

DRAFT MODULE – COMPLAINTS ABOUT STUDY PROGRESS AND EXAMINATIONS (version May 2017)

© This module is published by the EduLaw project (573540-EPP-1-2016-1-BE-EPPKA2-CBHE-JP) funded by the European Commission. It is a module in a series examining the role of education law in the modernisation of education systems in Europe. Information for the modules are gathered from the education systems of the Flemish Community of Belgium, Lithuania, Poland, Russia, Belarus, Albania.

Please cite this publication as: VUB EduLaw team, Module on Complaints about Examinations, EduLaw project output, Belgium.

Table of Contents

LEARNING OBJECTIVES	1
INTRODUCTION	2
1. General principles of administrative law as applied in examinations	2
1. To view the examination documents	3
2. To speak with the teacher	3
3. The internal appeal procedure and decision.....	3
4. The procedure before the administrative court	3
2. Case study: examination disputes in educational institutions of the Flemish Community of Belgium 4	
2.1. Primary education	4
2.1.1 The decision of the class council to deliver or not the certificate of primary education	4
2.1.2 Consultation	4
2.1.3 Organized Administrative Appeals and the Appeals Commission	5
2.2. Secondary education	6
2.2.1. Student evaluation and examination in secondary education	6
2.2.2. Principles on setting up the internal Appeals Commission.....	8
2.2.3. Litigation before the Council of State.....	9
2.3. Higher education and the special administrative court for decisions on study progress in higher education	10
2.3.1. Internal Appeals Commission	10
2.3.2. The Council for Disputes about Decisions on Study Progress	11
2.3.3. The Council of State	11
Annex.....	12
1. The Flemish Community of Belgium	12
1.1. Legislation of the Flemish Community of Belgium	12
1.2. Example of case law of the Flemish Community of Belgium	12
1.3. Summaries of some cases of the Flemish Community of Belgium	12
2. Lithuania	13
3. Poland	13
4. The Russian Federation.....	13
5. Belarus	13
6. Albania.....	13
Glossary of legal terms	14

LEARNING OBJECTIVES

The student:

- understands the theoretical concepts
- understands the importance of procedures and procedural requirements applicable in examination complaints

- understands the general principles of administrative law applicable in examination complaints
- understands the difference between appealing a decision and annulment of a decision
- can explain and apply the general principles of administrative law and procedural requirements applicable in examination complaints dealt with by the courts of his/her country

INTRODUCTION

In the first part of this module, the general principles of administrative law applicable in study progress and examination complaints will be discussed and procedures explained.¹

In the subsequent parts of this module, the application of the general principles of administrative law will be applied on study progress and examination decisions and litigation in the education system of the Flemish Community of Belgium by way of case study.

The Government of the Flemish Community of Belgium approved on 4 April 2014 the Decree on the legal status of pupils in primary and secondary education and on participation at school². The Decree also regulated the legal status of pupils in examination complaints.

Schools are now obliged to set up an appeals commission with school and non-school members. The aim is to solve complaints about examinations within the school rather than in court.

Schools are required to communicate transparently about the evaluation of students. This includes i.a. the obligation of the class council to motivate B and C (fail) certificates in writing.³

When students/parents disagree with the evaluation of the class council, they should first speak with the director.

If the issue is not solved out, students/parents can appeal to the Appeals Commission at school that has the power to decide on the matter without the approval of the class council.

The secondary school is required to communicate regularly and timely during the school year about the study progress made by a student and remedial actions to be taken. The same applies to the planning of examinations, the communication of the examination results, the form of examinations (oral, written, presentation ...) and the learning outcomes that student must acquire.

1. General principles of administrative law as applied in examinations

Evaluations of students and examinations are part of everyday student life. However, study

¹ The module focuses on complaints about examination although there are other cause for concern the student can be dissatisfied about and submit a formal complaint, such as examination fraud, recognition of courses followed elsewhere, recognition of skills, recognition of foreign diploma's, etc. ...

² http://www.ond.vlaanderen.be/decretenbundel/documenten/2014_rechtspositie.htm

³ Decision of the Flemish Government on the codification of secondary education (Besluit van de Vlaamse Regering houdende de codificatie betreffende het secundair onderwijs), 17 December 2010 (B.S.24/06/2011); <http://www.ond.vlaanderen.be/edulex/database/document/document.asp?docid=14289>

progress does not always go according to plan and students sometimes fail an exam⁴ or evaluation. The principles of due process aim to protect the rights of the student from unlawful administrative decisions and include procedural protections.

