DEFENCE FOR CHILDREN INTERNATIONAL ITALIA

JUST CLOSER

National Report on the youth justice system

BELGIUM

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Introduction: General characteristics and main legislation of the Flemish youth justice system

Belgium is a federal state, composed of communities (the Flemish Community, the French Community and the German-speaking Community) and regions (the Flemish Region, the Walloon Region and the Brussels Region).[1] Since the Sixth State Reform in 2014, youth justice mainly falls within the legislative competence of the communities.[2] Consequently, four systems of youth justice are possible in Belgium: the system of the Flemish Community[3], the French Community,[4] the German-speaking Community[5] and Brussels.[6] However, the federal state remains responsible for several matters, such as the organisation of the youth courts, their territorial jurisdiction and the administration of justice; and the execution of sentences imposed on minors who have committed a youth offence and who have been transferred to the adult criminal justice system [*uithandengeving*],[7] except for the management of care facilities for these young persons up to 23 years of age.[8]

In this report the focus is on the youth justice system of the Flemish Community, which is mainly regulated by the Flemish Youth Justice Decree of 15 February 2019 and some federal rules, such as the Youth Care Act, the Criminal Code and the Code of Criminal Procedure. This system applies to young suspects and offenders who were at least 12 years old[9] and less than 18 years old at the time the youth offence was committed[10] and have a family residence in the Flemish community.[11] In case there is no family

[1] Articles 1-3 The coordinated Constitution of 17 February 1994 (Belgian Constitution), *Belgian Official Gazette* 17 February 1994.
[2] Article 128, § 1 Belgian Constitution; article 5, § 1, II, 6° Special Act of 8 August 1980 reforming the institutions, *Belgian Official Gazette* 15 August 1980.
[3] Decree of 15 February 2019 on juvenile delinquency law (Youth Justice Decree), *Belgian Official Gazette* 26 April 2019.
[4] Decree of 18 January 2018 establishing the Prevention, Youth Assistance and Youth Protection Code, *Belgian Official Gazette* 3 April 2018.
[5] Juvenile delinquency law in the German-speaking Community is still regulated by the federal Act of 8 April 1965 on youth care, the charging of minors who have committed an offence described as a crime and the reparation of damage caused by this offence (Youth Care Act), *Belgian Official Gazette* 15 April 1965. However, a new decree on child protection and youth justice has been developed in the German-speaking Community and is scheduled to enter into force on 1 January 2024 (see www.ostbelgienlive.be/desktopdefault.aspx/tabid-255/620_read-68934/ and https://pdg.be/desktopdefault.aspx/tabid-4633/8159_read-70436/).
[6] Brussel has already drawn up its own juvenile delinquency law in the Ordinance of 16 May 2019 on child protection and youth care (*Belgian Official Gazette* 5 June 2019), but the date of enactment has yet to be determined. Until then, the juvenile delinquency law from the federal Youth Care Act applies.
[7] See article 38 Youth Justice Decree. The young person is then tried by the youth court's chamber for transferral [*kamer van uithandengeving*], which applies adult criminal law and procedures. Consequently, the transfer procedure is not included in this report.
[8] Article 5, § 1, II, 6° Special Act of 8 August 1980.
[9] Below the age of 12 children are not deemed to be criminally responsible, but when the child has certain problems, he can be offered help through voluntary or judicial child protection (article 4, § 2 Youth Justice Decree; Decree of 12 July 2013 on integrated child protection, *Belgian Official Gazette* 13 September 2013).
[10] Since the time when the youth offence is committed is the criterion for the applicability of juvenile delinquency law, young persons who are 18 years or older can also still be tried under juvenile delinquency law.
[11] Article 2, 10° and article 4 Youth Justice Decree.

residence, or it is not established, the place where the young person committed the youth offence, where the young person is found, or where the person resides or the facility is located to whom he was entrusted by the competent authorities will be considered.[12] The objectives and basic principles of Flemish juvenile delinquency law are as follows: putting the responsibility of the youth offender at the centre; ensuring a differentiated range of clear, swift, constructive and restorative responses to youth offences; working evidence-based; working with different frameworks (restorative, care, sanction and security); distinguishing the response to a youth offence from child protection; deploying subsidiarity and closed custody as a last resort; and attaching importance to legal safeguards and quality requirements in the decision-making and implementation of responses to youth offences.[13]

The youth justice procedure can be broadly outlined as follows: the allegedly committed youth offence is identified and investigated by the police, the public prosecutor and if necessary the investigating judge. The public prosecutor then decides on the appropriateness of prosecution, but may also choose to handle the youth offence itself (e.g. dismissal or making an offer for mediation). When the public prosecutor deems judicial intervention necessary and thus initiates the prosecution, the procedure follows two stages: the preparatory phase and the phase on the merits. In the preparatory phase, the youth court judge [*jeugdrechter*] may order an investigation into the young person's personality and living environment and, possibly, impose measures, during a cabinet hearing. In the phase on the merits, the youth court [*jeugdrechtbank*] then rules in a court hearing on the young person's guilt, imposes a sanction if necessary and, if applicable, rules on the victim's civil claim. The measure or sanction is carried out by recognised (child protection) facilities or community institutions.[14]

In what follows, we take a look at the accessibility, age-appropriateness, speed, diligence and adaptability to the rights of the child of the Flemish youth justice system and the way in which there is respect for the right to due process, the right to participate in and understand the proceedings, the right to private and family life and the right to integrity and dignity.

