

Siblings have the right to grow up together

written by Jolien Appels | December 9, 2022



As of June 19, 2021, the (old) Civil Code has a new chapter 'brothers and sisters'. The chapter was placed under Book I 'Persons', Title IX 'Parental authority and foster care' and contains 3 new legal provisions.

The new chapter applies to measures taken within the context of parental authority, foster care and the placement of a minor non-emancipated child in the context of youth assistance and youth protection.

The new legislative provisions give minor siblings **two explicit rights**:

1. the right not to be separated from each other and thus to grow up together in the same family. This may seem obvious, but in practice it often turns out differently after a separation of the parents or placement in youth care;
2. the right to have personal contact with each other at any age. This right already existed for grandparents and any other person who demonstrates a special affective bond with a child.

These rights derive from Article 8 ECHR (right to respect for private, family and family life).

Exceptions to these rights may only be made when it is in the best interest of the child itself, which is assessed for each individual child. If it is in the best interest of the child to be separated from his/her siblings, maximum efforts should still be

made to maintain personal contact with the siblings, unless this is also against the best interest of the child. In this way, if necessary, a tailor-made arrangement can be worked out in the interest of all siblings. For example, the law explicitly provides an exception when a child is placed in a juvenile facility as a result of committing a juvenile offense. Logically, the offender's siblings will then not also be placed in a facility.

The legal provisions do not only apply to siblings in the traditional sense of the word, but also to children who are raised together in the same family and who have developed a special affective bond with each other as a result of living together. In this way, newly composed families are also taken into account. At first sight, there seems to be a broad scope of application, but it should be noted that there is no definition of 'brother' and 'sister' in the Belgian legislation. The scope of the new legislation can therefore be disputed. In legal literature, a definition of brother and sister is proposed: someone with whom one has at least one common parent by descent or full adoption.

In order for the new legislative provisions to fully achieve their goal of allowing siblings to grow up together, a number of other legislative provisions were also amended:

- 374 §2 paragraph 4 (old) Civil Code was amended in the sense that the Family Court, when working out a living arrangement for the children after separation of the parents, must now strive for the same living arrangement for all siblings. If this is not possible, the Family Court must clarify how personal contact between the siblings is to take place;
- 393, paragraph 2 (old) Civil Code has been amended in the sense that when placing children under guardianship, the Justice of Peace should preferably appoint the same guardian for all siblings, unless this is not in the best interest of the child. If this is not possible, the Justice of Peace must clarify how personal contact between the siblings is to take place.

The new legislation has an important symbolic value. After all, 6 bills have already been submitted in the past and only now there is finally a general, legal recognition of the special bond between siblings. However, the new legislation

does not provide in any sanctions. The question therefore arises as to what happens when siblings are nevertheless separated from each other and cannot have contact with each other. The earlier bills were intended to allow minors to be able to enforce these newly acquired rights themselves in court. This however would make a minor gain “litigious capacity” which was met with much opposition and ultimately not included in the final amendment of the law.

Therefore, the actors in the field will have to apply the legislation effectively so that the new provisions do not remain hollow phrases.