1. To view the examination documents

If students disagree with the examination results, they - in most countries-, can file an appeal against that decision.

Students are entitled to view their examination documents. Multiple-choice tests are usually an exception to that rule.

If students received a fail grade but prove serious irregularities in the procedure of the examination, they can apply for the annulment of the grade.

2. To speak with the teacher

As a rule, students should first of all refer to their teachers, then to the ombudsman (higher education) or the person appointed by the institution.

Normally, the ombudsman is the appropriate contact for dealing with conflicts between teachers and students.

If students want to file an application for annulment of the examination, they have to meet the deadline laid down in the law or in the regulations of the institution following the publication of the assessment results.

Duly justified and motivated applications will then be processed.

3. The internal appeal procedure and decision

The internal appeals commission can uphold applications for an appeal against a fail decision if the students prove the facts.

In the procedure, student must be heard and be given the opportunity to comment.

4. The procedure before the administrative court

If the annulment of the examination grade is rejected, students can still refer to the administrative court to have the decision annulled.

⁴ In general, oral exams are public. Students have the right to be accompanied by a person of trust at the oral exam. Because of safety regulations, the maximum number of people in the audience can be limited.

2. Case study: examination disputes in educational institutions of the Flemish Community of Belgium⁵

2.1. Primary education⁶

2.1.1 The decision of the class council to deliver or not the certificate of primary education

The school board can deliver, upon the decision of the class council, a certificate of primary education to regular students. The class council assesses autonomously whether a regular student has achieved satisfactory the learning outcomes in order to obtain the certificate of primary education (Article 53 Decree Elementary Education).

A regular student is a student who complies with the admission requirements, attends the classes (apart from legitimate leave) and participates in the school activities (Article 20 Decree Elementary Education).

Every student who does not achieve satisfactory the learning outcomes of primary education is entitled to receive a written motivation and a statement with the number and type of school years he/she completed in primary education (Article 55 Decree Elementary Education).

The decision to grant the certificate of primary education is communicated to the parents before 30 June. The parents are deemed to have received that decision by 1 July at the latest (Article 55 Decree Elementary Education).

A student can remain in primary education for a maximum of 8 years. Admission to the eighth year, requires a favorable advice from the class council, but the final decision remains with the parents to decide whether or not their child remains in primary education (Article 19 §1 Decree of Elementary Education) or continues its learning process in secondary education. The student should be admitted by the admission class council of the secondary education institution (Article 6 §1 2^o Decision of the Flemish Government the Organization of Secondary Education). Alternatively, a student receives a certificate of primary education when he/she finishes successfully the first grade of secondary education (Article 41 Decision of the Flemish Government the Organization of Secondary Education).

2.1.2 Consultation

⁵ The elementary and secondary education system of the Flemish Community of Belgium has been organised into three distinct, main educational networks: (1) GO! (Onderwijs van de Vlaamse Gemeenschap) public schools of the Flemish Community funded by the Flemish Community and organised by a board and 28 school groups, composed of elementary and secondary schools, (2) public state –funded (‘subsidised official education’) organised by cities, municipalities and provinces subsidised by the Flemish Community with municipal and provincial councils as organising bodies, and (3) non-public state funded (‘subsidised private’) education organised by private-law organising bodies based on a specific denomination (Catholicism, Judaism, Protestantism, Islam) or a non-confessional philosophy of life or a specific pedagogical or educational principle (e.g. Steiner and Freinet schools), which are recognised and state funded (‘subsidised’) by the Flemish Community. The majority of non-public state funded schools belong to the Catholic educational network. The majority of pupils attend non-public state funded schools.

In the Brussels-Capital Region, schools using the Dutch language as language of instruction fall within the Flemish Community policy making.

⁶ Flemish education is divided into three levels: elementary education, secondary education and higher education. In addition, there is also continuing education. Elementary education (basisonderwijs) consists of pre-primary education (2.5 to 6-year olds) and primary education (6 to 12-year olds).

If parents disagree with the decision of the class council and the school, they can speak to the director within the deadline laid down in the school regulations. The director can not refuse the request for consultation. A written report is made of the consultation. After this consultation, the director (or his representative) can ask the class council to reconvene which can then confirm or modify its decision about the primary education certificate (Article 55 Decree of Elementary Education).