Accessibility

> Justice must be accessible for all children. Any barriers to access to justice must be removed and children shall be provided adequate information about their rights. Justice must be free of charge and legal aid must be guaranteed, and so must be access to support services and remedies.

The first principle we look at concerns the accessibility of the Flemish youth justice system. In this regard, information, interpretation and legal assistance are discussed successively.

[12] Article 44 Youth Care Act.
[13] Article 3 Youth Justice Decree.
[14] PUT, J., *Handboek Jeugdbeschermingsrecht*, Brugge, 2021, pp. 271-272.

Information

The Youth Justice Decree states that the actors involved in the implementation of this decree must explain in a timely and appropriate manner, explicitly and in a language comprehensible to the young person, the applicable standard, the procedure in which he finds himself, what he can expect and what he can do within this procedure.[15]

When a youth offence is committed and identified, it will be investigated by the police, the public prosecutor and if necessary the investigating judge. These persons may also interrogate the young person. Each interrogation should start with a brief communication of the facts on which the young person will be interrogated. Moreover, before the interrogation starts, the young person should be given certain basic information about his rights. He must be informed that he will be interrogated as a suspect; he has the choice after his identity is revealed to make a statement, to answer the questions asked to him or to remain silent; he cannot be obliged to incriminate himself; his statements can be used as evidence in court proceedings; and, when he is not deprived of his liberty, he can go wherever he wants at any time. Furthermore, he should be informed that he may request that all questions asked to him and all answers given by him be noted in the exact wording that has been used; that he may request that a particular investigative act be performed or a particular interrogation be conducted; that he may make use of the documents in his possession without delaying the interrogation; and that, during the interrogation or later, he may request that these documents be attached to the record of the interrogation or to the case file. He should also be told that he has the right to have a confidential consultation with a lawyer of his choice or a lawyer assigned to him before the interrogation, he may be assisted by that lawyer during the interrogation, insofar as the offences with which he may be charged concern a crime for which a custodial sentence may be imposed, and, in case he has not been deprived of his liberty, he should take the necessary measures to be assisted by a lawyer himself.[16] Finally, a young person remanded in custody [*voorlopige hechtenis*] must be informed of the additional rights applicable in this context concerning confidential consultation with and assistance of a lawyer, informing a third party of the arrest and medical assistance.[17]

The wording of the communication of these rights shall be adapted in function of the age or a possible vulnerability of the young person affecting his ability to understand these rights.[18] Without undue delay, a written statement of these rights will be handed over to the young person before the first hearing.[19] In

[15] Article 3, § 1, 2° Youth Justice Decree.
[16] Article 47*bis*, § 2 and article 70*bis* Code of Criminal Procedure; circular No. COL 11/2018 of the College of Public Prosecutors General of 16 August 2018 on Addendum 2 to circular No. COL 8/2011 on the organisation of right of access to a lawyer - situation of minors and those suspected of having committed an offence defined as a crime before the age of 18, pp. 4-5, www.om-mp, www.om-mp.be/nl/meer-weten/omzendbrieven.
[17] Article 47*bis*, § 4 and article 70*bis* Code of Criminal Procedure.
[18] Article 47*bis*, § 6, 2) and article 70*bis* Code of Criminal Procedure.
[19] Article 47*bis*, § 5 and article 70*bis* Code of Criminal Procedure.

research by De Bondt and Vercruysse twenty actors in the youth justice system were interviewed.[20] Two judges, two lawyers, two police officers, two public prosecutors and two legal experts indicated that this written statement is not understood by children because of the difficult legal language.[21] However, it is a common practice that the police officer asks at the start of the interrogation whether the young person has understood his rights, and the lawyer can also provide information to the young person.[22] Indeed, in the CLEAR-Rights study lawyers indicated that one of their main tasks is to advise the child on their rights and on the procedure and various alternatives.[23] Also in the preliminary study 'Monitoring and evaluation of the youth justice decree' 98 out of 100 lawyers surveyed said they considered it their duty to inform the young person about his rights and the course of the proceedings.[24] Also worth mentioning is that according to a study of the National Commission on the Rights of the Child [*Nationale Commissie voor de Rechten van het Kind, NCRK*] all police districts do have an expert in communication with minors or systematically call on an expert from a neighbouring zone for questioning.[25]

At the end of the interrogation, the young person is given the text of his statement to read unless he asks for it to be read to him. He has the possibility to correct or add anything to his statements.[26] He also has the right to a free copy of the text of his statement. That copy is handed over or sent by post immediately or within a month. However, postponement or refusal is possible in exceptional circumstances.[27]

