElement> (last visited 23 April 2012), paras. 54 – 55; United Nations Committee on the Rights of the Child, *Concluding Observations: Honduras*, CRC/C/HND/CO/3, 3 May 2007, available at http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.HND.CO.3_en.pdf (last visited 23 April 2012), paras. 68-69; United Nations Committee on the Rights of the Child, *Concluding Observations: France*, CRC/C/FRA/CO/4, 11 June 2009, available at <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-FRA-CO-4.pdf> (last visited 23 April 2012), paras. 82 – 83.

⁹³ United Nations Committee on the Rights of the Child, *Concluding Observations: Philippines*, CRC/C/15/Add.259, 21 September 2005, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/440/53/PDF/G0544053.pdf?OpenElement> (last visited 23 April 2012), para. 72.

areas need to be safe.⁹⁴ It has only clarified this condition however in the context of countries where landmines threaten the safety of children. In this context, States Parties have an obligation to raise awareness about the dangers of landmines, to speed up the removal process and to ensure that children are provided with adequate possibilities to safely exercise their right to play.⁹⁵

On several occasions, the Committee on the Rights of the Child pointed out in its concluding observations that States Parties should consider the need for playgrounds and child-friendly parks in urban planning.⁹⁶ This obligation is confirmed by UNICEF, in its implementation handbook for the Convention on the Rights of the Child, where it provides a checklist with measures to implement article 31 CRC.⁹⁷ Those measures include taking into account the play needs of children and the views of children in the context of environmental planning and providing opportunities to play for all children, without discrimination.

States Parties are furthermore advised to adopt legislation or administrative rules “in order to ensure that leisure areas for children remain a priority in urban planning decisions.”⁹⁸ To ensure the implementation of article 31 CRC, States Parties also need

⁹⁴ Cf. a.o. United Nations Committee on the Rights of the Child, *Concluding Observations: Mongolia*, CRC/C/15/Add.264, 21 September 2005, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/440/18/PDF/G0544018.pdf?OpenElement> (last visited 23 April 2012), para. 55; United Nations Committee on the Rights of the Child, *Concluding Observations: Honduras*, CRC/C/HND/CO/3, 3 May 2007, available at http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.HND.CO.3_en.pdf (last visited 23 April 2012), para. 69.

⁹⁵ United Nations Committee on the Rights of the Child, *Concluding Observations: Bosnia and Herzegovina*, CRC/C/15/Add.260, 21 September 2005, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/440/39/PDF/G0544039.pdf?OpenElement> (last visited 23 April 2012), paras. 59 and 63; United Nations Committee on the Rights of the Child, *Concluding Observations: Angola*, CRC/C/AGO/CO/2-4, 11 October 2010, available at <http://www2.ohchr.org/english/bodies/crc/crcs55.htm> (last visited 24 April 2012), paras. 61 – 62.

⁹⁶ Cf. a.o. United Nations Committee on the Rights of the Child, *Concluding Observations: Albania*, CRC/C/15/Add.249, 31 March 2005, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/408/44/PDF/G0540844.pdf?OpenElement> (last visited 23 April 2012), paras. 62-63; United Nations Committee on the Rights of the Child, *Concluding Observations: Lebanon*, CRC/C/15/Add.54, 7 June 1996, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G96/169/34/PDF/G9616934.pdf?OpenElement> (last visited 22 April 2012), para. 36.

⁹⁷ Hodgkin & Newell, 2007, p. 477.

⁹⁸ Cf. a.o. United Nations Committee on the Rights of the Child, *Concluding Observations: Mozambique*, CRC/C/15/Add.172, 3 April 2002, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G02/409/97/PDF/G0240997.pdf?OpenElement> (last visited 21 April 2012),

to consider this right in their budget and should “allocate adequate human and financial resources to the implementation of the right to rest, leisure and play.”⁹⁹

Children furthermore need to have enough time for play and recreational activities. In the context of education, for example, States Parties need to ensure that children have time and space to play.¹⁰⁰ In light of competitive school systems, for instance, States Parties are advised to promote play and recreational activities in schools in order to reduce stress and to ensure the full development of the child.¹⁰¹

Article 31 CRC also imposes an obligation on States Parties to provide opportunities for play and recreation that are “appropriate to the age of the child”. This entails that adults have a responsibility to protect children against activities that are harmful.¹⁰² The provided activities should not harm the development, health or education of the child and children should be protected against exploitation and excessive risks.¹⁰³ This requirement furthermore entails that children need to be guided by adults, such as parents and other caregivers, when necessary and without them taking over the control of the child.¹⁰⁴ When implementing the right to play, States Parties should take the

para. 59; United Nations Committee on the Rights of the Child, *Concluding Observations: Guinea-Bissau*, CRC/C/15/Add.177, 13 June 2002, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G02/435/12/PDF/G0243512.pdf?OpenElement> (last visited 21 April 2012), paras. 46 – 47.

⁹⁹ Cf. a.o. United Nations Committee on the Rights of the Child, *Concluding Observations: Bangladesh*, CRC/C/BGD/CO/4, 26 June 2009, available at http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.BGD.CO.4_en.pdf (last visited 23 April 2012), para. 77.

¹⁰⁰ United Nations Committee on the Rights of the Child, *Concluding Observations: The Plurinational State of Bolivia*, CRC/C/BOL/CO/4, 16 October 2009, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/455/32/PDF/G0945532.pdf?OpenElement> (last visited 23 April 2012), para. 70.

¹⁰¹ Cf. a.o. United Nations Committee on the Rights of the Child, *Concluding Observations: Japan*, CRC/C/15/Add.90, 24 June 1998, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G98/166/25/PDF/G9816625.pdf?OpenElement> (last visited 22 April 2012), para. 43; United Nations Committee on the Rights of the Child, *Concluding Observations: Singapore*, CRC/C/15/Add.220, 27 October 2003, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/446/34/PDF/G0344634.pdf?OpenElement> (last visited 23 April 2012), para. 43.

¹⁰² Hodgkin & Newell, 2007, p. 470.

¹⁰³ United Nations Office of the High Commissioner for Human Rights, *Manual on Human Rights Reporting under Six Major International Human Rights Instruments*, HR/PUB/91/1 (Rev.1), 1997, available at <http://www.unhcr.org/refworld/docid/428085252.html> (last visited 18 April 2012), p. 469.

¹⁰⁴ Defrancq, 2009, p. 111.

physical and psychological development of the child into account.¹⁰⁵ Facilities need to be foreseen for children of different ages and different backgrounds.¹⁰⁶

It is shown that there is an increasing awareness of the importance of the child to play and that more and more attention is paid to this right.

The implementation of this right however is threatened by several other activities and issues. Some examples were already given. Furthermore, also traffic demands and city planning pose a threat to the right of the child to play.¹⁰⁷ Television watching and computer games as well can have an impact on the right to play, specifically in the context of the requirement that play needs to be “appropriate to the age of the child” and because of the effect on the amount of time a child spends playing.¹⁰⁸ Highly competitive school systems are also mentioned by the Committee on the Rights of the Child as a possible threat to the right to play.¹⁰⁹

In the case of Belgium, another threat is posed to the right of the child to play. Here, playgrounds and day-care centres had to close or be relocated because neighbours complained of the noise made by the children. This specific threat to the right of the child to play will be discussed in chapter 3.¹¹⁰

¹⁰⁵ Cf. a.o. United Nations Committee on the Rights of the Child, *Concluding Observations: Lithuania*, CRC/C/15/Add.146, 21 February 2001, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G01/408/34/PDF/G0140834.pdf?OpenElement> (last visited 21 April 2012), paras. 45 – 46; United Nations Committee on the Rights of the Child, *Concluding Observations: Benin*, CRC/C/BEN/CO/2, 20 October 2006, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/448/45/PDF/G0644845.pdf?OpenElement> (last visited 23 April 2012), para. 64.

¹⁰⁶ United Nations Committee on the Rights of the Child, *Concluding Observations: Bangladesh*, CRC/C/BGD/CO/4, 26 June 2009, available at http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.BGD.CO.4_en.pdf (last visited 23 April 2012), para. 77.

¹⁰⁷ Hodgkin & Newell, 2007, p. 473.

¹⁰⁸ *Ibid.*; United Nations Committee on the Rights of the Child, *Concluding Observations: Ukraine*, CRC/C/UKR/CO/3-4, 21 April 2011, available at http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.UKR.CO.3-4_en.pdf (last visited 24 April 2012), para. 70.

¹⁰⁹ Cf. a.o. United Nations Committee on the Rights of the Child, *Concluding Observations: Singapore*, CRC/C/SGP/CO/2-3, 2 May 2011, available at <http://www2.ohchr.org/english/bodies/crc/crcs56.htm> (last visited 24 April 2012), para. 58.

¹¹⁰ Cf. *infra*, pp. 44 – 72.

1.4 Organisations dedicated to the right to play

Besides the increased attention by the Committee on the Rights of the Child, some organisations as well have acknowledged the importance of the right to play and are dedicated to the implementation of this right. The two most important organisations, namely Right to Play and International Play Association (IPA), will be discussed.

1.4.1 Right to Play

‘Right to Play’ is an international humanitarian and development organisation which aims to “improve the lives of children in some of the most disadvantaged areas of the world by using the power of sport and play for development, health and peace.”¹¹¹ The organisation uses the United Nations Convention on the Rights of the Child as guidance. It develops sport and play programs in order to teach children values and life skills, to educate them about health, to teach conflict resolution and peace building skills and to reintegrate children affected by war.¹¹² These programs are implemented in communities that are affected by war, poverty and diseases in order to achieve change.

1.4.2 International Play Association

Another organisation dedicated to the right to play is the International Play Association.¹¹³ This non-governmental organisation was already founded in 1961. Its purpose is to “protect, preserve and promote the child’s right to play as a fundamental human right.”¹¹⁴

In 1977, IPA drafted a Declaration of the Child’s Right to Play.¹¹⁵ In this Declaration, IPA emphasises the link between play, education, health, welfare, leisure and planning. With regards to planning for example, governments should “reserve adequate and appropriate space for play and recreation through statutory provision.”¹¹⁶

¹¹¹ <http://www.righttoplay.com/International/about-us/Pages/mission.aspx> (last visited 25 June 2012).

¹¹² <http://www.righttoplay.com/International/about-us/Pages/AtAGlanceCon%27t.aspx> (last visited 25 June 2012).

¹¹³ <http://ipaworld.org/> (last visited 25 June 2012).

¹¹⁴ <http://ipaworld.org/category/about-us/> (last visited 25 June 2012).

¹¹⁵ <http://ipaworld.org/category/about-us/declaration/> (last visited 25 June 2012).

¹¹⁶ <http://ipaworld.org/category/about-us/declaration/> (last visited 25 June 2012).

In 2008, together with other organisations as co-signatories (namely Right to Play International, World Leisure Association, International Pediatrics Association, International Council on Children's Play, World Organisation for Early Childhood Education, International Toy Library Association, European Child Friendly Cities Network and Childwatch International), IPA requested that the Committee on the Rights of the Child would issue a General Comment on the right to play. In 2011, at the occasion of the opening of its fifty-eighth session, the Committee affirmed that it would develop a General Comment on article 31 CRC.¹¹⁷ With this General Comment, IPA wants to give guidance to member States of the United Nations to implement article 31 CRC and wants to increase awareness on the importance of the right to play. A General Comment would give a better understanding of the article and the obligations of States Parties and would promote the implementation of the right to play.

¹¹⁷[http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear_en\)/E2B77A8E67D53671C1257910003BED04?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/E2B77A8E67D53671C1257910003BED04?OpenDocument) (last visited 25 June 2012).

Chapter 2. The right to protection against noise nuisance

2.1 Introduction

Within the European Union, in 2011, an estimated 20% of the population (or about 80 million people) were exposed to noise levels that are unacceptable according to scientists and health experts and could cause annoyance, sleep disturbance and adverse health effects.¹¹⁸ Furthermore, an additional 170 million individuals live in areas where they are in the daytime confronted with noise levels sufficiently high to cause serious annoyance.¹¹⁹

It is clear that this noise can have a deteriorating effect on the quality of life and even on the health of individuals. It is therefore the object of more and more complaints. Complaints about noise are made easier because of its specific attributes, such as the possibility of objective measurement, possible identification of its impact on a certain area and scientific studies that show adverse effects on people's health.¹²⁰

These complaints are at the centre of this research because of a particular type of complaints that have been made in Belgium. Here, neighbours have complained about the noise children caused when they were playing.

In this chapter first the importance of protection against noise, with a focus on noise caused by neighbours, will shortly be discussed. Then a general introduction will be given to the protection against noise from a human rights point of view. Thereafter the case law of the European Court of Human Rights will be analysed to examine how this Court deals with claims for protection against noise. In a last section the principles derived from the case law of the European Court will be applied to the case of children playing.

¹¹⁸ <http://ec.europa.eu/environment/noise/greenpap.htm#situ> (last visited 25 June 2012).

¹¹⁹ *Ibid.*

¹²⁰ Verdú Baeza, 2009, p. 223.

2.2 The importance of protection against noise

The World Health Organisation (WHO) identified noise caused by neighbours as one of the main sources of community noise.¹²¹ Playgrounds are given as an example of typical neighbourhood noise. Noise made by children when they are playing would therefore be considered as community noise.

With regard to this community noise, the World Health Organisation has published “Guidelines for Community Noise”¹²² and “Fact Sheet No. 258, on Occupational and Community Noise” to give clarifications concerning this type of noise. The norms established in these documents are relevant to examine since the European Court of Human Rights, in its judgments and decisions, refers to them as international standards with regard to acceptable noise levels.¹²³

Noise does not only lead to annoyance. The WHO has identified several negative effects of noise on a person’s health. These effects include sleep disturbance, cardiovascular effects (such as heart diseases), damage to work and school performance (such as a reduction of productivity at work and learning impairments) and hearing impairment such as tinnitus.¹²⁴ Furthermore noise can cause annoyance, stress and interference with communication. Exposure to noise above 80 decibels (dB) can also lead to a person becoming more aggressive.¹²⁵ The WHO has also indicated other effects of noise on residential behaviour, such as feelings of anger, disappointment, dissatisfaction, withdrawal, helplessness, depression, anxiety, distraction, agitation and exhaustion.¹²⁶

¹²¹ World Health Organisation, *Guidelines for Community Noise*, 1999, available at <http://whqlibdoc.who.int/hq/1999/a68672.pdf> (last visited 27 May 2012), p. V.

¹²² World Health Organisation, *Guidelines for Community Noise*, 1999, available at <http://whqlibdoc.who.int/hq/1999/a68672.pdf> (last visited 27 May 2012); World Health Organisation, *Occupational and Community Noise*, Fact Sheet n° 258, February 2001, available at http://www.who.int/peh/Occupational_health/OCHweb/OSHpages/OSHDdocuments/Factsheets/noise.pdf (last visited 27 May 2012).

¹²³ Cf. a.o. *Fägerskiöld - Sweden* (No 37664/04) Decision 26.2.2008 [Section III].

¹²⁴ <http://www.euro.who.int/en/what-we-do/health-topics/environment-and-health/noise/facts-and-figures/health-effects-of-noise> (last visited 25 June 2012).

¹²⁵ World Health Organisation, *Occupational and Community Noise*, Fact Sheet n° 258, February 2001, available at http://www.who.int/peh/Occupational_health/OCHweb/OSHpages/OSHDdocuments/Factsheets/noise.pdf (last visited 27 May 2012), pp. 2 and 33.

¹²⁶ World Health Organisation, *Guidelines for Community Noise*, 1999, available at <http://whqlibdoc.who.int/hq/1999/a68672.pdf> (last visited 27 May 2012), p. 32.

With regard to the noise of children playing, the effects of noise will mostly concern these effects on residential behaviour, interference with speech and increasing aggressive behaviour.

The International Organisation for Standardisation (ISO) has established standards for the description of noise. These standards are also used by the World Health Organisation. Two concepts are relevant in the context of this thesis.

Decibels (dB) indicate the sound pressure level that is perceived by the ear on a logarithmic scale. It measures the air vibrations that make up sound.¹²⁷ Because the human hearing system is not equally sensitive to different frequencies of sound, several types of filters can be used to measure sound. It is mostly A-weighting that is being used (dB(A)). With this filter lower frequencies are weighted as less important than mid- and higher frequencies in order to fully calculate the overall environmental noise.¹²⁸

L_{Aeq} (equivalent continuous sound pressure level), another measurement of sound that will be mentioned, indicates the total energy, as an effect of a combination of noise events, over a certain time period.¹²⁹ This measurement should be used in the context of continuous sound.¹³⁰

In its Guidelines for Community Noise the World Health Organisation has established maximum levels of noise. To avoid interference with speech perception, for instance, the background noise level should not be more than 35 dB(A).¹³¹ The maximum noise levels to avoid hearing impairment are set higher. For adults, peak sound pressures should not exceed 140 dB, while for children the maximum is set at 120 dB.¹³² As far as noise causing annoyance is concerned, it is estimated that “few people are highly annoyed at L_{Aeq} levels below 55 dB(A), and few are moderately annoyed at L_{Aeq} levels below 50 dB(A).”¹³³ Also social behaviour is affected by noise. Exposure to noise

¹²⁷ *Id.*, p. 3.

¹²⁸ *Id.*, p. 4.

¹²⁹ *Ibid.*

¹³⁰ *Id.*, p. 5.

¹³¹ *Id.*, p. xii and pp. 25 - 26.

¹³² *Id.*, p. xii.