If the parents disagree with the new decision of the class council, the school will inform the parents in writing about the possibility and procedure of appeal (Article 55 Decree of Elementary Education).

2.1.3 Organized Administrative Appeals and the Appeals Commission

Parents who disagree with the class council on the refusal to deliver a primary education certificate may appeal that decision. The appeal procedure is laid down in the school regulations. However, parents can only appeal after consultation with the Director (Article 37/1 Decree Elementary Education).

When parents have first exhausted the consultation with the Director, they can appeal to the school board. They have to date and sign the appeal and describe the subject of the appeal, the facts and justification of the objections raised (Article 37/1 Decree Elementary Education).

The appeal is dealt with by the Appeals Commission and leads to:

- either the motivated rejection of the appeal on the grounds of inadmissibility as either: (a) the deadline for lodging the appeal in the school regulations was not respected, and / or (b) the appeal does not meet the formal requirements in the school regulations;
- either the confirmation of non-granting the certificate of primary education,
- either the award of the certificate of primary education (Article 37/2 Decree Elementary Education).

The appeals commission decides whether the decision taken is in accordance with the law and the school regulations (Article 37/3 §1, 6 ° Decree Elementary Education).

The school board must accept the decision of the Appeals Commission. The outcome of the appeal is notified to the parents in writing before 15 September at the latest (Article 37/2 Decree Elementary Education).

The Appeals Commission is appointed by the school board, that determines its composition and its decision making. The composition may vary ad hoc, but should always consist of both 'internal members' and 'external members'. Internal members are members who are also members of the class council, including at least the director or his representative. External members are members who are not a member of the class council or the school board that refused to grant the certificate. The chairman must be an external member (Article 37/3 Decree Elementary Education).

The school board decides on the operation including the voting procedure of the Appeals Commission. Each member of an Appeals Commission is in principle entitled to vote. The number of members of the Appeals Commission entitled to vote and the number of external members of the Appeals Commission must be equal. In the event of a break even, the chairman's vote is decisive (Article 37/3 §1, 1 ° Decree Elementary Education).

Each member of an appeals commission should respect the duty of confidentiality (Article 37/3 §1, 2 ° Decree Elementary Education).

If the parents disagree with the decision of the Appeals Commission, they can within 60 days of reception of the decision (Article 14 Council of State Statute) bring the case before the Council of State and ask the annulment of the decision.

However, the decision of the Council of State does not replace the decision of the class council or the decision of the Appeals Commission. The Council of State can only annul the decision of the class council and the Appeals Commission. The Council of State only rules on the legality of these decisions.

2.2. Secondary education

- Diploma of secondary education in general, technical or artistic education

If a student achieved (satisfactory) the learning outcomes according to the deliberating class council the first and second grade of the first stage, the first and second grade of the second stage and the first grade of the third stage, he/she can proceed to the next grade or stage (Article 38 1 ° Decision of the Flemish Government the Organization of Secondary Education). The second grade of the third stage of general, technical or artistic education, ends successfully if he/she has sufficiently achieved the learning outcomes and fulfilled all the relevant objectives of the studies and qualifications and is ready to start higher education (Article 38 3 ° Organization of Secondary Education).

At the end of the second grade of the third stage of general, technical and artistic education, the diploma of secondary education is awarded to the regular student. This is a certificate issued by a school or by the exam commission of the Flemish Community (Article 46 Decision of the Flemish Government on the Organization of Secondary Education).

- Diploma of secondary education in vocational secondary education

At the end of the second grade of the third stage of vocational secondary education, the diploma of secondary vocation education is awarded to the regular students who have successfully completed this grade and stage (Article 47 Decision of the Flemish Government the Organization of Secondary Education) .

At the end of the third grade of the third stage of vocational secondary education, whether or not organized as a specialization grade, the diploma of secondary education will be awarded to the regular students by a school or by the examination board of the Flemish Community (Article 49 Organizational Decision Secondary Education).

2.2.1. Student evaluation and examination in secondary education

The Decision of the Flemish Government on the Organization of Secondary Education (Article 2, 3°) makes a distinction between:

1. the Admissions Class Council: the body which is the only authorized body to give advice and take decisions concerning the admission or transition to a particular grade, education and subdivision (Article 3);
2. The accompanying class council: the body which has the competences for the formulation and evaluation of the study progress of a particular group of students and the authority for the final removal of a student from the educational institution. The accompanying class council may also formulate remedial tracks (Article 4);
3. The deliberating class council: the body that decides autonomously whether a student has satisfactory achieved the learning outcomes, giving him/her admission to the next grade or stage (Article 5).