At the preparatory phase, the case is brought before the youth court judge at the request of the public prosecutor by ordinary letter addressed to the youth court judge without notification to others. In the exceptional cases where the investigation judge was consulted regarding the case and takes measures, he notifies the youth court judge in writing at the same time.[28] However, the young person and his parents, his guardian or the person who has custody over him,[29] as well as their lawyer are notified of the fact that a cabinet hearing of the youth court judge will take place and can then inspect the file to take note of the claim of the prosecution.[30] In the phase on the merits, the case is brought to the youth court by the public

[20] Two youth court judges, five lawyers, four police officers, three public prosecutors, a youth worker, a social worker, a member of the supervisory body for closed facilities, a policy advisor on children's rights, a researcher on youth justice and a consultant at the youth court's social service.
[21] See also earlier research of VANDERHALLEN, M., VAN OOSTERHOUT, M., *Belgium: Empirical Findings*, in VANDERHALLEN, M., VAN OOSTERHOUT, M., PANZAVOLTA, M., DE VOCHT, D. (eds), *Interrogating young suspects*, Cambridge, 2016, p. 61. In this research it also appeared that police officers differ widely in the way they inform young suspects of their rights: literally, own wording or literally and own wording (pp. 69-70).
[22] DE BONDT, W., VERCRUYSSE, L., *Social Field Research (FRANET). Procedural safeguards for children who are suspect or accused persons in criminal proceedings - Belgium*, 2021, pp. 20-21.
Earlier research of Vanderhallen and Oosterhout showed that police officers differ in how they check whether young persons understood their rights (VANDERHALLEN, M., van Oosterhout, M., *Belgium: Empirical Findings*, cit., p. 69).
[23] GRAZIANI, L., *Europese analyse van rechtsbijstand voor kinderen in de praktijk en van lacunes in de rechtsbijstandsystemen in België, Frankrijk, Hongarije, Roemenië & Nederland*, 2021, p. 59.
[24] COECK, I., HADERMANN, E., VAN KELECOM, E., PUT, J., PLEYSIER, S., GOEDSEELS, E., *Vooronderzoek 'Monitoring en evaluatie van het decreet jeugddelinquentierecht'*, 2021, pp. 77-78.
[25] NCRK, *Nationale Kinderrechtenindicatoren. Make them count*, 2016, p. 184.
[26] Article 47*bis*, § 6, 3) and article 70*bis* Code of Criminal Procedure.
[27] Article 28*quinquies*, § 2 and article 57, § 2 Code of Criminal Procedure.
[28] Article 45, 2., a) Youth Justice Decree; PUT, J., *Handboek Jeugdbeschermingsrecht*, cit., p. 560.
[29] In the following, when parents are mentioned, also others who have legal guardianship over the young person are meant.
[30] Article 55 Youth Care Act.

prosecutor by means of a summons [*dagvaarding*]. This must be addressed to the young person and his parents.[31] The summons must contain the information set out in Article 43 of the Judicial Code. It must also clearly describe the facts to which the prosecution relates.[32] Furthermore, at the level of the public prosecutor and youth court (judge), no standardised information brochures are available. The efforts vary between the individual actors.[33] The preliminary study 'Monitoring and evaluation of the youth justice decree' show that most public prosecutors (12 out of 14) and youth court judges (17 out of 23) considered it their duty to inform the young person about his rights and the course of the proceedings.[34] Furthermore, almost all the public prosecutors and youth court judges surveyed checked whether the young person had understood the explanation after providing him with information. To this end, they asked the young person to repeat the most important information.[35]

When the youth court (judge) imposes a placement measure (preparatory phase) or sanction (phase on the merits), the young person is placed in a community institution [*gemeenschapsinstellingen, GIs*].[36] Upon arrival at that institution, the young person is given a lot of information about the internal functioning of the institution.[37] Article 11, § 1 of the Legal Status Decree[38] stipulates that the young person has the right to clear, adequate and comprehensible information on child protection and all related matters, in particular living rules and arrangements. The house rules [*huishoudelijk reglement*] of the community institutions – which are outdated because they are no longer adapted to current practice in the community institutions and are currently under review – determine in that context that counsellors, teachers, social workers and psychologists regularly inform the young person and answer their questions, and that the young person receives a lot of information through a youth brochure.[39] The counsellors also discuss the treatment plan and youth court reports with the young person.[40] They also talk to the young person about the different steps in counselling and explain those steps to him so that he can understand the proposals made by the team.[41]

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[31] Article 46, first and second section and article 63*ter*, third section Youth Justice Decree.
There are two other forms of bringing the case before the youth court, but these are rarely used in practice: summons to appear (article 46*bis* Youth Justice Decree) and voluntary appearance (article 45, 2., b) and article 63*ter*, c) Youth Justice Decree).

[32] VERSTRAETEN, R., VERBRUGGEN, F., *Inleiding tot het Belgische strafrecht en strafprocesrecht*, Mortsel, 2023, p. 347.