¹³³ *Id.*, p. xiii.

levels above 80 dB(A), for instance, will lead to reduced helping behaviour.¹³⁴ Moreover, noise above the level of 80 dB(A) will make people that are predisposed to aggressiveness more aggressive.¹³⁵ The guidelines also set a maximum level of noise with regard to toys, where adults and children can be exposed to, to avoid hearing impairment. For an adult the maximum is set at 140 dB(lin) peak sound pressure level, while for children the maximum is 120 dB(lin), when measured close to the ears, namely 100mm.¹³⁶

To compare, a normal conversation is estimated at about 60 dB, a lawn mower at 90 – 105 dB, a playground between 70 and 85 dB and a crowd of shouting children at 120 dB.¹³⁷

In its Guidelines, the WHO encourages States to develop policies on noise management.¹³⁸ These policies should include the promotion of noise assessment, noise control and, as much as possible, the reduction of noise at the source.¹³⁹

2.3 The protection against noise from a human rights point of view

Increasing attention is paid to the need to address noise as an environmental problem. Furthermore, noise is no longer only seen as nuisance. As a consequence of the impact of noise on a person's health and quality of life, as discussed above¹⁴⁰, it is more and more considered as a public health problem.¹⁴¹ Noise nuisance has therefore more and more entered the field of human rights.¹⁴²

The right to protection against noise nuisance is not explicitly recognised in a human rights document. Recognised human rights, however, can be invoked to ensure the

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*

¹³⁶ *Id.*, p. xv.

¹³⁷ http://www.gezondheid.be/index.cfm?fuseaction=art&art_id=76 (last visited 25 June 2012).

¹³⁸ World Health Organisation, *Guidelines for Community Noise*, 1999, available at <http://whqlibdoc.who.int/hq/1999/a68672.pdf> (last visited 27 May 2012), p. xvii.

¹³⁹ *Ibid.*

¹⁴⁰ Cf. *supra*, pp. 25 – 27.

¹⁴¹ World Health Organisation, *Occupational and Community Noise*, Fact Sheet n° 258, February 2001, available at

http://www.who.int/peh/Occupational_health/OCHweb/OSHpages/OSHDdocuments/Factsheets/noise.pdf (last visited 27 May 2012), p. 1.

¹⁴² Desgagné, 1995, p. 263.

enjoyment of an environment in which basic human rights, such as the right to life, the right to health and the right to a family and private life can be ensured.¹⁴³ In 1972, for instance, on the occasion of the Conference on the Human Environment, the United Nations recognised the importance of a healthy environment for the enjoyment of human rights by stating that “Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights the right to life itself.”¹⁴⁴ The idea is that a healthy environment can have a positive influence on the quality of life of an individual.¹⁴⁵ On the basis of generally accepted human rights a claim can therefore be made that there is a need for protection against noise nuisance. This vision with regard to the link between human rights and the environment can also have a positive influence on the protection of the environment.¹⁴⁶ Environmental damage can, under certain circumstances, be considered as a violation of a human right and can lead to a claim before a national or international court.

In its case law, also the European Court of Human Rights (and before the European Commission) is increasingly aware of the link between the respect for and the protection of human rights on the one hand and the protection of the environment on the other hand.¹⁴⁷ In the context of this thesis the cases of the Court with regard to noise nuisance will be analysed and discussed.

2.4 The protection against noise nuisance in the case law of the European Court of Human Rights

2.4.1 Introduction

In the European Convention for the Protection of Human Rights and Fundamental Freedoms the protection against noise nuisance is not explicitly recognised as a human right. There is no provision with regard to the environment inserted in the Convention or its additional protocols. Originally, complaints concerning the environment, such as complaints with regard to noise, were therefore declared inadmissible because they were

¹⁴³ Shelton, 2006, p. 131.

¹⁴⁴ Declaration of the United Nations Conference on the Human Environment, 16 June 1972.

¹⁴⁵ Desgagné, 1995, p. 264.

¹⁴⁶ *Ibid.*

¹⁴⁷ *Id.*, p. 263.

seen as ill-founded *ratione materiae*.¹⁴⁸ However, this approach has changed over time.¹⁴⁹

Several articles can potentially be relevant in the context of noise pollution. These articles are mainly the articles that protect the integrity of a person or its immediate surroundings.¹⁵⁰ It concerns article 2 ECHR (right to life), article 3 ECHR (prohibition of torture, inhuman or degrading treatment), article 6 ECHR (right to a fair trial), article 8 ECHR (right to respect for private and family life) and article 1 of additional protocol 1 concerning the protection of property. Under this last article, for instance, applicants have complained about the fact that they could no longer peacefully enjoy their private property and that the value of their property had decreased.¹⁵¹ So far, no complaints have been made under articles 2 and 3 ECHR in cases that solely concern noise nuisance. Moreover, the threshold for the application of these articles is set very high by the European Court of Human Rights. It is therefore unlikely that a violation of articles 2 or 3 ECHR will be accepted in a case concerning noise nuisance.

Since the complaints under article 1 additional protocol 1 have never been accepted by the European Court and article 6 ECHR concerns procedural aspects, only case law regarding article 8 ECHR will be discussed here. Article 8 ECHR is also the article that has been invoked most in cases concerning noise nuisance.

Article 8 ECHR protects the right to respect for private and family life. This article states “Everyone has the right to respect for his private and family life, his home and his correspondence.”¹⁵² Limitations to this right are possible under certain conditions, provided in the second paragraph of article 8 ECHR. This paragraph reads “There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the

¹⁴⁸ García San José, 2005, p. 6.

¹⁴⁹ *Id.*, pp. 7 – 8.

¹⁵⁰ Desgagné, 1995, p. 265.

¹⁵¹ *Fägerskiöld - Sweden* (No 37664/04) Decision 26.2.2008 [Section III]; *Galev and Others v. Bulgaria - 18324/04* Decision 29.9.2009 [Section V].

¹⁵² Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, article 8.

prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”¹⁵³

The European Court of Human Rights has accepted the possible protection by article 8 ECHR in cases concerning noise nuisance. The Court has confirmed that “There is no explicit right in the Convention to a clean and quiet environment, but where an individual is directly and seriously affected by noise or other pollution, an issue may arise under Article 8.”¹⁵⁴

Judges have pointed out that “As the Court has often underlined: ‘The Convention is a living instrument, to be interpreted in the light of present-day conditions’ (...) This “evolutive” interpretation by the Commission and the Court of various Convention requirements has generally been “progressive”, in the sense that they have gradually extended and raised the level of protection afforded to the rights and freedoms guaranteed by the Convention to develop the “European public order”. In the field of environmental human rights, which was practically unknown in 1950, the Commission and the Court have increasingly taken the view that Article 8 embraces the right to a healthy environment, and therefore to protection against pollution and nuisances caused by harmful chemicals, offensive smells, agents which precipitate respiratory ailments, noise and so on.”¹⁵⁵

The case law of the European Court of Human Rights remains limited with respect to noise nuisance. It has however established some general principles.

In the context of noise caused by children, the cases where the ECtHR dealt with neighbouring noise are relevant to analyse, in contrast to the cases concerning noise caused by airports because of the difference in noise levels and because of the contribution an airport makes to the economic well-being of a country. The Court has dealt with this kind of cases on several occasions and has established some general principles. Some of these principles have been established in a case concerning noise

¹⁵³ *Ibid.*

¹⁵⁴ *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, ECHR 2003-VIII – (8.7.03), para. 96.

¹⁵⁵ *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, ECHR 2003-VIII – (8.7.03), Joint dissenting opinion of judges Costa, Ress, Türmen, Zupancic and Steiner, para. 2.

caused by Heathrow airport, namely *Hatton and Others v. the United Kingdom*¹⁵⁶, and have later been confirmed in cases concerning neighbouring noise. The most important and relevant principles will be discussed here.

2.4.2 Principles established by the European Court of Human Rights

The European Court of Human Rights has first of all given some clarifications concerning the concept ‘home’, used in article 8 ECHR. The Court states “A home will usually be the place, the physically defined area, where private and family life develops. The individual has a right to respect for his home, meaning not just the right to the actual physical area, but also to the quiet enjoyment of that area. Breaches of the right to respect of the home are not confined to concrete or physical breaches, such as unauthorised entry into a person’s home, but also include those that are not concrete or physical, such as noise, emissions, smells or other forms of interference. A serious breach may result in the breach of a person’s right to respect for his home if it prevents him from enjoying the amenities of his home.”¹⁵⁷ As a consequence protection against noise caused by neighbours may fall within the scope of the protection offered by article 8 ECHR. The interference by noise in a private home is therefore, under certain circumstances, considered as a violation of a fundamental human right by the European Court of Human Rights.

The European Court has determined that article 8 ECHR not only applies in cases where it is the State that causes environmental pollution, *in casu* noise, but also in cases where the State fails to take reasonable and appropriate measures to ensure that an individual can enjoy its rights under article 8 ECHR.¹⁵⁸ Article 8 entails an obligation for the State to adopt “measures designed to secure respect for private life and home even in the sphere of the relations of individuals between themselves.”¹⁵⁹ Furthermore, in both scenarios the State must find a balance between the interests of an individual and the

¹⁵⁶ *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, ECHR 2003-VIII – (8.7.03).

¹⁵⁷ Cf. a.o. *Moreno Gómez v. Spain*, no. 4143/02 (Sect. 4), ECHR 2004-X – (16.11.04), para.53.

¹⁵⁸ *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, ECHR 2003-VIII – (8.7.03), para. 96.

¹⁵⁹ *Deés v. Hungary*, no. 2345/06 (Sect. 2) (Eng) – (9.11.10), para. 15.

interests of the community as a whole.¹⁶⁰ The State does enjoy a certain margin of appreciation in fulfilling its obligations under article 8 ECHR.¹⁶¹

It is furthermore necessary that the applicant is personally affected by the noise nuisance. The interference with article 8 ECHR, namely the noise nuisance, must directly affect the home, private life or family life of the applicant. The Court will examine whether in a certain case, on the basis of all the present elements, “the alleged nuisances were sufficiently serious to affect adversely the applicants’ enjoyment of the amenities of their homes and the quality of their private and family lives.”¹⁶²

Another element that is laid down by the Court is the fact that the noise nuisance must attain a minimum level in order to trigger the application of article 8 ECHR and to amount to a possible violation of this article.¹⁶³ It is often with regard to this condition that the Court concludes that there was no violation of article 8 ECHR or that the case is manifestly ill-founded and therefore inadmissible.

This minimum level of noise nuisance that triggers the protection under article 8 ECHR will depend on all the circumstances of the case, namely “the nuisance’s intensity and duration, its physical or mental effects, the general context, and whether the detriment complained of was negligible in comparison to the environmental hazards inherent to life in a modern city.”¹⁶⁴ With regard to this last element, the European Court has referred for example to an unreported decision made by the Commission in a case that concerned noise from road works.¹⁶⁵ The Commission decided in this case that “the noise level was not higher than what was usually inherent to life in a modern city (see *Trouche v. France*, no. 19867/92, Commission decision of 1 September 1993, unreported).”¹⁶⁶

An analysis of the case law of the European Court of Human Rights makes it clear that several elements play a role in deciding whether the noise nuisance has reached the

¹⁶⁰ *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, ECHR 2003-VIII – (8.7.03), para. 96.

¹⁶¹ *Ibid.*

¹⁶² *Mileva and Others v. Bulgaria*, nos. 43449/02 and 21475/04 (Sect. 5) (Eng) – (25.11.10), para. 91.

¹⁶³ *Moreno Gómez v. Spain*, no. 4143/02 (Sect. 4), ECHR 2004-X – (16.11.04), para. 58.

¹⁶⁴ *Mileva and Others v. Bulgaria*, nos. 43449/02 and 21475/04 (Sect. 5) (Eng) – (25.11.10), para. 90.

¹⁶⁵ *Id.*, para. 92.

¹⁶⁶ *Ibid.*

minimum level of severity. In this context, also cases that were declared inadmissible are interesting to examine since they give examples of situations where the trigger for the application of the protection under article 8 ECHR was not reached.

One important element is the recognition by State authorities of the presence of high levels of noise. In the case *Moreno Gómez v. Spain*, for instance, the Court decided that with regard to bars, pubs and discotheques in a residential area the State had violated article 8 ECHR “in view of the volume of the noise – at night and beyond the permitted levels – and the fact that it continued over a number of years.”¹⁶⁷ The Court came to this conclusion on the basis of mainly two reasons. First, the residential area where the applicant lived was designated by law as an ‘acoustically saturated zone’, which means that it is “an area in which local residents are exposed to high noise levels which cause them serious disturbance.”¹⁶⁸ Furthermore the authorities had recognised on several occasions that the permitted noise levels were exceeded.¹⁶⁹

Another relevant element in the case law of the European Court is the noise level that is permitted by law.

In the case of *Dées v. Hungary*, for instance, the Court concluded that there was a violation of article 8 ECHR because the State had taken insufficient measures to protect the applicant against excessive noise disturbance caused by road traffic.¹⁷⁰ The Court stated that there was a “disproportionate individual burden for the applicant.”¹⁷¹ Furthermore, the noise levels were considerable higher than the levels allowed by law.¹⁷²

Not only domestic legislation with regard to noise levels is taken into account. The European Court of Human Rights refers in its case law also to international standards, such as those established by the World Health Organisation, as discussed above¹⁷³. In the case of *Fägerskiöld v. Sweden*, for instance, the Court concluded that the noise caused by a wind turbine, built nearby the house of the applicants, “does not exceed the

¹⁶⁷ *Moreno Gómez v. Spain*, no. 4143/02 (Sect. 4), ECHR 2004-X – (16.11.04), para.60.

¹⁶⁸ *Id.*, para.59.

¹⁶⁹ *Id.*, para.59.

¹⁷⁰ *Deés v. Hungary*, no. 2345/06 (Sect. 2) (Eng) – (9.11.10), para. 24.

¹⁷¹ *Id.*, para. 23.

¹⁷² *Ibid.*

¹⁷³ Cf. *supra*, pp. 26 – 27.

level recommended by the WHO, either outdoors or indoors, and it only slightly exceeds the recommended maximum level in Sweden.”¹⁷⁴

In its case law, the Court also refers on several occasions to a lack of evidence provided by the applicants to demonstrate the levels of noise nuisance they are exposed to. In a case concerning a tailoring workshop established in a neighbouring house, the Court reasoned that the applicant did not provide the court with the results of a noise test in order to determine whether domestic or international standards were exceeded or whether they exceeded “the environmental hazards inherent in life in every modern town.”¹⁷⁵

The European Court of Human Rights has furthermore pointed out that the noise nuisance has to rise above the levels of noise in a modern town. With regard to a dentist’s surgery in an apartment building, for instance, the Court referred to the fact that the noise nuisance was probably restricted to office hours and not likely to reach high levels.¹⁷⁶ Because there was no proof that the noise levels exceeded the acceptable levels, the complaint was declared manifestly ill-founded. On the basis of the same elements, the Court decided with regard to noise caused by an office in a neighbouring apartment, namely “telephones ringing and conversations, loud voices, moving of furniture and banging of doors”¹⁷⁷, that this noise level could not trigger the application of article 8 ECHR.¹⁷⁸

With regard to a computer club in an apartment building, however, the Court came to different conclusions. Even though the applicants did not provide the Court with exact numbers concerning the noise level, the Court concluded that the levels of noise attained the “minimum level of severity which required the authorities to implement measures to protect the applicants from such disturbance.”¹⁷⁹ This conclusion is based on the fact that the computer club operated 24 hours per day, seven days per week and for a period of approximately four years. Furthermore clients of the club generated a

¹⁷⁴ *Fägerskiöld - Sweden* (No 37664/04) Decision 26.2.2008 [Section III].

¹⁷⁵ *Borysiewicz v. Poland*, no. 71146/01 (Sect. 4) (Eng) – (1.7.08), para. 53.

¹⁷⁶ *Galev and Others v. Bulgaria* - 18324/04 Decision 29.9.2009 [Section V].

¹⁷⁷ *Mileva and Others v. Bulgaria*, nos. 43449/02 and 21475/04 (Sect. 5) (Eng) – (25.11.10), para. 46.

¹⁷⁸ *Id.*, para. 95.

¹⁷⁹ *Id.*, para. 97.

high level of noise and other disturbance not only inside the building but also outside, for example when they entered or left the building.

A last element that can play a role in the reasoning of the Court when deciding whether the minimum level of severity is attained, is submitting proof of health disorders. The lack of evidence provided by the applicants, for instance by a medical certificate, of the fact that their health had been adversely affected by noise nuisance can be found in several cases as an argument to decide that the noise level was not sufficiently high.¹⁸⁰

If the European Court of Human Rights concludes that the noise nuisance attains the minimum level of severity, it will examine whether the authorities took the necessary steps to reduce the present nuisances. In this context the Court cannot review domestic legislation. It can only examine whether existing laws were applied and whether the State acted in compliance with the existing legislation.¹⁸¹ As stated above, the State enjoys a certain margin of appreciation.¹⁸² As a consequence, the Court will “assess whether the authorities approached the matter with due diligence and gave consideration to all competing interests.”¹⁸³ The European Court will examine for example the actions taken by local authorities after complaints by an applicant. In the case of *Moreno Gómez v. Spain*, for instance, the Court concluded that there had been a violation of article 8 ECHR because the local authorities, even though they had adopted protection measures “tolerated, and thus contributed to, the repeated flouting of the rules which it itself had established during the period concerned.”¹⁸⁴

It is clear that the European Court of Human Rights has set the threshold relatively high for finding a violation of article 8 ECHR in the case of noise nuisance. The question can be posed whether this threshold will be reached in the case of noise caused by playing children.

¹⁸⁰ Cf. a.o. *Fügerskiöld - Sweden* (No 37664/04) Decision 26.2.2008 [Section III]; *Borysiewicz v. Poland*, no. 71146/01 (Sect. 4) (Eng) – (1.7.08), para. 54.

¹⁸¹ *Mileva and Others v. Bulgaria*, nos. 43449/02 and 21475/04 (Sect. 5) (Eng) – (25.11.10), para. 98.

¹⁸² *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, ECHR 2003-VIII – (8.7.03), para. 96; cf. supra, p. 32.

¹⁸³ *Mileva and Others v. Bulgaria*, nos. 43449/02 and 21475/04 (Sect. 5) (Eng) – (25.11.10), para. 98.

¹⁸⁴ *Moreno Gómez v. Spain*, no. 4143/02 (Sect. 4), ECHR 2004-X – (16.11.04), para. 61.