It is therefore the deliberating class council that takes the final decision whether the student can proceed to the next grade or stage. The deliberating class council is thus responsible for a correct evaluation of student performance.

Student evaluations take into account the school's pedagogical project, the degree the student achieved in acquiring the learning outcomes laid down in the decree or regulation. The student evaluation should take into account the performance of a whole school year. It is done by the deliberating class council and results in a decision to pass or fail the student (Article 115/6 §1 Codex Secondary Education).

If the student passed the evaluation, the delivery of the diploma can not be refused for any reason, even if the student concerned has not fulfilled his/her financial obligations towards the school (Article 115/6 §1 Codex Secondary Education).

- The deliberating class council

The deliberating class council consists of voting and advisory members. Voting members are the director (or his representative) who chairs the class council and members of the teaching staff insofar as they have provided education to the pupil during that particular school year and are present in the school on the deliberation date. Supervisory members who may attend the class council are the deputy director, staff belonging to the support staff and persons involved in the psychosocial or pedagogical guidance of the student (Article 5 §2 Decision of the Flemish Government the Organization of Secondary Education).

Each voting member must participate in the deliberation except if he/she is legitimately absent or in case of force majeure (Article 5 §3 Decision of the Flemish Government the Organization of Secondary Education).

The deliberating class council is impartially and no member of the deliberating class council may be involved in any decision concerning a student who is a blood or related member till the fourth grade or a student whom he/she has given private lessons (article 5 §4 Decision of the Flemish Government the Organization of Secondary Education).

When taking the decisions, the deliberating class council takes into account the information in the student's file. This file contains at least the following information (Article 5 §5 Decision of the Flemish Government the Organization of Secondary Education):

- the results of tests or exams taken by the pupils;
- the results of the integrated test;
- the decisions, findings and opinions of the accompanying class council;
- the external certification.

A deliberation should take into account both the positive and the negative results of the student.

The decisions of the deliberating class council must be carefully motivated (Article 5 §8 Decision of the Flemish Government the Organization of Secondary Education) and minutes of the class council meeting should be made.

The report contains the list of students who passed and failed. The minutes contain a synthesis of the elements that led to the relevant decisions. Both documents must be kept for thirty years (Article 5 §6 Decision of the Flemish Government the Organization of Secondary Education).

The class council may vote if there is any need to do so. The result is recorded in the minutes. In the event of a break even, the chairman's vote is decisive (Article 5 §7 Decision of the

Flemish Government the Organization of Secondary Education).

The following certificates can be issued (Article 39 Decision of the Flemish Government the Organization of Secondary Education):

- Orientation certificate A: the student has successfully completed the academic year in that particular educational institution and is admitted to the next grade or stage;
- Orientation certificate B: the student has successfully completed the academic year in that particular education institution and is admitted to the next grade or stage with the exception of the subdivisions of study mentioned in the certificate;
- Orientation certificate C: the student has completed the academic year in that institution but failed (and is not admitted to the next grade or stage).

Decisions of the deliberating class council should be taken before 30 June, although this period can be extended in exceptional and individual cases till (at the latest) the first school day of the next school year (Article 37 §2 Decision of the Flemish Government the Organization of Secondary Education). This may be the case, for example, when the deliberating class council concludes that a student should take an additional test before taking a final decision. This additional evaluation can be done on the basis of examinations, holiday work, etc. (Circular on Structure and Organization of Full-time Secondary Education 64 of 25/06/1999). This can occur, for example, when it is unclear whether or not the student's illness during the school year has resulted in weaker results or not.

After the re-examination taken by the student, the class council decision should nevertheless include a global evaluation based on the results achieved for all subjects (Article 5 §5 Decision of the Flemish Government the Organization of Secondary Education).

Even if the decision of the deliberating class council is not contested by the student concerned, the school board is always entitled to reconvene the deliberating class council to reconsider a decision contested by the school board itself (Article 115/5 Codex Secondary Education). This must be done before 15 September of the next school year. If the decision differs from the contested decision, it shall be motivated and notified in writing immediately to the student concerned (Article 115/5 Codex Secondary Education).

2.2.2. Principles on setting up the internal Appeals Commission

If the student is dissatisfied with the decision then an appeal procedure is available to him/her. The appeal procedure is laid down in the school or center regulations. However, the student can only appeal the decision after consultation with the director or his representative (Article 123/15 §1 Codex Secondary Education).