[33] DE BONDT, W., VERCRUYSSE, L., *Social Field Research (FRANET). Procedural safeguards for children who are suspect or accused persons in criminal proceedings - Belgium*, cit., p. 80.

[34] COECK, I., HADERMANN, E., VAN KELECOM, E., PUT, J., PLEYSIER, S., GOEDSEELS, E., *Vooronderzoek 'Monitoring en evaluatie van het decreet jeugddelinquentierecht'*, cit., pp. 77-78.

[35] COECK, I., HADERMANN, E., VAN KELECOM, E., PUT, J., PLEYSIER, S., GOEDSEELS, E., *Vooronderzoek 'Monitoring en evaluatie van het decreet jeugddelinquentierecht'*, cit., pp. 81-82.

[36] Articles 20, 26-27, 29 and 35-37 Youth Justice Decree.

[37] COECK, I., HADERMANN, E., VAN KELECOM, E., PUT, J., PLEYSIER, S., GOEDSEELS, E., *Vooronderzoek 'Monitoring en evaluatie van het decreet jeugddelinquentierecht'*, cit., p. 80.

[38] Decree of 7 May 2004 on the legal status of minors in integrated child protection and within the framework of the decree on juvenile delinquency law (Legal Status Decree), *Belgian Official Gazette* 4 October 2004.

[39] Rule 3.1 House rules community institutions, www.jeugdhulp.be/sites/default/files/documents/algemene-huisregels.pdf.

[40] Rule 3.2 House rules community institutions, www.jeugdhulp.be/sites/default/files/documents/algemene-huisregels.pdf.

[41] Rule 3.3 House rules community institutions, www.jeugdhulp.be/sites/default/files/documents/algemene-huisregels.pdf.

Also worth mentioning here is the existence of websites that provide information to children about their rights and the youth justice system. An example is the website of 'tZitemzo [*https://tzitemzo.be/*] which includes a leaflet for young persons who want to know more about the police and in what ways they might have to deal with the police.[42]

Interpretation

The language of the proceedings is determined by the territoriality principle: Dutch is used in the Dutch language area.[43] If the interrogated young person does not understand or speak the language of the proceedings or if he suffers from hearing or speech impairments, a sworn interpreter will be provided – at the state's expense – during the interrogation. If no sworn interpreter is available, the young person will be asked to record his statement himself.[44] Also during the rest of the investigation, the young person shall enjoy the right to free assistance of an interpreter, unless there are compelling reasons to limit this right in the light of the concrete circumstances of the case. The interpreter's assistance doesn't necessarily need to be in the young person's mother tongue or in a language of his choice. However, it is required that the young person understands or speaks the language used sufficiently to effectively exercise his right of defence, which is assessed by the court, taking into account the nature and complexity of the facts.[45]

Also before the youth court (judge), the young person who does not understand or speak the language of the proceedings or suffers from a hearing or speech impairment, has the right to be assisted free of charge by an interpreter who translates all oral statements. The court then appoints a sworn interpreter ex officio. In addition, the young person suffering from a hearing or speech impairment may request that the interpreter's assistance be supplemented by the assistance of a person who is most familiar with dealing with him.[46] Also, a young person who has a better command of another national language (French or German) may request referral to the nearest court of the same rank, whose language of justice is the language requested by him. However, the court may decide not to grant his request due to the circumstances of the case.[47] In the preliminary study 'Monitoring and evaluation of the youth justice decree', youth court judges indicated that interpreters are not always available when needed.[48] Moreover, research by De Bondt and Vercruysse cited that family member are sometimes asked to interpret, even

[42] https://tzitemzo.be/publicaties/tzitemzo-bij-de-politie2/. See also www.watwat.be/politie/ik-word-als-minderjarige-verhoord-door-de-politie-wat-moet-ik-weten.
[43] Act of 15 June 1935 on the use of languages in court cases, *Belgian Official Gazette* 22 June 1935.
[44] Article 47*bis*, § 6, 4) and article 70*bis* Code of Criminal Procedure.
[45] Article 31 Act of 15 June 1935 on the use of languages in court cases; Cass. 25 October 2022, P.22.0711.N; Cass. 7 March 2023, AR P.22.1551.N.
[46] Article 189 *juncto* article 152*bis* Code of Criminal Procedure; article 31 Act of 15 June 1935 on the use of languages in court cases.
[47] Article 23 Act of 15 June 1935 on the use of languages in court cases.
[48] COECK, I., HADERMANN, E., VAN KELECOM, E., PUT, J., PLEYSIER, S., GOEDSEELS, E., *Vooronderzoek 'Monitoring en evaluatie van het decreet jeugddelinquentierecht'*, cit., p. 83.

though this is preferred to be avoided, and that communicating through an interpreter does create barriers.[49]