2.5 The application of the principles of the European Court of Human Rights to noise nuisance caused by children playing

In this section, the above mentioned principles will be applied to the specific case of noise caused by playing children. First it will be discussed however why it is relevant to look at the case law of the European Court of Human Rights in the Belgian context.

2.5.1 The relevance of the case law of the European Court of Human Rights in the Belgian Context

In the Belgian context it is relevant to look at the case law of the European Court of Human Rights concerning noise nuisance for the following reasons.

The right to a healthy environment is explicitly recognised in article 23 of the Belgian Constitution.¹⁸⁵ There is however no consensus on the possible direct effect of this article in the Belgian legal order.¹⁸⁶ It is therefore difficult to directly invoke this article in a successful manner before a Belgian tribunal or court. The idea is that this article should be used as a guiding principle by the government and the legislature.¹⁸⁷ During the parliamentary preparation of the revision of the Belgian Constitution that led to the insertion of article 23, the value of including social and economic rights in the Constitution was discussed. The parliament members that drafted the provision pointed out that, because of the recognition of this right in the Constitution, the authorities would be obliged to promote and elaborate this right.¹⁸⁸

The right to private life and family is protected in article 22 of the Belgian Constitution.¹⁸⁹ There is a consensus that this article, just as article 8 of the European

¹⁸⁵ Belgium Constitution, art. 23.

¹⁸⁶ Staelens, 2004, p. 219.

¹⁸⁷ Flemish Environmental Law Organisation, *Constitutional rights to an ecologically balanced environment*, V.V.O.R.-Report 2007/2, 2007, available at http://www.omgevingsrecht.be/sites/default/files/2007_the_right_to_an.pdf (last visited 26 May 2012), p. 16.

¹⁸⁸ Belgian Senate, *Herziening van title II van de Grondwet, door invoeging van een artikel 24bis betreffende de economische en sociale rechten. Tekst voorgesteld door de heren Stroobant en Taminaux c.s. (Revision of Title II of the Constitution to insert an article 24bis concerning economic and social rights)*, Parl. St. Senaat nr. 100-2/3° (1992-1993), 9 June 1993, available at <http://www.senate.be/lexdocs/S0528/S05281151.pdf> (last visited 9 June 2012), p. 13.

¹⁸⁹ Belgium Constitution, art. 22.

Convention of Human Rights, has direct effect in the Belgian legal order.¹⁹⁰ Furthermore, in the parliamentary preparation of the revision of the Belgian Constitution, when the right to private life was inserted in the Constitution, it was clarified that article 22 and the concept ‘protection of private life and family life’ has to be interpreted in the same way as article 8 ECHR is interpreted by the European Court of Human Rights.¹⁹¹ It is therefore important to look at the case law of the European Court concerning noise nuisance since it can influence cases before national courts and tribunals that concern noise nuisance caused by children.

2.5.2 The application of the principles established by the European Court of Human Rights to noise nuisance caused by playing children

The majority of cases with regard to noise nuisance considered by the European Court of Human Rights deal with obvious sources of noise, such as airplanes, bars and discotheques. This research however deals with the noise caused by playing children, a sound that some people would not even consider nuisance.

In this section, the above mentioned principles, derived from the case law of the European Court of Human Rights, will be applied to the case of nuisance caused by the noise of children playing. It will be examined whether neighbours could potentially file a complaint with the European Court under article 8 of the European Convention on Human Rights after the exhaustion of domestic remedies.

It is first necessary to establish whether article 8 ECHR is applicable to the present situation. When children are playing and are making noise, it is clear that the interference with article 8 ECHR is not directly caused by the State. As confirmed by the European Court, however, a State, under article 8 ECHR, has a positive obligation to adopt reasonable and appropriate measures to ensure that individuals can enjoy their

¹⁹⁰ Staelens, 2004, p. 219.

¹⁹¹ Belgian Chamber of Representatives, *Herziening van de Grondwet. Herziening van Titel II van de Grondwet om een artikel 24quater in te voegen betreffende de eerbiediging van het privé-leven. Verslag namens de Commissie voor de Herziening van de Grondwet, voor de Institutionele Hervormingen en voor de Regeling van Conflicten (Revision of the Constitution to insert an article 24quater concerning the protection of private life)*, Parl. St. Kamer nr. 997/5 (1992-1993), 20 October 1993, available at [http://www.dekamer.be/doc/flwb/pdf/48/0997/48k0997005.pdf#search="997/5"](http://www.dekamer.be/doc/flwb/pdf/48/0997/48k0997005.pdf#search=) (last visited 5 June 2012), p. 2.

rights under article 8 ECHR, not only towards State authorities but also vis-à-vis other individuals. It would be this obligation of the State that could, hypothetically, be at stake in a case before the European Court concerning child noise.

Noise caused by children on a playground (outside) or in a day-care centre in a neighbouring house could fall within the scope of article 8 ECHR because of the broad interpretation the Court has given to this article. The right to respect for the home, as protected by article 8 ECHR, includes the right to a quiet enjoyment of the home. As a consequence there could be a breach of article 8 ECHR in case of noise caused by children. As stated by the Court: “A serious breach may result in the breach of a person’s right to respect for his home if it prevents him from enjoying the amenities of his home.”¹⁹² The question that therefore needs to be posed is whether the noise of children playing prevents neighbours from enjoying the amenities of their home.

The most difficult step will therefore be to determine whether the interference is serious enough to “affect adversely the applicants’ enjoyment of the amenities of their homes and the quality of their private and family lives.”¹⁹³ If this is not the case, the Court could declare the case manifestly ill-founded and therefore inadmissible.

In this context, the European Court of Human Rights will examine whether the noise nuisance attains a minimum level of severity. This has to be decided on the basis of the specific circumstances of the case, namely “the nuisance’s intensity and duration, its physical or mental effects, the general context, and whether the detriment complained of was negligible in comparison to the environmental hazards inherent to life in a modern city.”¹⁹⁴ Some general remarks can be made however.

It can firstly be questioned whether the noise of children playing is not part of life in a modern city. Otherwise the complaint could be declared manifestly ill-founded.

To prove that this is not the case, applicants would have to be able to submit noise tests that show that the noise levels exceed the acceptable norms, namely statutory norms or the international standards set by the World Health Organisation. Without this proof it

¹⁹² Cf. a.o. *Moreno Gómez v. Spain*, no. 4143/02 (Sect. 4), ECHR 2004-X – (16.11.04), para.53.

¹⁹³ *Mileva and Others v. Bulgaria*, nos. 43449/02 and 21475/04 (Sect. 5) (Eng) – (25.11.10), para. 91.

¹⁹⁴ *Id.*, para. 90.

seems plausible that the European Court of Human Rights will establish that the noise caused by children is not likely to reach very high levels, as it did in the context of an office and a dentist's surgery in an apartment building.¹⁹⁵

Furthermore, noise caused by children playing is likely to be limited to the daytime. This could also be disadvantageous towards hypothetical applicants. In cases where the Court dealt with noise that was limited to office hours and where no proof of excessive noise levels or detrimental health effects were given, the Court concluded that the complaint was manifestly ill-founded.¹⁹⁶ Where the case concerned very high levels of night noise or constant noise, 24 hours a day and 7 days a week, however, the Court concluded that the minimum threshold of severity was attained.¹⁹⁷

When the case would concern noise caused in a day-care centre, where parents would need to bring and collect their children, this disturbance could also be taken into account by the Court. The high level of noise and other disturbance, both inside and outside an apartment building, were taken into consideration by the Court when it concluded that the minimum level of severity of noise nuisance was attained in the context of a computer club in an apartment building.¹⁹⁸ Also here however, it can be questioned whether this disturbance is not part of normal life in a modern city.

It can be concluded that it could be difficult for a complaint about the noise nuisance caused by children playing to fulfil the condition of attaining a minimum level of severity imposed by the Court. It seems that a hypothetical applicant would have most chances for his complaint to be declared admissible and not manifestly ill founded, if he provides the Court with two types of evidence. Firstly, it seems necessary that noise tests prove the existence of noise levels that exceed the acceptable level. Secondly, submitting evidence of the adverse effect of the noise nuisance caused by children on their health could support the complaint.

¹⁹⁵ *Galev and Others v. Bulgaria* - 18324/04 Decision 29.9.2009 [Section V]; *Mileva and Others v. Bulgaria*, nos. 43449/02 and 21475/04 (Sect. 5) (Eng) – (25.11.10), para. 46.

¹⁹⁶ *Ibid.*

¹⁹⁷ *Moreno Gómez v. Spain*, no. 4143/02 (Sect. 4), ECHR 2004-X – (16.11.04), para.60; *Mileva and Others v. Bulgaria*, nos. 43449/02 and 21475/04 (Sect. 5) (Eng) – (25.11.10), para. 97.

¹⁹⁸ *Mileva and Others v. Bulgaria*, nos. 43449/02 and 21475/04 (Sect. 5) (Eng) – (25.11.10), para. 97.

If the European Court of Human Rights would accept that the nuisance caused by children playing attains the minimum level of severity, it would have to examine whether the State authorities fulfilled their positive obligations under article 8 ECHR. The Court can only examine whether existing laws were applied and whether the State acted in compliance with the existing legislation.¹⁹⁹ In the context of this research, it is relevant to note that Belgium has several laws and regulations that can be important regarding complaints about noise caused by children.²⁰⁰ This is shown by the (successful) lawsuits that have taken place.²⁰¹ The application of these laws and regulations however will have to be examined on a case by case basis and will depend on the particular circumstances of the case.

2.5.3 The right to play and the European Court of Human Rights

Another question that is important to ask is whether the right of the child to play could be taken into account by the European Court of Human Rights in its judgments.

The ECHR is not specifically meant to protect the rights of children. Only on two occasions, namely in articles 5 and 6 ECHR, the Convention refers explicitly to ‘minors’ and ‘juveniles’. Furthermore, article 2 protocol no.1, which protects the right to education, is of specific relevance to children, even though it also applies to adults. A specific reference to the ‘interests of children’ is made in article 5 protocol no.7 in the context of the equality between spouses in their relationship with their children. The concept of the ‘best interests of the child’ also plays a role in the judgements of the European Court, for instance in the context of article 8 ECHR.²⁰²

On the basis of article 1 ECHR, however, the provisions of the Convention and of the additional protocols apply to “everyone”.²⁰³ All provisions of the ECHR can therefore be invoked by children, parents or other legal representatives before the European Court.²⁰⁴ A claim will only be declared admissible, however, when it concerns an

¹⁹⁹ *Id.*, para. 98.

²⁰⁰ Cf. *infra*, pp. 51 – 58.

²⁰¹ Cf. *infra*, pp. 48 – 51.

²⁰² Kilkelly, 2001, pp. 312 – 313.

²⁰³ Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, art. 1.

²⁰⁴ Kilkelly, 1999, pp. 1 – 17.

alleged violation of “the rights set forth in the Convention or the Protocols thereto. (...)”²⁰⁵ Rights that have been invoked to protect children include the right to a fair trial (art. 6 ECHR), the right to an education (art. 2 protocol no. 1), the right to respect for private and family life (art. 8 ECHR), the prohibition of discrimination (art. 14 ECHR) and the protection of property (art. 1 protocol no. 1).²⁰⁶

The protection of the rights of the child is therefore less comprehensive under the ECHR than under the CRC. Not all the rights of the CRC are protected under the ECHR. Nevertheless, the CRC plays a role in the judgments of the Court. The ECtHR has referred to the CRC and to the clarifications made by the Committee on the Rights of the Child when interpreting the rights of the ECHR.²⁰⁷ The CRC has thus been used to interpret the ECHR in cases that concerned children.

With respect to the present case, it can be concluded that the right of the child to play is not explicitly recognised under the European Convention on Human Rights or its additional protocols.

It could be argued however that article 8 ECHR, namely the right to respect for a person’s private and family life, could be interpreted as including the right of the child to play.

The European Court of Human Rights, and before the European Commission, has always refused to give an exhaustive definition of the concept ‘private life’. Article 8 ECHR has, however, always been interpreted broadly. Already in 1976, the European Commission concluded that the right to respect for private life “comprises also, to a certain degree, the right to establish and to develop relationships with other human beings, especially in the emotional field for the development and fulfilment of one’s own personality.”²⁰⁸ In later decisions and judgments this vision has been confirmed and examples have been given of what the concept of ‘private life’ includes. In 2003,

²⁰⁵ Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, art. 34.

²⁰⁶ European Court of Human Rights, *Fact Sheet – Children’s Rights*, March 2011, available at http://www.echr.coe.int/NR/rdonlyres/31806882-25E0-4A1E-ABE3-7C67D1710BBB/0/FICHES_Droits_des_enfants_EN.pdf (last visited 18 June 2012).

²⁰⁷ Kilkelly, 2001, pp. 315 – 324.

²⁰⁸ *X v. Iceland* (N° 6825/74) Decision 18.5.1976.

the ECtHR stated for instance that article 8 ECHR “also protects a right to identity and personal development, and the right to establish and develop relationships with other human beings and the outside world and it may include activities of a professional or business nature. There is, therefore, a zone of interaction of a person with others, even in a public context, which may fall within the scope of ‘private life’.”²⁰⁹

As pointed out before²¹⁰, playing is important for the mental, emotional, social and physical development of the child. Furthermore, during play activities a child interacts with its peers and with adults and develops relationships with them. Since playing is characteristic for children and should be part of their everyday life, it can also be considered as being part of the identity of the child. It can therefore be argued that the right to play should fall within the scope of protection offered by the right to respect for a person’s private life under article 8 ECHR.

On the other hand, the question can also be asked whether the right of the child to play could be taken into consideration by the Court in its reasoning in case neighbours would bring their complaint about noise nuisance before the European Court.

In this context article 53 ECHR could play a role. This article states “Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a party.”²¹¹ The ECHR can therefore not be construed as limiting or derogating from any of the rights of the child, protected under the CRC.²¹²

Furthermore, a State, when fulfilling its obligations under article 8 ECHR, enjoys a certain margin of appreciation.²¹³ The CRC could play a role in the assessment by the Court of the exercise of this margin of appreciation. The CRC is namely ratified by all member States of the Council of Europe. Furthermore the Court has recognised the importance of the CRC on several occasions. It has stated for example that “The human

²⁰⁹ *Peck v. the United Kingdom*, no. 44647/98 (Sect. 4), ECHR 2003-I – (28.1.03), para. 57.

²¹⁰ Cf. *supra*, pp. 4 – 8.

²¹¹ Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, art. 53.

²¹² Ferrer Riba, 2010, p. 22.

²¹³ *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, ECHR 2003-VIII – (8.7.03), para. 96; cf. *supra*, p. 32.

rights of children and the standards to which all States must aspire in realising these rights for all children are set out in the United Nations Convention on the Rights of the Child.”²¹⁴

It therefore seems possible that the European Court would take these elements into account when deciding whether the noise level caused by playing children has reached the minimum level of severity or, for instance, needs to be considered as being part of normal daily life.

²¹⁴ *Sahin v. Germany* [GC], no. 30943/96, ECHR 2003-VIII – (8.7.03), para. 39.

Chapter 3. The threat of the right to protection against noise to the right of the child to play. The case of Belgium

3.1 Introduction

In Belgium judges had to decide on several occasions whether a day-care centre, a playground or a youth centre had to close down after neighbours complained about the noise children made when they were playing. Already since 1999, juridical proceedings are being carried out with respect to this topic.²¹⁵ Furthermore, in other conflicts concerning the noise of children a lawsuit was avoided after reaching an amicable settlement. These cases show the tension between the right of the child to play and the right to a quiet surrounding of other residents.

In this section first the implementation of article 31 CRC in Belgium, as reviewed in the reporting process to the Committee on the Rights of the Child, will be discussed. Then the Belgian judgments concerning the complaints about the noise of children playing will be examined. A specific focus will be put on the legal grounds that have been invoked in these cases. Thereafter the reaction of child rights organisations and the political reactions to these judgments will be discussed and evaluated.

3.2 Article 31 CRC in the reviewing process by the Committee on the Rights of the Child

The implementation of article 31 CRC in general and the right of the child to play in particular has been discussed in the context of the last review of Belgium by the Committee on the Rights of the Child in 2010.

Problems concerning the lack of implementation of article 31 CRC in Belgium were pointed out in several alternative reports. The Committee itself has also raised some concerns with regard to the implementation of the right to play in Belgium. In this section these comments will be discussed.

²¹⁵ De Ridder, Hilde, Roosemont, Michel, Teughels, Anne, Gellynck, Lut & Penninckx, Tony, *Onderzoek van juridische gronden voor klachten ten aanzien van (vrijtjids)infrastructuur voor jeugdwerkinitiatieven en sportclubs, alsook ten aanzien van kinderopvanginitiatieven*, 2006, report received by email from Gerda Van Roelen, responsible team youth policies, Agency Social-Cultural Work for Youth and Adults, 9 February 2012, p. 18.

In their alternative report on the implementation of the Convention on the Rights of the Child in Belgium, NGOs have pointed out the tension between the right of the child to play and the right to a quiet surrounding of other residents in the context of the discussion of article 31 CRC and the use of public space. They stated “that there is a growing intolerance to the use of public space by children and adolescents. (...) The NGOs are therefore concerned that a general climate of intolerance towards children and young people, also in the media, may lie at the basis of the reduction of their rights.”²¹⁶ One of the examples that is given of this intolerance, is the increasing number of lawsuits against playgrounds and day-care centres. The NGOs recommend that the government would make it a priority to develop a policy in order to combat the growing intolerance towards children and youth.²¹⁷

The Children’s Rights Commissioners of the Flemish and the French Communities also provided the Committee on the Rights of the Child with an alternative report.²¹⁸ The specific problem of complaints about the noise of children playing is not mentioned in this report. The Commissioners chose to concentrate on 12 specific subjects and the right to play is not discussed separately. It is mentioned however with regard to specific categories of children. The Commissioners point out, for instance, the lack of possibilities to play for asylum-seeking children and for children in precarious income families.²¹⁹

In light of the principles of the CRC, it is also important to examine how the implementation of the right to play is perceived by children themselves. This conception

²¹⁶ Kinderrechtencoalitie Vlaanderen & Coordination des ONG pour les Droits de l’Enfant, *Alternative Report by the NGOs on the Implementation of the UN Convention on the Rights of the Child in Belgium*, 1 March 2010, available at

<http://www.crin.org/docs/Alternative%20Report%20by%20the%20NGO's%20on%20the%20implementation%20of%20the%20UN%20CRC%20in%20Belgium%20-%202010.pdf> (last visited 5 June 2012), p.