The student concerned appeals to the school by dated and signed mail, listing at least the subject of the appeal, a factual description and justification of the objections raised, eventually with proofs in annex (Article 123/15 §2 Codex Secondary Education).

The appeal is dealt with by the Appeals Commission and ends:

1 ° either with the motivated rejection of the appeal on the grounds of inadmissibility as either: (a) the deadline for lodging the appeal laid down in the school regulations is not respected; and/or (b) the appeal does not meet the formal requirements of the school regulations;

2 ° either after the Appeals Commission has assigned additional tests or assignments to the student, confirmed the original evaluation result or replaced it with another evaluation result. The school or center board accepts the decision of the Appeals Commission (Article 123/15 §3 Codex Secondary Education).

The Appeals Commission assesses whether the decision taken is in accordance with the decree and regulations of education and the school or center regulations (Article 123/17 §2 6 ° Codex Secondary Education).

The result of the appeal shall be notified to the persons concerned in writing the latest by 15 September (Article 123/15 §4 Codex Secondary Education).

- Formation of the Appeals Commission

In secondary education, an Appeals Commission is set up by a school. The school board decides on the composition of the Appeals Commission. The composition may be ad hoc and consist of internal members (these are members of the class council) including at least the chairman of the class council that took the appealed evaluation decision, and ‘external members’ (persons who are external to the school that took the decision). The chairman is elected from the external members (Article 123/17, Codex Secondary Education).

In secondary education, the school determines the functioning, including the voting procedure, of an Appeals Commission. Each member of an Appeals Commission is in principle entitled to vote. The number of internal members of the Appeals Commission entitled to vote and of the external members of the Appeals Commission must be equal. In the event of a break even, the chairman's vote is decisive (Article 123/17 §2 3 ° Codex Secondary Education).

Each member of an Appeals Commission has a duty of confidentiality (Article 123/17 2 ° Codex Secondary Education).

The Appeals Commission decides autonomously how to reach a well-founded decision, for example, it may:

- (A) hear one or more voting members of the class council that took the appealed evaluation decision;
- B) hear one or more advisory members of the class council that took the appealed evaluation decision;
- C) organize additional tests or assignments for the student (Article 123/17 4 ° Codex Secondary Education).

As long as an appeal is ongoing, the student has the right to pursue his/her education in the school (Article 123/18 Codex Secondary Education).

If the student is still dissatisfied with the decision of the Appeals Commission, he/she may - within 60 days of publication of the decision (Article 14 of the State Council Statute) bring the case before the Council of State and ask to annul that decision. The Council of State does not in any way replace the decision of the deliberating class council, but it reviews the legality of the decision and can annul the evaluation decision.

2.2.3. Litigation before the Council of State

Article 14 of the Council of State Statute states that the Council has jurisdiction over decisions of an administrative authority. In its judgment of 6 September 2002, the Court of Cassation ruled that the Council of State had jurisdiction over the decisions of class councils of schools in public and non-public state funded schools.

In some cases, private legal entities act as ‘administrative authorities’ when they perform tasks of general interest. Non-public state funded educational institutions may exercise part of public authority and take decisions that bind third parties (students). When a deliberating

class council in general secondary education decides whether or not to pass or fail a student, the class council fulfills a public service task entrusted to the council by the government regardless of whether the relevant educational institution is public or a non-public state funded school, and the Council of State is empowered to review the legality of the decision.

However, the State Council does not protect the student against severe (exam) decisions, but only against unlawful decisions.⁷ The Council of State does not act as an appeal body, putting its evaluation in the place of the deliberating class council. However, the Council of State rules on the legality including the reasonableness of an evaluation decision, thereby respecting the broad discretion of the deliberating class council and limiting itself to a marginal review of manifest error.

Moreover, before a case is brought before the State Council, all previous appeal opportunities must have been exhausted.

The most common problem with evaluation decisions is the inadequate motivation of the exam decision and / or deliberation decisions. In secondary education, opinions and decisions of the deliberating class council must always be motivated (Article 5 §8 Decision of the Flemish Government the Organization of Secondary Education).

In addition, the Act of 29 July 1991 concerning the explicit statement of reasons for administrative acts (hereinafter: the Motivation Act) applies to all unilateral legal acts taken by administrations affecting the rights of individuals which includes decisions taken by the class council.