It is also worth mentioning that the young person who does not understand the language of the proceedings has the right to request a free translation of the relevant passages of the summons into a language he understands, in such a way that he is informed of the charges against him and can effectively defend himself.[50] In addition, he is also entitled to request a free translation of the relevant passages of the judgment into a language he understands, unless an oral translation was provided to him.[51] These requests should be filed at the registry of the competent court.[52] Young persons who do not master the language of the proceedings and wish to obtain a free translation of any other document than those whose translation is already provided for in the Code of Criminal Procedure may submit a request to the public prosecutor or the investigating judge, depending on the state of the proceedings. The translation will be limited to passages of the file that are essential to exercise the right of defence.[53] Finally, a translation into the language of that language area will be added to every writ and judgment drawn up in Dutch whose notification or service is to be made in another language area.[54]

At the level of the community institutions, article 12 of the Legal Status Decree stipulates that the communication with the young person should be in a language understandable to the him, appropriate to his age and maturity. The explanatory memorandum points out that communication may have to be provided by a person providing the young person with the necessary explanation, such as an interpreter.[55]

Legal assistance

The right to legal assistance is contained in article 23, second section, 2° of the Belgian Constitution. The abovementioned duties of notification at the time of the interrogation show that the young person is entitled to the assistance of a lawyer when interrogated. The assistance of a lawyer is always free of charge, upon presentation of his identity card or any other document proving his status.[56] The specific rights concerning this assistance vary according to the circumstances in which the minor is interrogated (in custody or not), the facts about which he is being interrogated (possibility of a custodial sentence or not) and by whom the interrogation is conducted. For example, minors suspected of having committed an offence punishable by a custodial sentence automatically enjoy confidential consultations with and assistance by a lawyer, organised by the authorities. Minors who are not suspected of such an offence must themselves take the necessary measures if they wish to exercise their right to a confidential consultation with or assistance from a lawyer. The same applies if the minor is merely being interrogated about his personality, living

[49] DE BONDT, W., VERCRUYSSE, L., *Social Field Research (FRANET). Procedural safeguards for children who are suspect or accused persons in criminal proceedings - Belgium*, cit., p. 54.
[50] Articles 189 and 211 *juncto* article 145, fifth section Code of Criminal Procedure.
[51] Articles 189 and 211 *juncto* article 164, § 1 Code of Criminal Procedure.
[52] Articles 189 and 211 juncto article 145, fifth section and article 164, § 1 Code of Criminal Procedure.
[53] Article 22 Act of 15 June 1935 on the use of languages in court cases.
[54] Article 38 Act of 15 June 1935 on the use of languages in court cases.
[55] Explanatory memorandum to the proposal for a decree on the legal status of minors in integrated child protection, *Parl.St.* Vl.Parl. 2003-04, nr. 2063/1, p. 16.
[56] Article 508/13/1, § 4 Judicial Code. Although article 508/13/1, § 4 of the Judicial Code speaks of 'minor', an adult who appears for acts committed when he was a minor is considered a minor and continues to enjoy free legal assistance (OVB, *Compendium Juridische tweedelijnsbijstand*, 2021, p. 19).

environment and activities or is interrogated on the basis of a questionnaire.[57] However, the role of the lawyer is always the same: ensuring that rights are communicated in advance; ensuring the regularity of the interrogation (respect for the right not to incriminate oneself and the right to remain silent/not to answer questions and ensuring that no undue pressure or coercion is applied); checking the text of the record to ensure that it corresponds to what the young person said, both in terms of content and intention; and making comments on the conduct of the interrogation and the content of the text.[58]

Also, when the young person appears before the youth court (judge), each time he is entitled to assistance by a lawyer.[59] This assistance is free of charge upon presentation of his identity card or any other document proving his status.[60] When a minor does not have his own lawyer (which is usually the case), one will be assigned to him ex officio.[61] This requires the public prosecutor, in case it brings a young person delinquency case before the youth court (judge), to notify the staff holder of the Bar Association without delay. Within two working days, the staff holder or legal aid office [*Bureau voor Juridische Bijstand, BJB*] shall proceed to assign a lawyer. The staff holder or BJB will also ensure, if there are conflicting interests, that the young person is defended by a lawyer other than the one to whom his parents would rely on.[62] If at the established cabinet meeting or court hearing, the young person's lawyer would not appear (and the minor would appear without a lawyer), either because they forgot to appoint one or because the appointed lawyer does not show up, the youth court (judge) must either suspend the hearing until a lawyer can assist the minor, or postpone the case to a subsequent hearing, even if the assistance of a lawyer is not prescribed under penalty of nullity.[63]

Finally, it is worth mentioning that the young person is also entitled to assistance and contact with his lawyer during his stay in a community institution.[64] The outdated house rules of the community institutions state in this context that young persons have the right to contact their lawyer. If the young person thinks his lawyer can help him with a problem or complaint, the young person can always contact him.[65]

Age-appropriate

[57] See article 47*bis* Code of Criminal Procedure; article 49 Youth Care Act; Act of 20 July 1990 on pre-trial detention (Pre-trial Detention Act), *Belgian Official Gazette* 14 August 1990; COL 11/2018. Slightly different rules on the assistance by a lawyer apply to adults at the moment of the prosecution: it should be assumed that an adult who is heard about acts committed before the age of 18 can validly waive his rights to confidential consultation and assistance and that he consulted a lawyer if he was informed of his rights in the invitation. However, special attention should be paid to young adults who are eligible for transfer to the adult criminal justice system (COL 11/2018, p. 16).