57.

²¹⁷ *Id.*, p. 58.

²¹⁸ Children’s Rights Commissioners of the Flemish and the French Communities, *Report to the Committee on the Rights of the Child*, February 2010, available at

http://www.crin.org/docs/Belgian_Children's_Commissioners_Report_to_CRC2010_EN.pdf (last visited 5 June 2012).

²¹⁹ *Id.*, pp. 22 and 26.

can be found in the alternative report submitted by Belgian children to the Committee.²²⁰

They point out the importance of the possibility to play.²²¹ The report states that “It is all about the time and space to play, and the physical and mental access to games and leisure. A lot depends on factors such as the financial threshold, the availability of the parents or the physical accessibility.”²²²

The children also point out the importance of participation with regard to the right to play. In the context of schools, for instance, they want to be heard concerning the conception of the playground.²²³ With respect to town councils as well children find it important to be heard and “to participate in talks and thinking processes” about inter alia streets and playgrounds.²²⁴ They ask to “participate actively in projects for the construction of playgrounds” when it concerns their neighbourhood.²²⁵

Children also point out the problem of insufficient playgrounds. They ask for example for more play areas at school.²²⁶ In general, they find that there is a lack of space and opportunities to play outside in Belgium.²²⁷ The children conclude that they want to have their own meeting space “by having more parks, playgrounds and playing fields in areas where children live. We need space outside to play, move around and make friends. For example we want a playground in every village; by existing spaces being maintained, by having more and colourful equipment in the parks, and by renewing them once in a while; by ensuring that the park is fun and feels like a playground: hills, fountains, plants,... and enough benches for our parents so they like coming to the park with us; free drinking fountains in the park”²²⁸.

²²⁰ UNICEF Belgium, Flemish Youth Council & Youth Council of the French Community (eds.), *This is what we think about it! Second report by the Belgian children to the Committee on the Rights of the Child*, 2010, available at <http://www.crin.org/docs/ChildrenReportBelgium.pdf> (last visited 5 June 2012).

²²¹ *Id.*, p. 7.

²²² *Ibid.*

²²³ *Id.*, p. 15.

²²⁴ *Ibid.*

²²⁵ *Id.*, p. 21.

²²⁶ *Id.*, p. 16.

²²⁷ *Id.*, p. 21.

²²⁸ *Ibid.*

The right of the child to play is discussed rather extensively in the report submitted by Belgian children. This shows that it is an important issue for children and that problems still need to be overcome in order to achieve a full realisation of this right.

Although the concluding observations of the Committee on the Rights of the Child on Belgium mention the right of the child to play, not all the concerns raised in the alternative reports are treated by the Committee.²²⁹

With regards to the implementation of article 31 CRC in Belgium, the Committee mentions that it “welcomes the initiatives taken at community level to improve children’s access to rest, leisure and cultural and artistic activities. However, the Committee notes the insufficient availability of playgrounds and informal meeting and recreational areas for children, especially in rural and remote areas, and the limited involvement of children in the decisions taken in this regard at municipal level. The Committee expresses further concern that children from the most disadvantaged families, children in reception centres, children with disabilities and children in psychiatric care are often deprived access to any leisure activities. The Committee notes with concern that the “sport cheques” in the French Community which benefitted families with a precarious income have been abolished. The Committee urges the State party to strengthen its efforts to guarantee the right of all children to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts and to fully involve children in any decision-making process in this regard. In particular, the Committee calls upon the State party to ensure that children in reception centres, children with disabilities and children in psychiatric care are provided with adequate and accessible playground spaces to exercise play and leisure activities. The Committee further calls upon the State party to provide disadvantaged families with the necessary resources to enable their children to fully exercise their rights in accordance to article 31 of the Convention.”²³⁰

²²⁹ United Nations Committee on the Rights of the Child, *Concluding Observations: Belgium*, CRC/C/BEL/CO/3-4, 18 June 2010, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/430/77/PDF/G1043077.pdf?OpenElement> (last visited 24 April 2012).

²³⁰ *Id.*, paras. 70 – 71.

The right to protection against noise nuisance, or as the NGOs call it “the general climate of intolerance towards children and young people”²³¹ as a possible threat to the exercise of the rights under article 31 CRC is not mentioned in the concluding observations on Belgium, nor has it been mentioned in any of the other concluding observations of the Committee on the Rights of the Child.

3.3 The Belgian judgements concerning complaints about the noise of children playing

In this part, the focus will be put on the specific threat to the right of the child to play as it occurs in Belgium, namely on the juridical proceedings as a consequence of complaints about the noise of children playing. Unfortunately only two of the judgements that were mentioned in the news were published. These cases will be discussed in this section. This analysis clarifies the arguments at the basis of the decisions of Belgian courts and tribunals. To complement this analysis, a report commissioned by the government will be discussed. This report clarifies the possible legal grounds that can be invoked in this type of cases.

3.3.1 A discussion of the Belgian judgments

In a first case, decided by the District Court (“Vredegerecht”) of Mechelen, the establishment of a nursery with a maximum capacity of 21 children in an apartment building was at stake.²³²

This case concerned in the first place the legality of a decision made by the general assembly of co-owners that prohibited the presence of the nursery in the building. The judge decided that this decision was not taken in accordance with the law and was therefore not valid.

²³¹ Kinderrechtencoalitie Vlaanderen & Coordination des ONG pour les Droits de l’Enfant, *Alternative Report by the NGOs on the Implementation of the UN Convention on the Rights of the Child in Belgium*, 1 March 2010, available at <http://www.crin.org/docs/Alternative%20Report%20by%20the%20NGO's%20on%20the%20implementation%20of%20the%20UN%20CRC%20in%20Belgium%20-%202010.pdf> (last visited 5 June 2012), p. 57.

²³² Vred. Mechelen 18 March 2009, *Tijdschrift voor appartements- en immorecht*, 2009, pp. 29 – 32.

The judge then had to decide whether a nursery could be situated in the concerned apartment building. On the basis of the regulation of the building with regard to co-ownership the judge stated that the nursery could remain under the condition that no abnormal or excessive nuisance was caused to the neighbours. The judge decided that the boundaries of normal nuisance among neighbours were not exceeded. The judge argued that disturbance caused by parents bringing and picking up their children was only temporary. Furthermore, there was a lack of evidence of noise nuisance as a consequence of the nursery. As a result, the nursery could remain open as long as no abnormal or excessive nuisance was caused.

Where the first case was decided on the basis of the legality of decisions made by the general assembly of co-owners and on the basis of the doctrine concerning abnormal or excessive nuisance, the second published case was decided on the basis of the regulation concerning urban planning.

This case concerned complaints made by residents about the noise of children on a municipal area in Lauwe, a borough of the city Menen.²³³ The residents argued that activities in this area caused several types of nuisance, mainly noise nuisance. As a consequence, residing in this environment would no longer be possible.

The concerned area consisted of a building (a type of farm) and a playground that were being used as a youth centre. It was situated in an area designated as a residential area according to the urban plan developed by the Region. At this centre, activities were organised during the holidays (“speelpleinwerking”). Parties were organised there as well.

In the first instance, the Tribunal of First Instance of Kortrijk considered that these activities were not in conformity with the urban plan since they cannot be reconciled with the immediate surroundings, namely private housing. As a consequence activities could no longer be organised during the holidays. Parties, namely gatherings after 20h00 with loud music, could no longer take place in the building. The playground furthermore had to be closed down every evening at 18h00. The use of the farm as a

²³³ Rb. Kortrijk 10 January 2006, *Tijdschrift voor Jeugdrecht en Kinderrechten*, 2009, afl. 2, pp. 167 – 168.

municipal youth centre in general was not at stake in this case so that other activities could still be organised by youth groups.

This judgment led to a question, on 26 January 2006, to the then Flemish minister of finances, budget and urban planning Dirk Van Mechelen.²³⁴ It concerned the interpretation of the concept ‘residential area’ by the judge of the Tribunal of First Instance of Kortrijk. The minister stated that the separation of powers needs to be respected but pointed out that judges need to interpret regulations and circular letters correctly. He stated that playgrounds and youth centres are directly connected with the function of ‘living’. Therefore, they do belong in a residential area. With regard to the playground, the minister stated that this is part of the residential function in an area. It is very difficult to automatically conclude that there is excessive and non acceptable nuisance on the condition that the scale of the playground is adapted to the area. Furthermore, according to the minister this case should not have been decided on the basis of urban planning. He considers this a case that should be dealt with on the basis of the doctrine concerning nuisance caused by neighbours or on the basis of environmental law.

This reasoning can also be found in the judgment that was issued after the appeal by the city Menen.²³⁵ The Court of Appeal of Gent considered that some other elements were of importance. The activities organised during the holidays only took place on weekdays. Between 7h00 and 8h30 and after 18h00 activities were organised inside the building. Furthermore, no music was played outside, excluding the music played to gather all the children. With regard to the organised parties, the Court noted that these are limited to 12 per year, with a maximum of 2 per month. Furthermore, doors and windows needed to remain closed and a noise control system had been installed.

In an interim judgement, the Court ordered precautionary measures in order to be able to take an informed decision. It decided that an independent and neutral third party

²³⁴ Flemish Parliament, *Vraag om uitleg van de heer Gilbert Bossuyt tot de heer Dirk Van Mechelen, Vlaams minister van Financiën en Begroting en Ruimtelijke Ordening, over de gevolgen van een rechterlijke uitspraak dat een jeugdcentrum met speelpleinwerking niet thuishoort in een woongebied zoals omschreven in het Koninklijk Besluit van 28 december 1972 (Question for explanation posed in the Flemish Parliament concerning the consequences of a judgment stating that a youth centre does not belong in a residential area)*, 26 January 2006, available at <http://www.vlaamsparlement.be/Proteus5/showVIVerslag.action?id=423334> (last visited 5 June 2012).

²³⁵ Gent 30 June 2006, *Tijdschrift voor Jeugdrecht en Kinderrechten*, 2009, afl. 2, pp. 168 – 171.

should evaluate the situation objectively during a certain period of time, namely during the activities organised during the summer holidays. The Court also designated a sound expert who had to evaluate the noise nuisance in case of new complaints of noise nuisance. The third party and the sound expert would also evaluate the parties organised during the summer holidays and the fact that the playground had to close after 18h00. The Court of Appeal of Gent issued its final judgement on 25 May 2007.²³⁶ In this judgement the Court concluded that the playground/ youth centre could be reconciled with the designation of 'residential area' since in this type of area the interrelation between playing and living should, as much as possible, be the starting point. According to the Court this case did not concern a problem of urban planning. The Court furthermore determined that no abnormal or excessive nuisance (in comparison to normal nuisance caused by neighbours) could be established. As a consequence the organised activities did not have to be limited.

3.3.2 The legal grounds invoked to support complaints against noise made by children

The discussed judgements show that several legal grounds can be and have been invoked in cases concerning the noise of children playing. In 2006, four ministers of the Flemish government at the time, namely Inge Vervotte (then minister of welfare, public health and family), Dirk Van Mechelen (then minister of finances, budget and urban planning), Kris Peeters (then minister of public works, energy, the environment and nature) and Bert Anciaux (then minister of culture, youth, sports and Brussels) established a working group of jurists to research the possible legal grounds for these complaints, to prepare possible counterarguments and to determine whether new legislation is necessary.²³⁷ This research was done on the basis of existing case law and on-going cases. The possible legal grounds mentioned in the report will be discussed in this section.

²³⁶ Gent 25 May 2007, *Tijdschrift voor Jeugdrecht en Kinderrechten*, 2009, afl. 2, pp. 171 – 172.

²³⁷ De Ridder, Hilde, Roosemont, Michel, Teughels, Anne, Gellynck, Lut & Penninckx, Tony, *Onderzoek van juridische gronden voor klachten ten aanzien van (vrijtijds)infrastructuur voor jeugdwerkinitiatieven en sportclubs, alsook ten aanzien van kinderopvanginitiatieven*, 2006, report received by email from Gerda Van Roelen, responsible team youth policies, Agency Social-Cultural Work for Youth and Adults, 9 February 2012.

Firstly, neighbours have based their arguments on urban planning and on plans that designate a destination to a certain area.²³⁸

A detailed discussion of the existing laws and regulations concerning urban planning in Belgium would go beyond the scope of this research. In light of the discussed judgments some remarks however need to be made.

The second case, namely the case concerning a municipal youth centre and playground in the city of Lauwe, was, in the first instance, decided on the basis of non-compliance of these services with the residential area they were situated in.²³⁹ According to the applicable Royal Decree, it is necessary that all non-residential functions, such as playgrounds, day-care centres and youth centres, need to be compatible with the immediate surroundings in a residential area.²⁴⁰ This needs to be judged ad hoc and while taking into account the specific circumstances of the case. It is the authority that delivers a permit for a certain establishment that needs to motivate the compatibility of the establishment with the surroundings.

In this context, however, also the obligations of Belgium under article 31 CRC need to be taken into consideration and need to be fulfilled. This includes inter alia that play areas need to be accessible. It therefore seems necessary that they are established in residential areas in order to enable children of residents easy access to these areas. As a consequence, the vision of the Court of Appeal of Gent²⁴¹ and of the former Flemish minister Dirk Van Mechelen, namely that these cases do not concern a problem of urban planning, seem compatible with the obligations under article 31 CRC. Furthermore play and recreation are important for the development of children and youth. Since children need to be considered as members of the community, areas for play and recreation should be considered as being part of the non-residential functions that are compatible with the surroundings in a residential area.²⁴²

²³⁸ *Id.*, pp. 5 – 11.

²³⁹ Rb. Kortrijk 10 January 2006, *Tijdschrift voor Jeugdrecht en Kinderrechten*, 2009, afl. 2, pp. 167 – 168.

²⁴⁰ Koninklijk Besluit betreffende de inrichting en de toepassing van de ontwerp-gewestplannen en de gewestplannen (Royal Decree concerning the arrangement and application of draft regional plans and regional plans), 28 December 1972, art. 5.

²⁴¹ Gent 25 May 2007, *Tijdschrift voor Jeugdrecht en Kinderrechten*, 2009, afl. 2, pp. 171 – 172.

²⁴² Children's Rights Commissioner of the Flemish Community, *Advies. Klachten over geluidshinder door kinderen en jongeren (Advice. Complaints about noise nuisance by children and youth)*, 16

In light of the State's obligations under article 31 CRC, urban planning should not be used as an argument in the context of a complaint against the noise of children. Children should not take the consequences of urban planning where their rights have not been taken into account. On the contrary, it is up to the Belgian authorities to take the right of the child to play into consideration at the stage of urban planning. This obligation has been confirmed by the Committee on the Rights of the Child.²⁴³

Secondly, complaints can be based on the norms concerning noise nuisance.²⁴⁴ The VLAREM-regulations (“Vlaams reglement betreffende de milieuvergunning” or “Flemish regulation concerning environmental licence”) are relevant in this context. Title II of this regulation concerns noise nuisance.²⁴⁵ These norms were developed in the Flemish Region to implement the federal framework law of 18 July 1973 concerning the control of noise nuisance.²⁴⁶ The norms however are only applicable to certain establishments. For each category of establishment levels of noise are developed that need to be used as guidance in the assessment of the produced noise. They are not maximum norms. Furthermore they are not applicable to noise made by children. In 2002, the Flemish government developed a Decree to implement a directive relating to the assessment and management of environmental noise of the European Union.²⁴⁷ As a consequence, “noise that is caused by the exposed person himself, noise from domestic activities, noise created by neighbours, noise at work places or noise inside means of transport or due to military activities in military areas” cannot be considered as

November 2006, available at

http://www.kinderrechten.be/IUSR/adviezen//Adviezen_pdf/2005_2006/2005-2006_1_Advies_Lawaaihinder_site_pdf.pdf (last visited 10 June 2012), p. 6.

²⁴³ Cf. supra, pp. 16 – 17 and 19.

²⁴⁴ De Ridder, Hilde, Roosemont, Michel, Teughels, Anne, Gellynck, Lut & Penninckx, Tony, *Onderzoek van juridische gronden voor klachten ten aanzien van (vrijtijds)infrastructuur voor jeugdwerkinitiatieven en sportclubs, alsook ten aanzien van kinderopvanginitiatieven*, 2006, report received by email from Gerda Van Roelen, responsible team youth policies, Agency Social-Cultural Work for Youth and Adults, 9 February 2012, pp. 11 – 14.

²⁴⁵ Vlaams reglement betreffende de milieuvergunning. Titel II. Besluit van de Vlaamse Regering van 1 Juni 1995 houdende algemene en sectorale bepalingen inzake milieuhygiëne (Flemish regulation concerning environmental licence. Title II. Decree of the Flemish government concerning general and sectoral provisions with regard to environmental health), 1 June 1995.

²⁴⁶ Wet betreffende de bestrijding van de geluidshinder (Law concerning the control of noise nuisance), 18 July 1973.