A decision about a student must be properly motivated and substantiated in law and in substance ('substantive motivation' Article 2 Motivation Act). In addition, the motivation that form the basis of the decision in the act must be clear ('formal motivation' Article 3 Motivation Act).

The deliberating class council must therefore explicitly state what the legal and factual reasons and grounds of the decision are, so that the student is informed in a clear manner about the decision taken so that he has sufficient elements to appeal the decision.

Standard sentences are not valid grounds for a class council decision according to the Council of State.⁸ The reasoning must not be contradictory either. In written examinations, the examination quotation is in principle sufficient to substantiate the pass or fail. For practical tests and examinations that relate to practical skills such as a thesis, at least one written assessment report is required which explicitly states the strengths and shortcomings of the assessed work.

2.3. Higher education and the special administrative court for decisions on study progress in higher education

In higher education, a special administrative court was created to deal with study progress disputes including examinations in higher education after the internal appeal procedures has been exhausted by the student.

2.3.1. Internal Appeals Commission

In case a student feels that his/her rights have been infringed, he/she can appeal internally

⁷ Council of State (R.v.St.) 9 November 2006, nr. 164.592

⁸ Council of State (R.v.St.) 28 december 1994, nr. 51.005

against a study progress decision within the deadline laid down in the regulations of the institution (most institutions have a seven calendar days deadline) following the day of the proclamation (electronic communication of examination results are considered as proclamation in most institutions). For all other study progress decisions, the deadline starts the day after being informed/reception of the decision.

To be admissible, the appeal must be formally correctly filed which means a signed and dated application letter submitted within the deadline by registered mail to the Chairman of the Appeals Commission concerned. The application must include the identity information of the student, the disputed decision(s) and a factual description of the objections invoked.

The decision of the Appeals Commission will be communicated within (in most institutions twenty) calendar days following the day on which the appeal was filed by the student.

2.3.2. The Council for Disputes about Decisions on Study Progress

If the student disagrees with the decision of the Appeals Commission, he can appeal this internal Appeals decision with the Council for Disputes about Decisions on Study Progress. The appeal must be signed by student or his/her lawyer.⁹

The Council for Disputes about Decisions on Study Progress can review decisions on study progress in higher education such as examination decisions, disciplinary examination decisions and decisions concerning the award of an exemption to a study unit (Art. II.285 Codification 11 October 2013 of the decree provisions on higher education). The Council has the competence to assess study progress decisions in higher education. The creation of this special administrative court led to a decrease in the annulment and suspension litigation before the Council of State.

The legislator expressly provided that the general principles of good governance be included in the legality check of the contested evaluation decision by the Council for Disputes about Decisions on Study Progress. 'The Council examines whether the disputed decisions are in accordance with: the provisions of the decree and regulations and the educational and examination regulations; general administrative principles and principles of good governance.' (Art. II.291 Codification 11 October 2013 of the decree provisions on higher education)

2.3.3. The Council of State

If the student disagrees with the decision of the Council for Disputes about Decisions on Study Progress, he can bring the case before the Council of State that will rule on the legality of the decision only.

Whereas the Council of State lost its jurisdiction to annul and suspend study progress decisions in higher education, it got the competence to take cassation decisions in these matters.

This means that the Council of State retains the residual competence to assess the legality of the evaluation decision in higher education (Art. I.3, 69° Codification 11 October 2013 of the decree provisions on higher education) which led to an increase in cassation procedure before

⁹ Case law of the Council for Disputes about Decisions on Study Progress (in higher education - Raad Studievoortgangsbetwistingen) <https://onderwijs.vlaanderen.be/nl/raad>

the Council of State.

Annex

1. The Flemish Community of Belgium

Information about the Flemish Education in Figures

<http://www.flanders.be/en/publications/detail/flemish-education-in-figures-2015-2016>

<https://onderwijs.vlaanderen.be/en/education-in-flanders>

1.1. Legislation of the Flemish Community of Belgium

Dutch only website Edulex <http://data-onderwijs.vlaanderen.be/edulex/>

<https://webgate.ec.europa.eu/fpfis/mwikis/eurydice/index.php?title=Special:Pdfprint&page=Belgium-Flemish-Community:Legislation>