[58] Article 47*bis*, § 6, 7) and article 70*bis* Code of Criminal Procedure; PUT, J., *Handboek Jeugdbeschermingsrecht*, cit., p. 534.

[59] Article 52*ter*, second section Youth Care Act; article 15, § 2 Youth Justice Decree; PUT, J., *Handboek Jeugdbeschermingsrecht*, cit., pp. 555-556.

[60] Article 508/13/1, § 4 Judicial Code.

[61] Article 54*bis* Youth Care Act.

[62] Article 54*bis* Youth Care Act.

[63] Youth Court Luik 5 January 1990, *Revue de Jurisprudence de Liège, Mons et Bruxelles* 1990, 285; PUT, J., *Handboek Jeugdbeschermingsrecht*, cit., p. 556.

[64] Article 24 Youth Justice Decree; Explanatory memorandum to the proposal for a decree on the legal status of minors in integrated child protection, *Parl.St.* Vl.Parl. 2003-04, nr. 2063/1, p. 23.

[65] Rule 9.2 House rules community institutions, www.jeugdhulp.be/sites/default/files/documents/algemene-huisregels.pdf.

At all stages of the proceedings, children must be treated according to their age, their specific needs, their degree of maturity and level of understanding. Everything must be explained in a language they can understand.

Individual assessment

In this section on age-appropriateness we will first look at the individual assessment of the young person. At the prosecution level, the settlement option to be used will be assessed individually for each young person, taking into account the specific conditions for those options. To this end, the prosecution relies on information gathered through the police, which, in addition to a focus on the facts, can sometimes even include a social investigation. However, not every police force in Belgium has a social department to help them do such an individual assessment.[66]

At the level of the youth court (judge), the principle of 'separate handling', which imposes that each young person must be tried separately, is paramount. Also when the offence committed is related to a crime committed by one or more adults, the case is split.[67] The youth court (judge) determines the appropriate response to the youth offence based on all the information available to him. He can draw this information from the investigation into the facts conducted by the police, the public prosecutor and possibly the investigating judge.[68] In addition, the youth court judge can order an investigation into the young person's personality and living environment during the preparatory phase. The purpose of this investigation is to get to know the young person's personality and the environment in which he is raised (i.e. information) and to determine what his interests are and what means are appropriate for his upbringing or treatment (i.e. make informed judgments on the appropriateness of measures and sanctions). To this end, a social examination will be carried out by the social service. If the youth court judge conducts such an investigation, a decision on the merits can only be made (or changed) after taking note of the social service's opinion. There are two exceptions to this: (1) urgent cases and (2) if the opinion does not reach the youth court within the time limit set by it, which may not exceed 75 days. Besides a social examination, the youth court judge can, if necessary, also subject the young person to a medical-psychological examination by an expert.[69] Such a medical-psychological examination is not compulsory, except – in principle – for being able to impose a long closed guidance, *terbeschikkingstelling* (this involves an

[66] DE BONDT, W., VERCRUYSSE, L., *Social Field Research (FRANET). Procedural safeguards for children who are suspect or accused persons in criminal proceedings - Belgium*, cit., pp. 50 and 53.
[67] Article 56, second section Youth Care Act; PUT, J., *Handboek Jeugdbeschermingsrecht*, cit., pp. 568-569.
[68] PUT, J., *Handboek Jeugdbeschermingsrecht*, cit., p. 308.
[69] Article 50 Youth Care Act; PUT, J., *Handboek Jeugdbeschermingsrecht*, cit., pp. 568-569.
[69] PUT, J., *Handboek Jeugdbeschermingsrecht*, cit., pp. 312-314.

ambulatory sanction[70], conditions[71] or continuation of placement of up to ten years) or transfer to the adult criminal justice system.[72]

However, the Youth Justice Decree does contain six decision criteria that the youth court (judge) must take into account: (1) the seriousness of the offence, the damage and the consequences for the victim; (2) the personality and maturity of the young person; (3) recidivism, or the risk of recidivism; (4) the safety of society; (5) the living environment of the young person; and (6) the safety of the young person. It must be evident from the order or judgment of the youth court (judge) how and in which manner these criteria were taken into account.[73] Besides, the best interests of the child should always be the first consideration.[74] Moreover, before the youth court (judge) can impose a particular measure or sanction, he must also check whether the substantive and age conditions for that measure are met. For example, the measure or sanction of placement in a forensic child and adolescent psychiatric unit of a psychiatric hospital [*For-K*] can only be imposed when the need for this is shown by a psychiatric expertise.[75]

Furthermore, closed guidance can only be imposed after a closed orientation.[76] The orientation phase of up to one month is always aimed at formulating a substantiated and documented answer to the question of whether or not a closed placement is useful or desirable for the young person, or which other response to the youth offence is feasible and appropriate.[77] Finally, it is worth noting that the duration of the long closed guidance depends on the young person's age. The maximum duration of this sanction depends on the age of the minor at the time of the offence: 2 years for 12/13-year-olds, 5 years for 14/15-year-olds and 7 years for 16/17-year-olds.[78]