²⁴⁷ Directive 2002/49/EC of the European Parliament and of the Council relating to the assessment and management of environmental noise, 25 June 2002.

environmental noise.²⁴⁸ The legislator therefore never meant to regulate the noise of children with the VLAREM-norms. Nevertheless, they are used as a reference in judgements. The noise levels caused by children are compared with these norms since there is no other framework to refer to. An example of this misuse can be found in the judgement of the Court of Appeal of Gent where a sound expert was appointed.²⁴⁹ These norms as such, however, could not be used to sanction the noise of children playing.²⁵⁰

On the other hand, in the case law of the European Court of Human Rights, the level of produced noise, namely the produced decibels, are also taken into consideration to assess whether the minimum level of severity is reached and whether there is a violation of article 8 ECHR.²⁵¹

A third possibility is the use of communal regulations concerning noise nuisance as a legal ground for a complaint.²⁵² On the basis of the New Municipalities Act, city councils have the possibility to establish a regulation that is only applicable to their community.²⁵³ The content of this regulation differs in every city. It is possible to include provisions concerning noise nuisance that are also applicable to the noise of children playing. As a consequence of the existence of such a regulation, measures can be ordered. Noise could for example lead to a warning, to the ordering of insulating

²⁴⁸ Besluit van de Vlaamse Regering inzake de evaluatie en de beheersing van het omgevingslawaai en tot wijziging van het besluit van de Vlaamse Regering van 1 juni 1995 houdende de algemene en sectorale bepalingen inzake milieuhygiëne (Decree of the Flemish government concerning the assessment and management of environmental noise and to amend the Decree of the Flemish government of 1 June 1995 concerning general and sectoral provisions with regard to environmental health), 22 July 2005, art. 1.

²⁴⁹ Gent 30 June 2006, *Tijdschrift voor Jeugdrecht en Kinderrechten*, 2009, afl. 2, pp. 168 – 171; Fiers & Ramaen, 2009, p. 175.

²⁵⁰ De Ridder, Hilde, Roosemont, Michel, Teughels, Anne, Gellynck, Lut & Penninckx, Tony, *Onderzoek van juridische gronden voor klachten ten aanzien van (vrijetijdsinfrastructuur voor) jeugdwerkinitiatieven en sportclubs, alsook ten aanzien van kinderopvanginitiatieven*, 2006, report received by email from Gerda Van Roelen, responsible team youth policies, Agency Social-Cultural Work for Youth and Adults, 9 February 2012, p. 14.

²⁵¹ Cf. supra, pp. 32 – 34.

²⁵² De Ridder, Hilde, Roosemont, Michel, Teughels, Anne, Gellynck, Lut & Penninckx, Tony, *Onderzoek van juridische gronden voor klachten ten aanzien van (vrijetijdsinfrastructuur voor) jeugdwerkinitiatieven en sportclubs, alsook ten aanzien van kinderopvanginitiatieven*, 2006, report received by email from Gerda Van Roelen, responsible team youth policies, Agency Social-Cultural Work for Youth and Adults, 9 February 2012, p. 14.

²⁵³ Nieuwe Gemeentewet (New Municipalities Act), 24 June 1988, art. 119 and 135§2.

measures and even to the closing of the concerned establishment, such as a day-care centre.

Moreover, the mayor of a city, on the basis of the same law, has the possibility to act in an individual case when the public order has been disturbed and can take all necessary measures to restore this public order.²⁵⁴

It needs to be noted however that these communal regulations have also been used in a positive way. The regulation of the city of Dendermonde, for instance, as a consequence of the above discussed case, now includes that noise cannot be considered as nuisance when it is caused by playing children.²⁵⁵ Other cities have followed this example.

A fourth possibility is to rely on the rules concerning liability, as provided in article 1382 civil code.²⁵⁶ However, it will be difficult to provide the necessary proof for the application of this provision. It is necessary to demonstrate the existence of fault, harm and a causal relationship. A fault can consist of not taking the necessary precautionary measures to avoid nuisance where this was possible. It can therefore consist of not foreseeing sufficient insulation in a house where a day-care centre is established. To prove the causal relationship, it needs to be shown that there would not be any harm if the misconduct would not have occurred.

More relevant is the doctrine of nuisance caused by neighbours, namely a doctrine of liability without fault.²⁵⁷ This doctrine is based on article 544 of the Belgian Civil Code, which concerns the right to enjoy your own property as long as this property is not used contrary to existing laws or regulations. The doctrine was developed by the jurisprudence. Several conditions need to be met to invoke it successfully.²⁵⁸ These conditions have been established by the Court of Cassation (“Hof van Cassatie”). Firstly, the nuisance needs to be exceptional. This means that it needs to exceed the

²⁵⁴ *Id.*, art. 135§2, 2°.

²⁵⁵ City Dendermonde. General police regulation. 6 July 2011, art. 1.5.3.

²⁵⁶ De Ridder, Hilde, Roosemont, Michel, Teughels, Anne, Gellynck, Lut & Penninckx, Tony, *Onderzoek van juridische gronden voor klachten ten aanzien van (vrijetijds)infrastructuur voor jeugdwerkinitiatieven en sportclubs, alsook ten aanzien van kinderopvanginitiatieven*, 2006, report received by email from Gerda Van Roelen, responsible team youth policies, Agency Social-Cultural Work for Youth and Adults, 9 February 2012, p. 15.

²⁵⁷ *Ibid.*

²⁵⁸ Fiers & Ramaen, 2009, p. 176.

normal nuisance caused by neighbours. There does not necessarily need to be misconduct by the neighbours. Secondly there needs to be a causal relation between the excessive nuisance and specific damage. Finally, it is necessary that the nuisance is caused by someone in the immediate surroundings.

It will be decided on a case by case basis whether these conditions have been met. The final judgment will therefore depend on the discretionary power of the judge. Some judges have decided that playing children cause noise nuisance that exceeds the boundaries of normal nuisance in a residential area. As a consequence, one day-care centre was forced to move to another location, while another centre could no longer take care of children during the holidays.²⁵⁹ Other judges, such as the district court of Mechelen in the first discussed case²⁶⁰ and the Court of Appeal of Gent in the second case²⁶¹, decided that the caused nuisance did not reach the necessary threshold.

It is interesting to examine this doctrine in light of the jurisprudence of the European Court of Human Rights concerning article 8 ECHR, as discussed above.²⁶² In its judgments the European Court namely requires one condition that also needs to be met under the Belgian doctrine, namely the fact that the nuisance needs to attain a minimum level of severity. As concluded previously, based on the existing case law of the European Court, it is unlikely that this condition is met when it comes to the noise of children playing.²⁶³

A Belgian tribunal came to the same conclusion in an unpublished case quoted in the report commissioned by four former ministers of the Flemish government. With respect to a day-care centre, the Tribunal of First Instance of Dendermonde concluded that “the shouting and cheering of children when having a good time, the crying in case of pain and sorrow cannot be considered as unbearable and abnormal nuisance caused by neighbours. This day-care centre and the additional “noise nuisance” needs to be considered as normal nuisance caused by neighbours in a residential area, just as it

²⁵⁹ Melkbeek, 2011, p. 171.

²⁶⁰ Cf. supra, pp. 48 – 49.

²⁶¹ Cf. supra, pp. 50 – 51.

²⁶² Cf. supra, pp. 31 – 35.

²⁶³ Cf. supra, p. 39.

would be when a family with a lot of children would become the neighbours of the plaintiffs, day and night, week in week out.”²⁶⁴

Lastly, specific rules, such as those concerning co-ownership, rules of procedure or a lease contract, can be applicable in a particular case.²⁶⁵

The question can also be posed what role the Convention on the Rights of the Child plays in this context. In 2006, the working group noted in its report that in none of the cases that were known to them, a reference was made to the CRC.²⁶⁶ In the two cases that were published after 2006 and that are discussed above, the CRC is not discussed either.

If article 31 CRC would have been invoked by the parties concerned, the judge would have had to examine whether this article has direct effect in the Belgian juridical order. Two conditions need to be met to conclude that a treaty provision has direct effect in the national legal order.²⁶⁷ Firstly, the State Parties to the treaty need to have the will to give direct effect to the treaty. The wording of the CRC and the evolution from a Declaration to a Convention on the Rights of the Child, suggest that the State Parties at least did not have the intention to exclude direct applicability of the CRC.²⁶⁸ The second condition includes that the invoked, particular norm needs to be clear and complete so that no further clarification of the norm is necessary.²⁶⁹ It is up to a judge to examine whether this second condition is fulfilled when a provision of the CRC is invoked in a specific case.²⁷⁰ So far, no judge has had to deal with the question of direct applicability of article 31 CRC.²⁷¹ If article 31 CRC would be considered as having direct effect, it would have priority over every national norm.²⁷²

²⁶⁴ De Ridder, Hilde, Roosemont, Michel, Teughels, Anne, Gellynck, Lut & Penninckx, Tony, *Onderzoek van juridische gronden voor klachten ten aanzien van (vrijtijds)infrastructuur voor) jeugdwerkinitiatieven en sportclubs, alsook ten aanzien van kinderopvanginitiatieven*, 2006, report received by email from Gerda Van Roelen, responsible team youth policies, Agency Social-Cultural Work for Youth and Adults, 9 February 2012, p. 18.

²⁶⁵ *Id.*, pp. 15-16.

²⁶⁶ *Id.*, p. 21.

²⁶⁷ Verhellen, 2008, p. 15.

²⁶⁸ *Ibid.*

²⁶⁹ *Ibid.*

²⁷⁰ Defrancq, 2009, p. 114.

²⁷¹ *Id.*, p. 115.

²⁷² Verhellen, 2008, p. 14.

Even if the direct effect of this article would not be accepted, it could play a role in the reasoning of courts, namely in the assessment of the interests of the involved children and to weigh the interests of all parties involved.²⁷³

3.4 Reactions to the complaints about the noise of children in Belgium

3.4.1 Reactions of child rights organisations

Child rights organisations have reacted to the discussed cases. Firstly, concerns were raised in the alternative report submitted to the Committee on the Rights of the Child, as discussed above.²⁷⁴ Secondly, several institutions that protect and promote the rights of children in Belgium, more particularly in Flanders, have developed opinions and position statements on the issue. They have emphasised the rights of children since children cannot defend their own interests because of their lack of legal competence.

The Children's Rights Commissioner of the Flemish Community already in 2006 developed an advice with regard to complaints about the noise of children.²⁷⁵ Then Commissioner Ankie Vandekerckhove expresses her concern about the growing intolerance towards children and about the misuse of existing regulations, such as the VLAREM-norms and the regulation concerning urban planning, to complain about the noise of children.²⁷⁶ The Commissioner rejects the application of norms of noise levels to the noise of children.²⁷⁷ She advocates for the inclusion of children in the community and in the city scene.²⁷⁸ The Commissioner furthermore states that “she cannot accept that normal (playful) behaviour is more and more considered as nuisance” and she asks

²⁷³ De Ridder, Hilde, Rosemont, Michel, Teughels, Anne, Gellynck, Lut & Penninckx, Tony, *Onderzoek van juridische gronden voor klachten ten aanzien van (vrijtijds)infrastructuur voor jeugdwerkinitiatieven en sportclubs, alsook ten aanzien van kinderopvanginitiatieven*, 2006, report received by email from Gerda Van Roelen, responsible team youth policies, Agency Social-Cultural Work for Youth and Adults, 9 February 2012, p. 21.

²⁷⁴ Cf. supra, pp. 44 – 47.

²⁷⁵ Children's Rights Commissioner of the Flemish Community, *Advies. Klachten over geluidshinder door kinderen en jongeren (Advice. Complaints about noise nuisance by children and youth)*, 16 November 2006, available at

http://www.kinderrechten.be/IUSR/adviezen//Adviezen_pdf/2005_2006/2005-2006_1_Advies_Lawaaihinder_site_pdf.pdf (last visited 10 June 2012).

²⁷⁶ *Id.*, p. 2.

²⁷⁷ *Id.*, p. 5.

²⁷⁸ *Id.*, p. 9.

that the authorities do not give in to the demands and expectations of adults that complain about the noise caused by children.²⁷⁹

The Flemish Children's Rights Coalition (Kinderrechtencoalitie Vlaanderen) as well has issued a position paper on noise nuisance caused by children.²⁸⁰ In this paper, just like the Commissioner did in 2006, the organisation raises its concerns about the growing intolerance towards children. It also argues that the complaints are often based on legislation that is not meant to regulate the behaviour of children and that existing regulations on noise, such as the discussed VLAREM-norms, should not be applied to the noise of children. It asks that the provisions of the Convention on the Rights of the Child will be applied with respect to this topic. In order to achieve this, the organisation proposes that concrete action will be taken in the form of the adoption of a law that establishes that noise caused by children cannot lead to complaints by neighbours. The Coalition is of the opinion that the example of Germany, which will be discussed below²⁸¹, should be followed.

3.4.2 Reactions of the Flemish government and parliament

Not only child rights organisations have reacted to the complaints about noise made by children. The Flemish parliament and government as well have taken action.

The Flemish government has partly followed the vision of the child rights organisations, namely by deciding not to include specific norms on noise nuisance caused by children in the VLAREM-regulations that are discussed above.²⁸² The idea is that children cannot be regulated and cannot be limited to making a certain level of noise.

²⁷⁹ *Ibid.*

²⁸⁰ Flemish Children's Rights Coalition, *Position paper on noise nuisance*, 2012, available at <http://www.kinderrechtencoalitie.be/NewsFlashDetail.aspx?id=493> (last visited 10 June 2012).

²⁸¹ Cf. *infra*, p. 68.

²⁸² Cf. a.o. Flemish Parliament, *Vraag om uitleg van mevrouw Mieke Vogels tot mevrouw Joke Schauvliege, Vlaams minister van Leefmilieu, Natuur en Cultuur, over de aanpassing van de VLAREM-normen inzake 'lawaaihinder' veroorzaakt door kinderen en Vraag om uitleg van mevrouw Katrien Schryvers tot mevrouw Joke Schauvliege, Vlaams minister van Leefmilieu, Natuur en Cultuur, over lawaaihinder door spelende kinderen (Questions for explanation posed in the Flemish Parliament concerning 'noise nuisance' caused by children)*, VI. Parl. St. 1464 (2010-2011) and 1487 (2010-2011), 22 March 2011, available at http://docs.vlaamsparlement.be/docs/handelingen_commissies/2010-2011/c0m179lee24-22032011.pdf (last visited 25 June 2012), p. 5.

So far, the examples of the Netherlands and Germany, which have adopted specific legislation concerning noise caused by children, have not been followed in Belgium. Other ideas and objectives however have been put forward to deal with the issue of complaints about noise made by children.

Already in the youth policy of the Flemish government of 2002, the issue of neighbours lodging complaints about playing children was raised.²⁸³

It is stated that the mentality of people needs to be changed in order to increase tolerance towards children and in order to create an integrated space where also children and youth would have their own place and would have their interests preserved.²⁸⁴

To improve the position of and the vision towards children and youth in society, specific objectives are formulated in the youth policy. One section of goals is dedicated to youth and urban planning. It is stated that children, just like adults, have a right to the public space and a right to participate in urban planning.²⁸⁵ One of the concrete policy actions that is formulated is the development and application of participation methods to involve children and youth in urban planning and to question them on their needs and desires.²⁸⁶ Furthermore, it is pointed out that those obligations under the Convention on the Rights of the Child that are important in the context of urban planning need to be met.²⁸⁷ For a description of these obligations, the policy refers to an advice given by the then Children's Rights Commissioner of the Flemish Community, Ankie Vandekerckhove. In 2001, she was asked to give advice with respect to the effect on children of a Flemish Decree on urban planning. She points out that "in the Convention on the Rights of the Child, several articles are relevant in the context of urban planning. The key article is article 31. (...) Besides that article, articles 12 and 13, with respect to the right to freedom of speech, participation and information, are relevant. State Parties to the Convention have an obligation to respect the views of children and to give them the possibility to seek, receive and impart information and ideas. Furthermore article 3

²⁸³ Flemish Government, *Jeugdbeleidsplan (youth policy)*, VI. Parl. St. 1264 (2001-2002), May 2002, available at <http://docs.vlaamsparlament.be/docs/stukken/2001-2002/g1264-1.pdf> (last visited 25 June 2012), p. 16.

²⁸⁴ *Ibid.*

²⁸⁵ *Id.*, p. 62.

²⁸⁶ *Id.*, p. 63.

²⁸⁷ *Ibid.*

is important. State Parties have an obligation to take the best interests of the child into account as a primary consideration.”²⁸⁸

In the most recent youth policy, developed for the period 2010 – 2014, the importance of play is emphasised as well.²⁸⁹ It is stated that playing is important for especially young children to learn, to make contacts and just to enjoy themselves. As a consequence, one of the concrete objectives of the youth policy is increasing the opportunities and accessibility of play for children under the age of 6.²⁹⁰

Attention is also given to the needs of older children and youth with respect to public space. They have a need, inter alia, to meet each other, to play sports and to associate.²⁹¹ Furthermore, it is emphasised that the different needs and expectations of all the users of public space need to be reconciled.²⁹² It is pointed out that there is often a lack of tolerance towards children and youth who take up their position in the public space. The problems concerning noise nuisance as a consequence of playing children are given as an example.²⁹³ Specific actions are proposed to deal with these issues. It is for example stated that children and youth should be more involved in the process of urban planning.²⁹⁴ Another objective is to continue campaigns of information and sensitisation in order to increase tolerance towards children and youth in the public space.²⁹⁵ These campaigns are not only directed at the public but also at local authorities who need to deal with complaints.

These goals are repeated in the action plan concerning the rights of the child of the Flemish government for the period 2011 – 2014, which clarifies and complements the

²⁸⁸ Child Right’s Commissioner of the Flemish Community, *Advies van het Kinderrechtencommissariaat inzake ruimtelijke ordening en minderjarigen naar aanleiding van de resolutie van 10 januari 2001 betreffende de ruimtelijke ordening en de nood aan beleidsaandacht voor kinderen en jongeren (Advice concerning urban planning and minors)*, Vl. Parl. St. 678 (2000 – 2001), 24 April 2001, available at <http://docs.vlaamsparlement.be/docs/stukken/2000-2001/g678-1.pdf> (last visited 25 June 2012), p. 5.

²⁸⁹ Flemish Government, *Vlaams Jeugdbeleidsplan 2010 – 2014, ingediend onder de coördinatie van de heer Pascal Smet, Vlaams minister van Onderwijs, Jeugd, Gelijke Kansen en Brussel (Youth Policy Flemish Government 2010 – 2014)*, Vl. Parl. St. 976 (2010-2011), 18 February 2011, available at <http://docs.vlaamsparlement.be/docs/stukken/2010-2011/g976-1.pdf> (last visited 25 June 2012), p. 43.