- Decree Elementary Education, 25 February 1997
- Decision of the Flemish Government the Organization of Secondary Education, 19 July 2002
- Decree of the Flemish Government on the codification of secondary education, 17 December 2010 (Codex Secondary Education)
- Law of 29 July 1991 on the duty to give reasons for administrative decisions (hereinafter: Law on Motivation)
- Decision of the Flemish Government on the codification of legislation on higher education (Codex Higher Education)

1.2. Example of case law of the Flemish Community of Belgium

- Case law by the Council of State (Belgium) can be found at:
<http://www.raadvanstate.be/?lang=nl&page=caselaw>
Case of Miftari vs. City of Brussels, Case nr. 228566, 29 September 2014
- Case law of the Council for Disputes about Decisions on Study Progress (in higher education - Raad Studievoortgangsbetwistingen)
<https://onderwijs.vlaanderen.be/nl/raad>

1.3. Summaries of some cases of the Flemish Community of Belgium

- Case law by the Council of State (Belgium) can be found at:
<http://www.raadvanstate.be/?lang=nl&page=caselaw>

Example of elementary education: Case of M. vs. City of Brussels, Case nr. 228566, 29 September 2014

The class council decided not to grant the certificate of primary education to the student. The consultation with the director led to a new meeting of the class council that confirmed its decision. This decision was immediately notified to the parents in writing, and included the information about the steps to be taken to appeal the decision. The appeal commission confirmed the decision of the class council and formulated (in accordance with the school regulations) the advice to the school board not to reconvene the class council.

The school board communicated this decision in writing to the parents. The parents appealed that decision before the Council of State. The Council of State annulled that decision.

Firstly, according to the school regulations, the school board had to take a formal decision,

following the advice of the appeal commission Committee, which the school had neglected. The Council of State therefore ruled that the appeal was premature - because there was not yet a final decision of the school board and the wrong communication by the school about the possibility of appeal. Moreover, the school management had shown that it was no longer intended to discuss the file which was unlawful given that it is for the Appeals Commission to makes its own decision. The Appeals Commission takes the decision, and has no advisory role with regard to the school board (Article 37/2 Decree Elementary Education). The council of State took the view that, in this particular case, the Appeals Commission has de facto taken the final decision and thus substituted its decision for that of the class council.

- Case law by the Council of State (Belgium) can be found at:

<http://www.raadvanstate.be/?lang=nl&page=caselaw>

Example of secondary education: Council of State (R.v.St.) 9 November 2006, nr. 164.592

Council of State no. 164,592 of 9 November 2006 in Case A. 178.175 / XII-4910

A.P. v. vzw Sint-Gabriel-College

The student earned an 'unsatisfactory' on mathematics and economics and failed, not only because of failed exams but also taking into account the performance during the whole year. The Council of State stated that it does not sit as an appeals court when dealing with the decision of a deliberating class council and evaluation of satisfactory learning outcomes of the student to let him pass to the next year, as it is for the deliberating class council to decide on matters of study progress and student evaluations. The Council of State confirms that the deliberating class council has a broad discretion when taking decisions in these matters. The Council of State can annul a decision because of manifest error and unlawful decision making but not against strict or severe evaluation decisions of the deliberating class council.

- Case law of the Council for Disputes about Decisions on Study Progress (in higher education - Raad Studievoortgangsbetwistingen)
<https://onderwijs.vlaanderen.be/nl/raad>

2. Lithuania

- Primary education (...)
- Secondary education (...)
- Higher Education (...)

3. Poland

- Primary education (...)
- Secondary education (...)
- Higher Education (...)

4. The Russian Federation

- Primary education (...)
- Secondary education (...)
- Higher Education (...)

5. Belarus

- Primary education (...)
- Secondary education (...)
- Higher Education (...)

6. Albania

- Primary education (...)
- Secondary education (...)

- Higher Education (...)