All these elements enshrined in legislation show that juvenile delinquency law is characterised by an individual assessment of the young person. However, a study by De Bondt and Vercruysse shows that there are also some problems in terms of individual assessment. For instance, not every social service investigation report is sufficiently updated. There is also a large difference in quality between the consultants and their reports. Reasons for these problems can be excessive workload and high staff

[70] This involves treatment at a psychological or psychiatric service, at a sex education service, at a service with expertise in alcohol or drug addiction, or context counselling that focuses on the broad-based support of the young person and all relevant stakeholders from his family, upbringing environment and other important areas of life. Substantiated methodologies are used that act on the young person's behaviour, the consequences of the youth offence and that should prevent recidivism (article 33 Youth Justice Decree).
[71] This involves complying with certain conditions, such as a restraining order, a no-contact order or a curfew, for a certain period of time (article 34 *juncto* article 25 Youth Justice Decree).
[72] Articles 37 and 38 Youth Justice Decree.
[73] Article 16, § 1 Youth Justice Decree.
[74] Article 22*bis* Belgian Constitution; Explanatory memorandum to the draft decree on juvenile delinquency law, *Parl.St.* Vl.Parl. 2017-18, nr. 1670/1, p. 45.
[75] Articles 25/1 and 34/1 Youth Justice Decree.
[76] Explanatory memorandum to the draft decree on juvenile delinquency law, *Parl.St.* Vl.Parl. 2017-18, nr. 1670/1, p. 17.
[77] Article 2 Flemish Government order of 16 September 2022 implementing the decree of 15 February 2019 on juvenile delinquency law, regarding the organisation, constitution and functioning of closed orientation, closed guidance and long closed guidance of up to two, five or seven years in community institutions, *Belgian Official Gazette* 19 December 2022.
[78] Article 37, § 1 and § 4 Youth Justice Decree.

turnover.[79] Besides, for the youth court (judges) to be able to impose the response they deem appropriate, these responses must also be effectively enforceable. Today, for instance, electronic monitoring and long closed guidance have not yet been rolled out in practice in Flanders, and the *terbeschikkingstelling* has not yet entered into force.

Adaptability of the police's approach to the age and maturity of the young person

Second, in this section, it is interesting to consider the adaptability of the approach of the police to the age and maturity of the young person. The Flemish Office of the Children's Rights Commissioner [*Kinderrechtencommissariaat*] sometimes receives complaints from youth, parents and professionals about police use of force. It also received questions from police officers themselves on how to deal with minors in certain situations. In its annual report of 2021-2022, the Flemish Office of the Children's Rights Commissioner calls for police officers to be better trained for situations involving minors as witnesses, victims or offenders. To that end, training should focus on de-escalation and dealing with aggression and rules, procedures, guidelines and protocols specific to situations involving children should be realised.[80] Commissioned on behalf of the minister of home affairs, a working group started analysing police procedures to see how they can be adapted to the needs of children and young persons.[81] This working group has since been converted to separate thematic working groups which are working within the police itself.[82] In 2022, the Flemish Youth Minister also allocated funds to six projects until 31 August 2023. The projects worked on the relationship between young persons and the police.[83] A report and impact analysis, with accompanying recommendations to various actors at local, Flemish and federal level, is expected by spring 2024.[84]

Today, there are four noteworthy child-specific regulations at the police level. First, when a young person suspected of committing a youth offence is arrested, and thus is deprived of his liberty before having to appear before the youth court judge, this is done in rooms in police stations where individuals are housed for a limited period of time. This stay in so-called transit cells or police security rooms must meet a number of minimum conditions. Article 33*sexies* of the Act Police Service and a circular of 3 January 2003[85] regulate the right to food, drink and sanitation. The Royal Decree of 14 September 2007[86] addresses a number of spatial and technical conditions and distinguishes between a police cell, a waiting cell, a mobile

[79] DE BONDT, W., VERCRUYSSE, L., *Social Field Research (FRANET). Procedural safeguards for children who are suspect or accused persons in criminal proceedings - Belgium*, cit., p. 52.
[80] Flemish Office of the Children's Rights Commissioner, *Jaarverslag 2021-2022*, p. 92. This is again referred to in Flemish Office of the Children's Rights Commissioner, *Jaarverslag 2022-2023*, 2023, p. 89.
[81] See https://verlinden.belgium.be/nl/kindtoets.
[82] Flemish Office of the Children's Rights Commissioner, *Jaarverslag 2022-2023*, cit., p. 89.
[83] See www.benjamindalle.be/post/dalle-wil-dat-politie-en-jongeren-elkaar-beter-begrijpen. Two of these projects have received extensions until the end of 2023 (*Vr. and Antw.* Vl.Parl., Vr. no. 79, 18 October 2023 (J. VANEECKHOUT), www.vlaamsparlement.be/nl/parlementair-werk/commissies/commissievergaderingen/1770926/verslag/1774061).
[84] *Vr. and Antw.* Vl.Parl., Vr. no. 79, 18 October 2023 (J. VANEECKHOUT), www.vlaamsparlement.be/nl/parlementair-werk/commissies/commissievergaderingen/1770926/verslag/1774061.
[85] Circular of 3 January 2003 on the provision of persons in pre-trial detention, excluding those who are the subject of confinement in a penal institution, *Belgian Official Gazette* 28 January 2003.
[86] Royal Decree of 14 September 2007 on the minimum standards, implantation and use of places of detention used by police forces, *Belgian Official Gazette* 16 October 2007.