²⁹⁰ *Id.*, p. 45.

²⁹¹ *Id.*, p. 76.

²⁹² *Id.*, p. 80.

²⁹³ *Id.*, p. 80.

²⁹⁴ *Id.*, pp. 80 – 81.

²⁹⁵ *Id.*, p. 81.

youth policy.²⁹⁶ One of the objectives is the improvement of education about the rights of the child under the CRC, both towards children and adults, in order to increase awareness, knowledge and application of these rights.²⁹⁷ Local authorities as well will be made aware of the right to engage in play and recreational activities.²⁹⁸

The idea is that making people aware of the fact that children have an actual right to play, which is protected in the CRC, could increase the tolerance towards playing children in the public space and towards the noise children make.

The Flemish Youth Council, the official advisory body of the Flemish government with respect to children and youth, has given advice with respect to this action plan. They advocate the development of a regulation that would ensure that the noise of children would no longer be able to be considered as noise nuisance.²⁹⁹ This recommendation has not yet been followed. The Youth Council furthermore asks that the system of communal regulations as a possibility to combat nuisance caused by youth, will be evaluated.³⁰⁰

The Child Right's Commissioner of the Flemish Community as well has given its advice with respect to the action plan. He advocates for the promotion of mediation or conciliation as methods to deal with cases of children and youth that cause nuisance.³⁰¹

This way, the position of all persons involved is taken into consideration. Furthermore, minors are not only pictured in a negative way. They are also made aware of their responsibilities and are involved in looking for possible solutions.

This seems to be a good suggestion. If a solution could be found through mediation or conciliation, juridical proceedings could be avoided. Furthermore, it could have as a consequence that the negative stereotyping of children as being the cause of nuisance could be avoided. The development of a regulation to oblige persons to first try to reach an agreement through alternative dispute settlement could therefore have a positive

²⁹⁶ Flemish Government, *Nota van de Vlaamse Regering. Vlaams Actieplan Kinderrechten 2011-2014, ingediend door de heer Pascal Smet, Vlaams minister van Onderwijs, Jeugd, Gelijke Kansen en Brussel (Flemish Action Plan Children's Rights 2011 – 2014)*, VI. Parl. St. 1238 (2010-2011), 27 July 2011, available at <http://docs.vlaamsparlement.be/docs/stukken/2010-2011/g1238-1.pdf> (last visited 25 June 2012).

²⁹⁷ *Id.*, pp. 22 – 25.

²⁹⁸ *Id.*, p. 45.

²⁹⁹ *Id.*, pp. 54 – 55.

³⁰⁰ *Id.*, p. 55.

³⁰¹ *Id.*, p. 69.

influence. If this agreement could not be reached, however, people would still have a right to start juridical proceedings.

On 6 April 2011, the Flemish parliament also took an initiative with the adoption of a resolution.³⁰² A resolution is not binding but it has political authority. It includes recommendations by the Flemish parliament towards the government with respect to measures or policy options.³⁰³ The objective of the adopted resolution is to reach more tolerance towards playing children. With the resolution the parliament wants to give a signal that children should be able to be children and that children happen to make noise.³⁰⁴ The parliament therefore asks the Flemish government to “1° set up a sensitisation campaign in order to increase tolerance towards playing children; 2° request the local authorities to make it a priority to create sufficient, safe and high quality play areas for children in consultation with the broad youth sector.”³⁰⁵

These recommendations seem to be a confirmation of the objectives included in the most recent youth policy and action plan.

It is clear that action has been taken to increase tolerance towards playing children and towards the noise this causes. The action however consists of a non-binding resolution and of objectives included in the Flemish youth policy and action plan. It is therefore necessary that the next step is the implementation of these ideas and objectives, the evaluation of their impact and, if necessary, the adoption of other measures.

³⁰² Flemish Parliament, *Voorstel van resolutie van de dames Katrien Schryvers, Else De Wachter, Danielle Godderis-T'Jonck en Mieke Vogels, de heer John Crombez, mevrouw Tinne Rombouts en de heer Peter Gysbrechts betreffende het sensibiliseren tot verdraagzaamheid voor spelende kinderen. Tekst aangenomen door de plenaire vergadering (Proposal of Resolution concerning the sensitisation of tolerance towards playing children. Text adopted by the plenary)*, VI. Parl. St. 1071 (2010–2011), 6 April 2011, available at <http://docs.vlaamsparlement.be/docs/stukken/2010-2011/g1071-1.pdf> (last visited 25 June 2012).

³⁰³ <http://www.vlaamsparlement.be/vp/informatie/begrippenlijst/resolutie.html> (last visited 13 June 2012).

³⁰⁴ Flemish Parliament, *Voorstel van resolutie van de dames Katrien Schryvers, Else De Wachter, Danielle Godderis-T'Jonck en Mieke Vogels, de heer John Crombez, mevrouw Tinne Rombouts en de heer Peter Gysbrechts betreffende het sensibiliseren tot verdraagzaamheid voor spelende kinderen. Tekst aangenomen door de plenaire vergadering (Proposal of Resolution concerning the sensitisation of tolerance towards playing children. Text adopted by the plenary)*, VI. Parl. St. 1071 (2010–2011), 6 April 2011, available at <http://docs.vlaamsparlement.be/docs/stukken/2010-2011/g1071-1.pdf> (last visited 25 June 2012), p. 2.

³⁰⁵ *Ibid.*, p. 3.

One of the steps that has been taken to execute this resolution, was the development of the Charter “Playing is a child’s right”. This Charter was launched on 28 March 2012 by ‘Goe Gespeeld!’ (‘Well Played!’), a project developed by several youth organisations with the support of the Flemish government.³⁰⁶ The project advocates the possibility for children to play. The developed Charter consists of 8 principles. The idea is that all local authorities in Flanders should sign the Charter and include the 8 principles in their policies. The Charter reads: “In our community: 1. Children play in all public spaces; 2. Children play in green areas; 3. Playing does not constitute nuisance; 4. Children can move safely; 5. There is enough space for organised youth work; 6. Local policy makers create a tolerant climate towards playing children; 7. Every policy measure takes the impact on children and youth into consideration; 8. Children are involved in the designing of public space.”³⁰⁷

On 24 April 2012, the Flemish minister of education, youth, equal opportunities and Brussels, Pascal Smet, was asked whether other steps would be taken to execute the resolution of 2011.³⁰⁸ The minister pointed out several actions that have been supported and taken by the Flemish government.

A sensitisation campaign was launched on the same day as the fifth ‘Buitenspeeldag’,³⁰⁹ (“playing outside-day”). This campaign was the ‘Goe Gespeeld!’ (‘Well Played!’) Campaign. Apart from the developed Charter, also a Child Party (with only children as members) was established to monitor the implementation of the Charter in local policies. The minister points out that the campaign now needs to be evaluated and, if necessary, adjusted or expanded. The minister furthermore states that, after the local elections of October 2012, he will write a letter to the new local authorities to ask them

³⁰⁶ <http://www.goegespeeld.be/over-het-project-goe-gespeeld> (last visited 13 June 2012).

³⁰⁷ <http://www.goegespeeld.be/sites/default/files/news/goegespeeldcharter.pdf> (last visited 13 June 2012).

³⁰⁸ Flemish Parliament, *Vraag om uitleg van mevrouw Katrien Schryvers tot de heer Pascal Smet, Vlaams minister van Onderwijs, Jeugd, Gelijke Kansen en Brussel, over het sensibiliseren tot verdraagzaamheid voor spelende kinderen (Question for explanation posed in the Flemish Parliament concerning increasing the tolerance towards playing children)*, Vl. Parl. St. 1512 (2011-2012), 24 April 2012, available at <http://www.vlaamsparlement.be/Proteus5/showVIVerslag.action?id=664244> (last visited 13 June 2012).

³⁰⁹ This is one day in the year, first organised on 28 June 2008, where playing outside is promoted by organising activities for children and youth. This action is supported by the Flemish government. Cf. <http://www.buitenspeeldag.be/spelen-en-sporten-in-je-buurt> (last visited 13 June 2012).

to engage themselves to create play areas for children, based on the Goe Gespeeld!-Charter.

Moreover, at the end of 2012 the minister will give out a prize to the community with the strongest youth policy. The minister decided that the emphasis would be put on the strongest policy with respect to the right of the child to play.

The author of the question posed to the minister pointed out that all these actions are directed towards the local authorities and not towards individual citizens. In this regard, the minister does not give examples of concrete actions but says that after the local elections, it will be researched whether action towards individuals needs to be taken and can be taken in collaboration with the new local authorities.

3.5 An evaluation of the reactions to complaints about the noise of children

It is clear that several initiatives were taken by the Flemish government and parliament to respond to the issue of complaints about the noise of children playing. With these initiatives, the authorities look at the issue from the point of view of the rights of the child. The reactions of neighbours are seen as intolerant towards playing children and on several occasions references were made to the principles of the CRC in general and to the right of the child to play in particular.

The objectives of the youth policies, action plan and resolution appear to be in conformity with the rights of the child, as protected under the Convention on the Rights of the Child.

The principle of participation is taken into consideration if children would be involved in the development of urban planning. The Committee on the Rights of the Child has also pointed out this obligation in the context of article 31 CRC.³¹⁰

Furthermore, educating children and adults about the principles of the CRC, and more specifically about the right of the child to engage in play and recreational activities and the obligations this right entails, is a realisation of the obligations of the State under article 42. This article reads “States Parties undertake to make the principles and

³¹⁰ Cf. supra, pp. 16 – 17 and 19.

provisions of the Convention widely known, by appropriate and active means, to adults and children alike.”³¹¹

Moreover, the government refers to the importance of play for young children and to the needs of older children and youth with respect to public space. The government and the parliament therefore have taken measures to meet their obligations under article 31 CRC.

The developed objectives and measures now need to be implemented and evaluated in order to analyse whether they have made an impact on the reactions of adults towards children and on the implementation of the right of the child to play. The question can already be posed however whether further action, such as suggested by child rights organisations, is necessary or desirable in order to protect the right of the child to engage in play and recreation activities. The Netherlands and Germany could serve as an example since in these countries legislation was adopted concerning the noise caused by children. On the other hand, it needs to be considered whether these legislations are in conformity with the case law of the European Court of Human Rights with respect to noise nuisance.

The Netherlands was last reviewed by the Committee on the Rights of the Child in 2009.³¹² Although the right to play was not mentioned in the concluding observations of the Committee, NGOs had paid attention to this right in their alternative report.³¹³

The Dutch NGO Coalition had raised their concerns about the implementation of the right to play in the Netherlands by pointing out, inter alia, that “The attention that is given to public space and young people is increasingly based on feelings of insecurity and hindrance; the lack of available space, the quality of the layout of the spatial environment and the increasing intolerance towards children and young people are exerting an influence on their opportunities for play and assembly in their leisure

³¹¹ United Nations Convention on the Rights of the Child, 20 November 1989, art. 42.

³¹² United Nations Committee on the Rights of the Child, *Concluding Observations: Netherlands*, CRC/C/NLD/CO/3, 27 March 2009, available at <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-NLD-CO3.pdf> (last visited 17 June 2012).

³¹³ Dutch NGO Coalition for Children’s Rights, *Children’s Rights in the Netherlands. The third report of the Dutch NGO Coalition for Children’s Rights on the implementation of the Convention on the Rights of the Child*, July 2008, available at http://www.crin.org/docs/Netherlands_KRC_NGO_Report.pdf (last visited 25 June 2012).

time.”³¹⁴ In their report, the Coalition made some recommendations to the Dutch government. With respect to article 31 CRC, these recommendations include “8.8. Avoid the Nimby (not in my backyard) effect (...) 8.9. Communicate about youth in a positive manner. Make sure that the unfavourable image of badly-behaved teenagers and youths in the public spaces does not determine the image of the entire age category. Arrange for the positive participation of children and young people in the neighbourhood in which they grow up. 8.10. Prevent the growth of the claim culture: arrange for safety and challenges. Do not lose sight of the interests of the child (at play) when drawing up and interpreting national and local regulations in the various policy areas (...).”³¹⁵

Despite of these recommendations, the Committee on the Rights of the Child did not pay attention to article 31 CRC in their latest concluding observations with respect to the Netherlands.

Since then however, the Dutch government has taken actions with regard to the right to play and more specifically with regard to the noise children make when playing. Since 1 January 2010, a provision concerning the noise of children is included in the Decree concerning general rules for establishments and environmental management.³¹⁶ The Decree determines whether or not a certain establishment needs to obtain a licence or needs to declare its activities. It furthermore determines norms in order to prevent environmental pollution, including noise pollution. These norms are target requirements. In the context of this thesis, the most important aspect of this regulation is the fact that, when the noise level is measured, certain noises cannot be taken into account. These noises concern inter alia the voices of visitors in the open-air of an establishment for sports or recreation activities, the voices of children on an unheated or open-air area that is part of an establishment for primary education (from one hour before the beginning of the courses until one hour after the termination of the classes)

³¹⁴ *Id.*, p. 57.

³¹⁵ *Id.*, p. 60.

³¹⁶ Besluit algemene regels voor inrichtingen milieubeheer (Decree concerning general rules for establishments and environmental management), 19 October 2007.

and the voices of children on an unheated or open-air area that is part of a day-care centre for children.³¹⁷

During the last review of Germany, in 2004, by the Committee on the Rights of the Child, the problem of complaints against the noise of playing children was not mentioned by the Committee on the Rights of the Child, nor by NGOs in their alternative reports.³¹⁸

The government established in 2011 however that the number of complaints against noise made by children was increasing. As a response, legal action was taken. On 15 April 2011, the Bundesrat, the legislative body that represents the federal states at the federal level, adopted an amendment to the law on protection against harmful effects of air pollution, noise, vibration and related events. The amendment entails that noise caused in a kindergarten, day-care centre, playground or similar facility cannot be considered as causing adverse environmental effects and cannot be taken into account when noise levels are measured.³¹⁹ This noise can therefore no longer lead to complaints by neighbours. The law uses the words ‘im Regelfall’. In principle, complaints about noise caused by neighbours could no longer be accepted. In exceptional circumstances, a ruling in favour of neighbours could be possible however.³²⁰ It needs to be awaited what could constitute exceptional circumstances that would allow a complaint. The idea was that with this amendment a child-friendly society would be promoted.³²¹

The regulations in the Netherlands and Germany take the rights of the child as a starting point. The emphasis is put on allowing children to exercise their right to play.

³¹⁷ *Id.*, art. 2.18, para. 1, b., h. and i.

³¹⁸ United Nations Committee on the Rights of the Child, *Concluding Observations: Germany*, CRC/C/15/Add.226, 26 February 2004, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/405/24/PDF/G0440524.pdf?OpenElement> (last visited 17 June 2006).

³¹⁹ Gesetz zum Schutz vor schädlichen Umwelteinwirkungen durch Luftverunreinigungen, Geräusche, Erschütterungen und ähnliche Vorgänge (Bundes-Immissionsschutzgesetz – BImSchG) (Law on protection against harmful effects of air pollution, noise, vibration and related events), 15 March 1974, para. 22.

³²⁰ http://www.rehmnetz.de/Bau_Vergabe_Umwelt/Umweltrecht/Umweltrechtunterseiten/Der-neue--22-Abs.-1a-BImSchG-5619.html (last visited 17 June 2012).

³²¹ <http://beck-online.beck.de/Default.aspx?vpath=bibdata/reddok/becklink\1012348.htm&pos=2&hlwords=L%C3%A4rm%C3%90Kind#xhlhit> (last visited 17 June 2012).

The question can be posed however whether these legislations can be reconciled with the obligations of a State under the European Convention of Human Rights. The authorities, under article 8 ECHR, have a responsibility to protect individuals against noise nuisance under certain conditions. As discussed above, it seems unlikely that the noise of children playing would attain the minimum level of severity required by the European Court to trigger the threshold for the application of article 8 ECHR. However, this possibility cannot be excluded. It could therefore be a problem that neighbours would have no possibility to complain about the noise of playing children.

In the case of Germany, the possibility of complaints is left open with the use of the expression 'im Regelfall'.

In the Netherlands, this is not the case. The application of that regulation however is more limited than the German one. It does not apply, for instance, to a playground that is not attached to a primary school, day-care centre or establishment for sport or recreation activities. On the basis of the case law of the European Court of Human Rights, it is not likely that the Court would decide that a State would have an obligation to protect individuals against noise nuisance caused by establishments that fall within the scope of the Dutch regulation since for instance the noise of these establishments is limited to the day time.

Both regulations therefore seem to be in conformity with the case law of the European Court of Human Rights.

The only question that needs to be posed is whether such a regulation is desirable. Over-regulation and a juridification of social relations need to be avoided as much as possible. It can therefore be applauded that first a solution is tried to be reached through other ways than adopting new regulations.

Conclusion

In Belgium, as well as in other countries, a tension exists between the right of the child to play, and thus the right of the child to be a child, and the right of neighbours to enjoy their home and a quiet environment. As a consequence, the possibility of the child to play is being limited in some cases. The issue of people complaining about the noise of playing children can be considered as an example of NIMBY ('Not In My Backyard') syndrome.³²² On the one hand, people want to have facilities, day-care centres and playgrounds in their neighbourhood. On the other hand, they do not want these facilities to cause them any nuisance.

In order to let a child be a child and in light of the importance of playing for the development of the child, it is necessary that the right of the child to play is implemented. On the other hand, not only the Convention on the Rights of the Child needs to be taken into account. Belgium also needs to fulfil its obligations under the European Convention on Human Rights. The rights and interests of all parties involved therefore need to be reconciled. A balance needs to be found between the right of the child to play, protected by article 31 CRC, and the right to be protected against noise nuisance, under certain conditions stipulated under article 8 ECHR. It is furthermore necessary, in light of article 31 CRC, that complaints about and intolerance towards playing children cannot have as a consequence that children can no longer play outside.