Glossary of legal terms

- a favorable advice from the class council
- the deliberating class council
- students proceed to the next grade or stage
- to decide during the exam whether or not to pass the student
- post-examination review procedures
- complaints and academic appeals
- review at a mutually agreed upon date and time
- in consultation with the director
- to be communicated to the school community
- the duty of confidentiality
- to provide guidance on who would be the best person to approach
- usually the initial raising of a concern is successful in resolving a problem
- if the student is dissatisfied with the outcome then other procedures are available to him/her
- the steps to submit a formal complaint are detailed in ...
- if the student has concerns about examinations
- to publish guidance and procedures governing the investigation of complaints brought to the attention of xxx under the provisions of the university regulations
- procedures for complaints which constitute appeals from a decision relating to an academic matter which has been taken by an academic committee or other body
- enquiries should be addressed to ...
- a complaint about examinations
- to take it up with the relevant faculty officer
- help and advice is available from the faculty ombudsman
- to publish complaints procedure
- have no jurisdiction over examinations
- to provide an independent scheme for the review of student complaints
- to rule in favor of a student
- it may recommend that the University should do something (e.g. look again at a complaint) or refrain from doing something
- to activate the procedures
- to have first exhausted all the available internal procedures
- to confirm that the case has been dealt with internally
- to inform the student of the outcome of the case
- to have a maximum of xxx months from the date of that letter to apply to xxx
- to deal with complaints about a final decision by the university about
- to deal with complaints about matters of academic judgment
- matters that are the subject of legal proceedings
- public interest disclosure = whistle-blowing
- to provide employees with legal protection against being dismissed or penalized as a result of disclosing certain serious concerns = whistle-blowing

Glossary on the European Union

- European Quality Assurance Reference Framework (EQARF, nowadays: EQAVET)
- European Credit System for Vocational Education and Training (ECVET)
- European area of higher education (EHEA)

Glossary on the Flemish Community of Belgium

- compulsory school attendance (schoolplicht)
- compulsory education (leerplicht)

- stages (graden)
- grades (leerjaren)
- internal quality assurance
- external evaluation = criteria that are evaluated by the inspectorate
- self-evaluation instruments
- pedagogische begeleidingsdiensten = Pedagogical Support Services
- CIPO (Context – Input – Process – Output) model
- learning outcomes and competences = the result of a learning process that can occur in an educational context and otherwise and describe what a learner should know, understand and/or be able to demonstrate after completion of a process of learning
- competence = cfr. Parliament Act on the Flemish qualifications structure 'the ability to apply knowledge, skills and attitudes when performing social activities, and integrate these into one's actions'
- subject-specific learning outcomes = competences in higher education describing what a student has learned in concrete situations including 'knowing', 'being able' and 'doing' and are observable and evaluated
- educational qualifications = result of having successfully completed an educational programme. They are in most cases confirmed by a diploma, certificate, etc. Educational qualifications are determined in four ways: (1) general learning outcomes together with professional qualification(s), (2) general learning outcomes together with specific learning outcomes, (3) final objectives and (4) one or more professional qualifications.
- elementary and secondary education use the concept of final objectives = learning outcomes that indicate the minimum knowledge and ability that a student has to have acquired after successfully finalising a certain learning programme, including objectives of knowledge, skills and attitudes.
- learning outcomes in higher education (introduced by the Dublin descriptors elaborated in the Act on Higher Education of 4 April 2003 of the Flemish Community). For the short cycle FQF's level 5 descriptors have been introduced in that law. The law states that institutions for higher education have to jointly describe the subject-specific learning outcomes for higher education courses.
- Flanders the Agency for quality assurance in education and training (Agentschap voor Kwaliteitszorg in Onderwijs en Vorming AKOV)
- Agency for Educational services (elementary, secondary, part-time artistic education, pupil guidance centres and school guidance) (Agentschap voor Onderwijsdiensten AgODi)
- Agency for Higher Education, Adult Education and Study Allowances (Agentschap voor Hoger Onderwijs, Volwassenenonderwijs en Studietoelagen AHOVOS)
- Agency for Education Communication (Agentschap voor Onderwijscommunicatie)
- Agency for School Infrastructure, an internal autonomous agency (IVA) (Agentschap voor Infrastructuur in het Onderwijs AGION)
- Agency for Quality Assurance in Education and Training (Agentschap voor Kwaliteitszorg in Onderwijs en Vorming AKOV)
- Flemish Public Employment and Vocational Training Service's (Vlaamse Dienst voor Arbeidsbemiddeling en Beroepsopleiding VDAB)
- Flemish Agency for Entrepreneurial Training SYNTRA Vlaanderen (Vlaams Agentschap voor Ondernemingsvorming SYNTRA Vlaanderen)
- Flemish Education Council (Vlaamse Onderwijsraad VLOR)
- Flemish Interuniversity Council (Vlaamse Interuniversitaire Raad VLIR)
- Flanders Social and Economic Council (Sociaal-Economische Raad van Vlaanderen SERV)
- Flemish Interuniversity Council (Vlaamse Interuniversitaire Raad VLIR)
- Flemish Council of University Colleges (Vlaamse Hogescholenraad VLHORA)