The action that has been taken in Belgium as a response to the complaints about playing children, seems to be in conformity with both the CRC and the ECHR. Although the emphasis has been put on the right of the child to play, the possibility of a complaint about the noise of children is left open. This is necessary to comply with the obligations under the ECHR. According to the case law of the ECtHR a State has the obligation to protect individuals against noise nuisance under certain conditions. The adoption of a

³²² Flemish Government, *Jeugdbeleidsplan (youth policy)*, VI. Parl. St. 1264 (2001-2002), May 2002, available at <http://docs.vlaamsparlement.be/docs/stukken/2001-2002/g1264-1.pdf> (last visited 25 June 2012), p. 16; Flemish Children's Rights Coalition, *Position paper on noise nuisance*, 2012, available at <http://www.kinderrechtencoalitie.be/NewsFlashDetail.aspx?id=493> (last visited 10 June 2012), p. 1.

law that includes that the noise of children could never lead to a complaint therefore seems contrary to the case law of the European Court.

The Flemish government and parliament have chosen to put the focus on the sensitisation of adults and communities towards the rights of the child in general and the right to play in particular. It needs to be applauded that no new legislation has been developed. Over-regulation and a juridification of social relations need to be avoided. It is furthermore positive that the current approach focuses not only on formal play areas, such as playgrounds. Also informal play areas, such as the footpath and the woods, are included when people are made aware of the right to play. This is necessary since informal play areas are also included in the protection under article 31 CRC. The existing regulations in the Netherlands and Germany, however, only focus on certain formal play areas, where the noise of children can no longer lead to complaints.

It is now necessary that the ideas, included in youth policies, action plans and resolutions, are implemented and evaluated.

In the meantime, one suggestion can be made. It would be a positive development if legislation would be adopted to encourage or oblige the use of alternative dispute settlement to deal with cases of children and youth that cause nuisance. This has been suggested by the Child Right's Commissioner of the Flemish Community.³²³ As a consequence, minors could be more involved in the proceedings and could be made aware of their own responsibilities towards and their role in the community. A solution could be found without having to rely on norms that are not meant to regulate children's behaviour. These solutions should include less far reaching ones, such as putting up barriers, imposing insulation measures and adapt the size of facilities to the surrounding area, instead of closing down playgrounds and day-care centres. Furthermore, negative images about children causing nuisance could be avoided. If no solution could be found through, for instance, mediation, juridical proceedings could still be started. In that case, it would be up to a judge to weigh all the involved interests.

³²³ Flemish Government, *Nota van de Vlaamse Regering. Vlaams Actieplan Kinderrechten 2011-2014, ingediend door de heer Pascal Smet, Vlaams minister van Onderwijs, Jeugd, Gelijke Kansen en Brussel (Flemish Action Plan Children's Rights 2011 – 2014)*, VI. Parl. St. 1238 (2010-2011), 27 July 2011, available at <http://docs.vlaamsparlement.be/docs/stukken/2010-2011/g1238-1.pdf> (last visited 25 June 2012), p. 69.

The measures that have been taken so far in Belgium deserve approval since the emphasis is put on increasing tolerance towards (playing) children. It is necessary that a society is created where children are tolerated and have their own place. Children, as well as adults, are part of the community and have a right to take up their place in society. Juridical proceedings concerning the noise of playing children need to be avoided as much as possible. Otherwise children will be sent the message that they are not valuable members of society.

In this context, it also needs to be noted that article 31 CRC does not include possible limitations to the right of the child to play. The question can therefore be asked whether adults should not be tolerant towards playing children, no matter how high the decibels they produce.

Although this thesis focuses on the Belgian case and on the actions taken in Flanders, the discussed issue is not limited to Belgium.³²⁴ The right of the child to play is threatened in all cities and urban environments. Because of the obligations of every State in the world under the Convention on the Rights of the Child, apart from Somalia and the United States of America, a human rights approach is necessary to address this problem. The conclusions drawn in this thesis can therefore be extended to other European and non-European States and can be applied by local authorities.

In order to ensure that children all over the world will grow up to be contributing members to society, the right of the child to play needs to be respected and the exercise of this right needs to be tolerated. As stated already in 1926 by former British Prime Minister, Lloyd George, “Play is a child’s first claim on the community. No community can infringe that right without doing deep and enduring harm to the minds and bodies of its citizens.”

³²⁴ Cf. *supra*, pp. 1 – 2.

Bibliography

LITERATURE

- Baptiste, Nancy, 'Adults Need to Play, Too', in *Early Childhood Education Journal*, vol. 23, 1995, pp. 33 – 35.
- Davey, Ciara & Lundy, Laura, 'Towards Greater Recognition of the Right to Play: An Analysis of Article 31 UNCRC', in *Children & Society*, vol. 25, 2011, pp. 3 – 14.
- David, Paolo, 'Article 31: The Right to Leisure, Play and Culture', in André Alen, Johan Vande Lanotte, Eugeen Verhellen, Fiona Ang, Eva Berghmans & Mieke Verheyden (eds.), *A Commentary on the United Nations Convention on the Rights of the Child*. Leiden: Martinus Nijhoff Publishers, 2006, pp.i-33.
- Defrancq, Rozemie, 'Het recht om kind te zijn. Het recht op rust, spel en cultuur (artikel 13 IVRK)', in *Tijdschrift voor Jeugd en Kinderrechten*, afl. 2, 2009, pp. 111 – 115.
- Desgagné, Richard, 'Integrating Environmental Values into the European Convention on Human Rights', in *The American Journal of International Law*, vol. 89, 1995, pp. 263 – 294.
- Detrick, Sharon, *A commentary on the United Nations Convention on the Rights of the Child*. The Hague: Martinus Nijhoff Publishers, 1999.
- Ferrer Riba, Josep, 'Principles and Prospects for a European System of Child Protection', 2010, available at http://www.indret.com/pdf/729_en.pdf (last visited 18 June 2012).
- Fiers, Jan & Ramaen, Sophany, 'Speel maar in stilte!', in *Tijdschrift voor Jeugdrecht en Kinderrechten*, vol. 2, 2009, pp. 172 – 178.
- García San José, Daniel, *Environmental Protection and the European Convention on Human Rights*. Strasbourg: Council of Europe Publishing, 2005.

- Gómez-Arostegui, H. Tomas, ‘Defining private life under the European Convention on Human Rights by referring to reasonable expectations’, in *California Western International Law Journal*, vol. 35, 2004 – 2005, pp. 153 – 202.
- Hodgkin, Rachel & Newell, Peter, *Implementation Handbook for the Convention on the Rights of the Child. Article 31 - Child’s Right to leisure, play and culture*. UNICEF: Geneva, 2007.
- Kilkelly, Ursula, *The Child and the European Convention on Human Rights*. Aldershot: Dartmouth Publishing Company Limited, 1999.
- Kilkelly, Ursula, ‘The Best of Both Worlds for Children’s Rights? Interpreting the European Convention on Human Rights in the Light of the UN Convention on the Rights of the Child’, in *Human Rights Quarterly*, vol. 23, 2001, pp. 308 – 326.
- Lester, Stuart & Russell, Wendy, *Children’s right to play: An examination of the importance of play in the lives of children worldwide. Working Paper No. 57*. The Hague: Bernard van Leer Foundation, 2010.
- Melkbeek, Christine, ‘Zijn die spelende kinderen daar alweer? Kunnen en mogen kinderen nog lawaai maken?’, in *Tijdschrift voor Jeugdrecht en Kinderrechten*, vol. 3, 2011, pp. 169 – 172.
- Shelton, Dinah, ‘Human rights and the environment: What specific environmental rights have been recognized?’, in *Denver Journal of International Law and Policy*, vol. 35, 2006, pp. 129 – 171.
- Staelens, Valentina, ‘Geluidshinder door nachtvluchten versus mensenrechten’, in *Nieuw Juridisch Weekblad*, vol. 61, 2004, pp. 218 – 227.
- United Nations, *Legislative History of the Convention on the Rights of the Child (Volume II)*. Geneva: Office of the United Nations High Commissioner for Human Rights, 2007.
- Van Gils, Jan, ‘The Child’s Right to Play: the Right to be a Child’, in A. Alen, H. Bosley, M. De Bie, J. Vande Lanotte, F. Ang, I. Delens-Ravier, M. Deplace, C. Herman, D. Reynaert, V. Staelens, R. Steel, M. Verheyde (eds.), *The UN Children’s Rights Convention: theory meets practice. Proceedings of the International Interdisciplinary Conference on Children’s Rights, 18-19 May 2006, Ghent, Belgium*. Antwerpen: Intersentia, 2007, pp. 359 – 375.

- Verdú Baeza, Jesús, 'Towards a Right to the Environment in Europe: Noise and Jurisprudence of the European Court of Human Rights', in *Bulletin of the Transilvania University of Braşov*, vol. 2 (51), 2009, pp. 219 – 226.
- Verhellen, Eugeen, 'Het Verdrag inzake de rechten van het kind meerderjarig. Enkele beschouwingen over de implementatie in België', in *Tijdschrift voor Jeugdrecht en Kinderrechten*, vol. 1, 2008, pp. 11 – 40.
- White, Robin C.A. & Ovey, Clare, *Jacobs, White and Ovey: The European Convention on Human Rights*. Oxford: Oxford University Press, 2010.

NEWSPAPER ARTICLES

- Karush Rogers, Teri, 'The noise children make', *The New York Times*, 6 July 2008, available at <http://www.nytimes.com/2008/07/06/realestate/06cov.html?pagewanted=all> (last visited 28 May 2012).
- The Local, 'Berlin to quash noise complaints caused by children', 4 August 2009, available at <http://www.thelocal.de/society/20090804-21017.html> (last visited 28 May 2012).
- Binnenlands Bestuur, 'Schoolpleinen dicht na klacht geluidsoverlast', 2 February 2010, available at <http://www.binnenlandsbestuur.nl/sociaal/nieuws/nieuws/schoolpleinen-dicht-na-klacht-geluidsoverlast.146671.lynkx/> (last visited 28 May 2012).
- The Local, 'Loud children no longer considered noise pollution', 16 February 2011, available at <http://www.thelocal.de/society/20110216-33155.html> (last visited 28 May 2012).
- Mail & Guardian, 'You want the right to play? Fine, just keep the noise down', 1 November 2011, available at <http://mg.co.za/article/2011-11-01-you-want-the-right-to-play-fine-just-keep-noise-down/> (last visited 28 May 2012).
- Ross, Corey, 'Children's play park leads to noise complaints', *Salisbury Journal*, 11 January 2012, available at http://www.salisburyjournal.co.uk/news/9464407.Children_s_play_park_leads_to_noise_complaints/ (last visited 28 May 2012).

INTERNET SITES

- http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (last visited 25 June 2012), website of the United Nations, status of the United Nations Convention on the Rights of the Child.
- <http://www.righttoplay.com/International/Pages/Home.aspx> (last visited 25 June 2012), website of the organisation ‘Right to Play’.
- <http://ipaworld.org/> (last visited 25 June 2012), website of the organisation ‘International Play Association’.
- [http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear_en\)/E2B77A8E67D53671C1257910003BED04?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/E2B77A8E67D53671C1257910003BED04?OpenDocument) (last visited 25 June 2012), website of the United Nations, statements of the Committee on the Rights of the Child at the opening of the fifty-eight session.
- <http://ec.europa.eu/environment/noise/greenpap.htm#situ> (last visited 25 June 2012), website of the European Commission describing the noise situation in the European Union.
- <http://www.euro.who.int/en/what-we-do/health-topics/environment-and-health/noise/facts-and-figures/health-effects-of-noise> (last visited 25 June 2012), website of the World Health Organisation describing the health effects of noise.
- http://www.gezondheid.be/index.cfm?fuseaction=art&art_id=76 (last visited 25 June 2012), website on health in Flanders describing the effects of noise on hearing.
- <http://www.vlaamsparlament.be/vp/informatie/begrippenlijst/resolutie.html> (last visited 13 June 2012), website of the Flemish parliament describing specific concepts.
- <http://www.goegespeeld.be/> (last visited 13 June 2012), website of ‘Goe Gespeeld!’ (‘Well Played!’).
- <http://www.buitenspeeldag.be/spelen-en-sporten-in-je-buurt> (last visited 13 June 2012), website of the ‘Buitenspeeldag’ (‘playing outside-day’).
- http://www.rehmnetz.de/Bau_Vergabe_Umwelt/Umweltrecht/Umweltrechtunterseit/en/Der-neue--22-Abs.-1a-BImSchG-5619.html (last visited 17 June 2012), website with articles on German Law.

- <http://beck-online.beck.de/Default.aspx?vpath=bibdata\reddok\becklink\1012348.htm&pos=2&hlwords=L%C3%A4rm%C3%90Kind#xhlhit> (last visited 17 June 2012), website with (information on) German legislation.

LEGISLATION

- TREATIES AND DECLARATIONS

- Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950.
- United Nations Declaration on the Rights of the Child, 20 November 1959.
- Declaration of the United Nations Conference on the Human Environment, 16 June 1972.
- United Nations Convention on the Rights of the Child, 20 November 1989.
- Organisation of African Unity African Charter on the Rights and Welfare of the Child, 11 July 1990.

- EUROPEAN UNION

- Directive 2002/49/EC of the European Parliament and of the Council relating to the assessment and management of environmental noise, 25 June 2002.

- NATIONAL LEGISLATION

Belgium

- Constitution.
- Koninklijk Besluit betreffende de inrichting en de toepassing van de ontwerp-gewestplannen en de gewestplannen (Royal Decree concerning the arrangement and application of draft regional plans and regional plans), 28 December 1972.
- Wet betreffende de bestrijding van de geluidshinder (Law concerning the control of noise nuisance), 18 July 1973.
- Nieuwe Gemeentewet (New Municipalities Act), 24 June 1988.

- Vlaams reglement betreffende de milieuvergunning. Titel II. Besluit van de Vlaamse Regering van 1 Juni 1995 houdende algemene en sectorale bepalingen inzake milieuhygiëne (Flemish regulation concerning environmental licence. Title II. Decree of the Flemish government concerning general and sectoral provisions with regard to environmental health), 1 June 1995.
- Besluit van de Vlaamse Regering inzake de evaluatie en de beheersing van het omgevingslawaai en tot wijziging van het besluit van de Vlaamse Regering van 1 juni 1995 houdende de algemene en sectorale bepalingen inzake milieuhygiëne (Decree of the Flemish government concerning the assessment and management of environmental noise and to amend the Decree of the Flemish government of 1 June 1995 concerning general and sectoral provisions with regard to environmental health), 22 July 2005.
- City Dendermonde. General police regulation, 6 July 2011.

The Netherlands

- Besluit algemene regels voor inrichtingen milieubeheer (Decree concerning general rules for establishments and environmental management), 19 October 2007.

Germany

- Gesetz zum Schutz vor schädlichen Umwelteinwirkungen durch Luftverunreinigungen, Geräusche, Erschütterungen und ähnliche Vorgänge (Bundes-Immissionsschutzgesetz – BImSchG) (Law on protection against harmful effects of air pollution, noise, vibration and related events), 15 March 1974.

PARLIAMENTARY WORK

- Belgian Chamber of Representatives, *Herziening van de Grondwet. Herziening van Titel II van de Grondwet om een artikel 24quater in te voegen betreffende de eerbiediging van het privé-leven. Verslag namens de Commissie voor de Herziening van de Grondwet, voor de Institutionele Hervormingen en voor de Regeling van Conflicten (Revision of the Constitution to insert an article 24quater concerning the protection of private life)*, Parl. St. Kamer nr. 997/5 (1992-1993), 20 October 1993, available at

[http://www.dekamer.be/doc/flwb/pdf/48/0997/48k0997005.pdf#search="997/5"](http://www.dekamer.be/doc/flwb/pdf/48/0997/48k0997005.pdf#search=)

(last visited 5 June 2012).

- Belgian Senate, *Herziening van title II van de Grondwet, door invoeging van een artikel 24bis betreffende de economische en sociale rechten. Tekst voorgesteld door de heren Stroobant en Taminiaux c.s. (Revision of Title II of the Constitution to insert an article 24bis concerning economic and social rights)*, Parl. St. Senaat nr. 100-2/3° (1992-1993), 9 June 1993, available at <http://www.senate.be/lexdocs/S0528/S05281151.pdf> (last visited 9 June 2012).

DOCUMENTS FLEMISH GOVERNMENT AND FLEMISH PARLIAMENT

- Child Right's Commissioner of the Flemish Community, *Advies van het Kinderrechtencommissariaat inzake ruimtelijke ordening en minderjarigen naar aanleiding van de resolutie van 10 januari 2001 betreffende de ruimtelijke ordening en de nood aan beleidsaandacht voor kinderen en jongeren (Advice concerning urban planning and minors)*, Vl. Parl. St. 678 (2000 – 2001), 24 April 2001, available at <http://docs.vlaamsparlement.be/docs/stukken/2000-2001/g678-1.pdf> (last visited 25 June 2012).
- Flemish Government, *Jeugdbeleidsplan (Youth policy)*, Vl. Parl. St. 1264 (2001-2002), May 2002, available at <http://docs.vlaamsparlement.be/docs/stukken/2001-2002/g1264-1.pdf> (last visited 25 June 2012).
- De Ridder, Hilde, Roosemont, Michel, Teughels, Anne, Gellynck, Lut & Penninckx, Tony, *Onderzoek van juridische gronden voor klachten ten aanzien van (vrijetijdsinfrastructuur voor) jeugdwerkinitiatieven en sportclubs, alsook ten aanzien van kinderopvanginitiatieven*, 2006, report received by email from Gerda Van Roelen, responsible team youth policies, Agency Social-Cultural Work for Youth and Adults, 9 February 2012.
- Flemish Parliament, *Vraag om uitleg van de heer Gilbert Bossuyt tot de heer Dirk Van Mechelen, Vlaams minister van Financiën en Begroting en Ruimtelijke Ordening, over de gevolgen van een rechterlijke uitspraak dat een jeugdcentrum met speelpleinwerking niet thuishoort in een woongebied zoals omschreven in het Koninklijk Besluit van 28 december 1972 (Question for explanation posed in the*

- Flemish Parliament concerning the consequences of a judgment stating that a youth centre does not belong in a residential area*), 26 January 2006, available at <http://www.vlaamsparlement.be/Proteus5/showVIVerslag.action?id=423334> (last visited 5 June 2012).
- Flemish Government, *Vlaams Jeugdbeleidsplan 2010 – 2014, ingediend onder de coördinatie van de heer Pascal Smet, Vlaams minister van Onderwijs, Jeugd, Gelijke Kansen en Brussel (Youth Policy Flemish Government 2010 – 2014)*, VI. Parl. St. 976 (2010-2011), 18 February 2011, available at <http://docs.vlaamsparlement.be/docs/stukken/2010-2011/g976-1.pdf> (last visited 25 June 2012).
 - Flemish Parliament, *Vraag om uitleg van mevrouw Mieke Vogels tot mevrouw Joke Schauvliege, Vlaams minister van Leefmilieu, Natuur en Cultuur, over de aanpassing van de VLAREM-normen inzake 'lawaaihinder' veroorzaakt door kinderen en Vraag om uitleg van mevrouw Katrien Schryvers tot mevrouw Joke Schauvliege, Vlaams minister van Leefmilieu, Natuur en Cultuur, over lawaaihinder door spelende kinderen (Questions for explanation posed in the Flemish Parliament concerning 'noise nuisance' caused by children)*, VI. Parl. St. 1464 (2010-2011) and 1487 (2010-2011), 22 March 2011, available at http://docs.vlaamsparlement.be/docs/handelingen_commissies/2010-2011/c0m179lee24-22032011.pdf (last visited 25 June 2012).
 - Flemish Parliament, *Voorstel van resolutie van de dames Katrien Schryvers, Else De Wachter, Danielle Godderis-T'Jonck en Mieke Vogels, de heer John Crombez, mevrouw Tinne Rombouts en de heer Peter Gysbrechts betreffende het sensibiliseren tot verdraagzaamheid voor spelende kinderen. Tekst aangenomen door de plenaire vergadering (Proposal of Resolution concerning the sensitisation of tolerance towards playing children. Text adopted by the plenary)*, VI. Parl. St. 1071 (2010–2011), 6 April 2011, available at <http://docs.vlaamsparlement.be/docs/stukken/2010-2011/g1071-1.pdf> (last visited 25 June 2012).
 - Flemish Government, *Nota van de Vlaamse Regering. Vlaams Actieplan Kinderrechten 2011-2014, ingediend door de heer Pascal Smet, Vlaams minister*

van Onderwijs, Jeugd, Gelijke Kansen en Brussel (Flemish Action Plan Children's Rights 2011 – 2014), VI. Parl. St. 1238 (2010-2011), 27 July 2011, available at <http://docs.vlaamsparlement.be/docs/stukken/2010-2011/g1238-1.pdf> (last visited 25 June 2012).

- Flemish Parliament, *Vraag om uitleg van mevrouw Katrien Schryvers tot de heer Pascal Smet, Vlaams minister van Onderwijs, Jeugd, Gelijke Kansen en Brussel, over het sensibiliseren tot verdraagzaamheid voor spelende kinderen (Question for explanation posed in the Flemish Parliament concerning increasing the tolerance towards playing children)*, VI. Parl. St. 1512 (2011-2012), 24 April 2012, available at <http://www.vlaamsparlement.be/Proteus5/showVIVerslag.action?id=664244> (last visited 13 June 2012).

INTERNATIONAL NON-BINDING INSTRUMENTS AND JURISPRUDENCE

- COMMITTEE ON THE RIGHTS OF THE CHILD

- United Nations Committee on the Rights of the Child, *Concluding Observations: Lebanon*, CRC/C/15/Add.54, 7 June 1996, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G96/169/34/PDF/G9616934.pdf?OpenElement> (last visited 22 April 2012).
- United Nations Committee on the Rights of the Child, *General guidelines for periodic reports*, CRC/C/58, 20 November 1996, available at <http://www.unhchr.ch/tbs/doc.nsf/0/e78f6fffd63fcca2c1256403005754a5?Opendocument> (last visited 16 April 2012).
- United Nations Committee on the Rights of the Child, *Concluding Observations: Japan*, CRC/C/15/Add.90, 24 June 1998, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G98/166/25/PDF/G9816625.pdf?OpenElement> (last visited 22 April 2012).
- United Nations Committee on the Rights of the Child, *Concluding Observations: Lithuania*, CRC/C/15/Add.146, 21 February 2001, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G01/408/34/PDF/G0140834.pdf?OpenElement> (last visited 21 April 2012).

- United Nations Committee on the Rights of the Child, *Concluding Observations: Mauritania*, CRC/C/15/Add.159, 6 November 2001, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G01/457/48/PDF/G0145748.pdf?OpenElement> (last visited 21 April 2012).
- United Nations Committee on the Rights of the Child, *Concluding Observations: Mozambique*, CRC/C/15/Add.172, 3 April 2002, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G02/409/97/PDF/G0240997.pdf?OpenElement> (last visited 21 April 2012).
- United Nations Committee on the Rights of the Child, *Concluding Observations: Guinea-Bissau*, CRC/C/15/Add.177, 13 June 2002, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G02/435/12/PDF/G0243512.pdf?OpenElement> (last visited 21 April 2012).
- United Nations Committee on the Rights of the Child, *Concluding Observations: Singapore*, CRC/C/15/Add.220, 27 October 2003, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/446/34/PDF/G0344634.pdf?OpenElement> (last visited 23 April 2012).
- United Nations Committee on the Rights of the Child, *General Comment No.5 (2003). General Measures of Implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)*, CRC/GC/2003/5, 27 November 2003, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/455/14/PDF/G0345514.pdf?OpenElement> (last visited 17 April 2012).
- United Nations Committee on the Rights of the Child, *Concluding Observations: Germany*, CRC/C/15/Add.226, 26 February 2004, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/405/24/PDF/G0440524.pdf?OpenElement> (last visited 17 June 2006).
- United Nations Committee on the Rights of the Child, *Report on the Thirty-Fifth Session*, CRC/C/137, 11 May 2004, available at [http://www.unhchr.ch/tbs/doc.nsf/0/8fd17ba0e5fe7dd8c1256ec90051a83c/\\$FILE/G0441537.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/8fd17ba0e5fe7dd8c1256ec90051a83c/$FILE/G0441537.pdf) (last visited 17 April 2012).

- United Nations Committee on the Rights of the Child, *Concluding Observations: Albania*, CRC/C/15/Add.249, 31 March 2005, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/408/44/PDF/G0540844.pdf?OpenElement> (last visited 23 April 2012).
- United Nations Committee on the Rights of the Child, *Concluding Observations: Norway*, CRC/C/15/Add.263, 21 September 2005, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/440/25/PDF/G0544025.pdf?OpenElement> (last visited 23 April 2012).
- United Nations Committee on the Rights of the Child, *Concluding Observations: Bosnia and Herzegovina*, CRC/C/15/Add.260, 21 September 2005, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/440/39/PDF/G0544039.pdf?OpenElement> (last visited 23 April 2012).
- United Nations Committee on the Rights of the Child, *Concluding Observations: Philippines*, CRC/C/15/Add.259, 21 September 2005, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/440/53/PDF/G0544053.pdf?OpenElement> (last visited 23 April 2012).
- United Nations Committee on the Rights of the Child, *Concluding Observations: Mongolia*, CRC/C/15/Add.264, 21 September 2005, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/440/18/PDF/G0544018.pdf?OpenElement> (last visited 23 April 2012).
- United Nations Committee on the Rights of the Child, *Concluding Observations: Denmark*, CRC/C/DNK/CO/3, 23 November 2005, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/451/11/PDF/G0545111.pdf?OpenElement> (last visited 23 April 2005).
- United Nations Committee on the Rights of the Child, *Concluding Observations: Mexico*, CRC/C/MEX/CO/3, 2 June 2006, available at <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.MEX.CO.3.pdf> (last visited 23 April 2012).
- United Nations Committee on the Rights of the Child, *Concluding Observations: Uzbekistan*, CRC/C/UZB/CO/2, 2 June 2006, available at [83](http://daccess-dds-

</div>
<div data-bbox=)

- ny.un.org/doc/UNDOC/GEN/G06/424/84/PDF/G0642484.pdf?OpenElement (last visited 23 April 2012).
- United Nations Committee on the Rights of the Child, *General Comment No.7 (2005). Implementing Child Rights in Early Childhood*, CRC/C/GC/7/Rev.1, 20 September 2006, <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/GeneralComment7Rev1.pdf> (last visited 9 March 2012).
 - United Nations Committee on the Rights of the Child, *Concluding Observations: Benin*, CRC/C/BEN/CO/2, 20 October 2006, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/448/45/PDF/G0644845.pdf?OpenElement> (last visited 23 April 2012).
 - United Nations Committee on the Rights of the Child, *Concluding Observations: Honduras*, CRC/C/HND/CO/3, 3 May 2007, available at http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.HND.CO.3_en.pdf (last visited 23 April 2012).
 - United Nations Committee on the Rights of the Child, *Concluding Observations: Maldives*, CRC/C/MDV/CO/3, 13 July 2007, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/432/55/PDF/G0743255.pdf?OpenElement> (last visited 23 April 2012).
 - United Nations Committee on the Rights of the Child, *Concluding Observations: Democratic Republic of Timor-Leste*, CRC/C/TLS/CO/1, 14 February 2008, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/404/72/PDF/G0840472.pdf?OpenElement> (last visited 23 April 2012).
 - United Nations Committee on the Rights of the Child, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, CRC/C/GBR/CO/4, 20 October 2008, available at <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf> (last visited 23 April 2012).
 - United Nations Committee on the Rights of the Child, *Concluding Observations: Netherlands*, CRC/C/NLD/CO/3, 27 March 2009, available at

- <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-NLD-CO3.pdf> (last visited 17 June 2012).
- United Nations Committee on the Rights of the Child, *Concluding Observations: France*, CRC/C/FRA/CO/4, 11 June 2009, available at <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-FRA-CO-4.pdf> (last visited 23 April 2012).
 - United Nations Committee on the Rights of the Child, *Concluding Observations: Bangladesh*, CRC/C/BGD/CO/4, 26 June 2009, available at http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.BGD.CO.4_en.pdf (last visited 23 April 2012).
 - United Nations Committee on the Rights of the Child, *Concluding Observations: The Plurinational State of Bolivia*, CRC/C/BOL/CO/4, 16 October 2009, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/455/32/PDF/G0945532.pdf?OpenElement> (last visited 23 April 2012).
 - United Nations Committee on the Rights of the Child, *Concluding Observations: El Salvador*, CRC/C/SLV/CO/3-4, 17 February 2010, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/406/86/PDF/G1040686.pdf?OpenElement> (last visited 23 April 2012).
 - United Nations Committee on the Rights of the Child, *Concluding Observations: Belgium*, CRC/C/BEL/CO/3-4, 18 June 2010, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/430/77/PDF/G1043077.pdf?OpenElement> (last visited 24 April 2012).
 - United Nations Committee on the Rights of the Child, *Concluding Observations: Angola*, CRC/C/AGO/CO/2-4, 11 October 2010, available at <http://www2.ohchr.org/english/bodies/crc/crcs55.htm> (last visited 24 April 2012).
 - United Nations Committee on the Rights of the Child, *Concluding Observations: Ukraine*, CRC/C/UKR/CO/3-4, 21 April 2011, available at http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.UKR.CO.3-4_en.pdf (last visited 24 April 2012).

- United Nations Committee on the Rights of the Child, *Concluding Observations: Singapore*, CRC/C/SGP/CO/2-3, 2 May 2011, available at <http://www2.ohchr.org/english/bodies/crc/crcs56.htm> (last visited 24 April 2012).
- United Nations Committee on the Rights of the Child, *Concluding Observations: Cambodia*, CRC/C/KHM/CO/2, 20 June 2011, available at <http://www2.ohchr.org/english/bodies/crc/crcs57.htm> (last visited 24 April 2011).
- United Nations Committee on the Rights of the Child, *Concluding Observations: Panama*, CRC/C/PAN/CO/3-4, 21 December 2011, available at <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.PAN.CO.3-4.pdf> (last visited 24 April 2012).

- OTHERS

- United Nations Office of the High Commissioner for Human Rights, *Manual on Human Rights Reporting under Six Major International Human Rights Instruments*, HR/PUB/91/1 (Rev.1), 1997, available at <http://www.unhcr.org/refworld/docid/428085252.html> (last visited 18 April 2012).
- World Health Organisation, *Guidelines for Community Noise*, 1999, available at <http://whqlibdoc.who.int/hq/1999/a68672.pdf> (last visited 27 May 2012).
- World Health Organisation, *Occupational and Community Noise*, Fact Sheet n° 258, February 2001, available at http://www.who.int/peh/Occupational_health/OCHweb/OSHpages/OSHDocuments/Factsheets/noise.pdf (last visited 27 May 2012).
- United Nations General Assembly, *A world fit for children*, A/RES/S-27/2, 11 October 2002, available at http://www.unicef.org/specialsession/docs_new/documents/A-RES-S27-2E.pdf (last visited 26 April 2012).
- UNICEF, *Sport, recreation and play*, August 2004, available at http://www.unicef.org/publications/index_23560.html (last visited 20 April 2012).
- European Court of Human Rights, *Fact Sheet – Children’s Rights*, March 2011, available at <http://www.echr.coe.int/NR/rdonlyres/31806882-25E0-4A1E-ABE3->

[7C67D1710BBB/0/FICHES Droits des enfants EN.pdf](#) (last visited 18 June 2012).

NATIONAL REPORTS, STUDIES AND OTHER INSTRUMENTS

- Children's Rights Commissioner of the Flemish Community, *Advies. Klachten over geluidshinder door kinderen en jongeren (Advice. Complaints about noise nuisance by children and youth)*, 16 November 2006, available at http://www.kinderrechten.be/IUSR/adviezen//Adviezen_pdf/2005_2006/2005-2006_1_Advies_Lawaaihinder_site_pdf.pdf (last visited 10 June 2012).
- Flemish Environmental Law Organisation, *Constitutional rights to an ecologically balanced environment*, V.V.O.R.-Report 2007/2, 2007, available at http://www.omgevingsrecht.be/sites/default/files/2007_the_right_to_an.pdf (last visited 26 May 2012).
- UK Children's Commissioner, *Report to the UN Committee on the Rights of the Child*, June 2008, available at http://www.niccy.org/uploaded_docs/UNCRC_REPORT_FINAL.pdf (last visited 25 June 2012).
- Dutch NGO Coalition for Children's Rights, *Children's Rights in the Netherlands. The third report of the Dutch NGO Coalition for Children's Rights on the implementation of the Convention on the Rights of the Child*, July 2008, available at http://www.crin.org/docs/Netherlands_KRC_NGO_Report.pdf (last visited 25 June 2012).
- Children's Rights Commissioners of the Flemish and the French Communities, *Report to the Committee on the Rights of the Child*, February 2010, available at http://www.crin.org/docs/Belgian_Children's_Commissioners_Report_to_CRC2010_EN.pdf (last visited 5 June 2012).
- Kinderrechtencoalitie Vlaanderen & Coördination des ONG pour les Droits de l'Enfant, *Alternative Report by the NGOs on the Implementation of the UN Convention on the Rights of the Child in Belgium*, 1 March 2010, available at [http://www.crin.org/docs/Alternative%20Report%20by%20the%20NGO's%20on%](http://www.crin.org/docs/Alternative%20Report%20by%20the%20NGO's%20on%20)

[20the%20implementation%20of%20the%20UN%20CRC%20in%20Belgium%20-%202010.pdf](#) (last visited 5 June 2012).

- UNICEF Belgium, Flemish Youth Council & Youth Council of the French Community (eds.), *This is what we think about it! Second report by the Belgian children to the Committee on the Rights of the Child*, 2010, available at <http://www.crin.org/docs/ChildrenReportBelgium.pdf> (last visited 5 June 2012).
- Flemish Children's Rights Coalition, *Position paper on noise nuisance*, 2012, available at <http://www.kinderrechtencoalitie.be/NewsFlashDetail.aspx?id=493> (last visited 10 June 2012).

CASE LAW

- EUROPEAN COURT OF HUMAN RIGHTS

- *X v. Iceland* (N° 6825/74) Decision 18.5.1976.
- *Peck v. the United Kingdom*, no. 44647/98 (Sect. 4), ECHR 2003-I – (28.1.03).
- *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, ECHR 2003-VIII – (8.7.03).
- *Sahin v. Germany* [GC], no. 30943/96, ECHR 2003-VIII – (8.7.03).
- *Moreno Gómez v. Spain*, no. 4143/02 (Sect. 4), ECHR 2004-X – (16.11.04).
- *Fägerskiöld - Sweden* (No 37664/04) Decision 26.2.2008 [Section III].
- *Borysiewicz v. Poland*, no. 71146/01 (Sect. 4) (Eng) – (1.7.08).
- *Galev and Others v. Bulgaria* - 18324/04 Decision 29.9.2009 [Section V].
- *Deés v. Hungary*, no. 2345/06 (Sect. 2) (Eng) – (9.11.10).
- *Mileva and Others v. Bulgaria*, nos. 43449/02 and 21475/04 (Sect. 5) (Eng) – (25.11.10).

- DOMESTIC CASE LAW (BELGIUM)

- Rb. Kortrijk 10 January 2006, *Tijdschrift voor Jeugdrecht en Kinderrechten*, 2009, afl. 2, pp. 167 – 168.

- Gent 30 June 2006, *Tijdschrift voor Jeugdrecht en Kinderrechten*, 2009, afl. 2, pp. 168 – 171.
- Gent 25 May 2007, *Tijdschrift voor Jeugdrecht en Kinderrechten*, 2009, afl. 2, pp. 171 – 172.
- Vred. Mechelen 18 March 2009, *Tijdschrift voor appartements- en immorecht*, 2009, pp. 29 – 32.