cell, a collective cell, a cell complex and a surveillance room. The latter is specifically intended for (one or more) minors. In addition to the minimum standards applicable to all places of confinement, some additional standards apply to these supervisory cells for minors. A cell in which young persons are confined must be separated from other confinement areas, have at least five square metres of floor space, an anchored table and seating area, aggression-resistant furniture, an aggression-resistant door without being allowed to have the appearance of a cell door and no bars are allowed. The catch, however, is that cells will only have to meet these standards within 20 years of the Royal Decree coming into force and thus by 2027 at the latest.[87] In practice not all police stations have yet youth cells or youth rooms. Besides, auditory contact with adults is possible as the youth rooms are in de same corridor as adult cells and children have to pass the adult cells to get to the youth cell.[88] Moreover, it is not entirely clear whether minors can only be confined in the surveillance room. For the other types of cells, the Royal Decree always refers to 'person', which may therefore also apply to minors.[89]

Second, there is a specific reporting obligation for the police in case a minor is deprived of his liberty pursuant to his arrest (or released against promise to appear or against a signed commitment). In that case, the police must, as soon as possible, notify the minor's parents in writing or verbally, of the arrest, the reason for it and the place where the minor is detained. If the minor is married, the notification should be made to his spouse instead of the above-mentioned persons.[90]

Third, with effect from 1 January 2023, a specific regulation has been introduced regarding the handcuffing of minors by members of the police.[91] Handcuffing of minors is prohibited, except in the following two cases: (1) the transfer, removal and guarding of young suspects or offenders; (2) the guarding of a young person who has been judicially deprived of liberty or administratively arrested. Even then, handcuffing is only exceptionally permissible if it is necessary due to circumstances: (1) resistance or violence to the deprivation of liberty; (2) acute danger of escape; (3) danger to oneself, the member of the operational staff or third parties; (4) acute danger that the person concerned will try to destroy evidence. Handcuffing should only take place when and for as long as those reasons exist and should not last longer than necessary. Finally, mention should be made of the handcuffing, and its justification, in the police report [*proces-verbaal*] or the register of deprivations of liberty.

Fourth, recently an act was passed supplementing article 28 of the Act Police Service with more concrete rules and guidelines on nude searches. This also introduces for the first time a child-specific rule on the

[87] See also ROEVENS, E., PUT, J., PLEYSIER, S., *Minderjarigen in een politiecel of de volwassenenpsychiatrie. Exploratief onderzoek over frequentie en aanpak*, 2019, 38-40.
[88] DE BONDT, W., VERCRUYSSE, L., *Social Field Research (FRANET). Procedural safeguards for children who are suspect or accused persons in criminal proceedings - Belgium*, cit., p. 63.
[89] PUT, J., *Handboek Jeugdbeschermingsrecht*, cit., p. 316.
[90] Article 48*bis*, § 1 Youth Care Act.
[91] Article 37*ter* Act of 5 August 1992 on the police service (Act Police Service), *Belgian Official Gazette* 22 December 1992, inserted by Act of 16 November 2022 amending the Act of 5 August 1992 on the police service, with a view to introducing clear safeguards regarding the handcuffing of minors, *Belgian Official Gazette* 21 December 2022.

matter: "*Minors can only be subjected to a search with full undressing, following a judicial deprivation of liberty and subject to the consent of the public prosecutor*."[92]

As far as police interrogation techniques are concerned, there is unfortunately no child-specific regulation yet for the interrogation of young suspects.[93] In contrast, for the audiovisual interrogation of child victims and witnesses, there are child-specific regulations that describe how the interrogation should be conducted. For example, the interview must proceed according to a certain protocol and must be conducted in an interview room that is neutral, sober and pleasant.[94] Research by Vanderhallen and van Oosterhout shows that individual differences exist between the interrogation styles and assessment approaches on the vulnerability of the young person adopted by police officers when interrogating young suspects. However, in the ten recorded interrogations the majority of the interrogators adopted an information gathering style. Besides, almost all of the interrogators used suggestive questions.[95]

Adaptability of the procedure to the study and working activities of the young person

As a third and final point, in this section we will take a look at the adaptability of the procedure to the study and working activities of the young person. Cabinet sessions of the youth court judges do not necessarily take place at fixed times. Their timing could therefore be adjusted to suit the study or working activities of the young person who is not deprived of his liberty. However, there is no legal provision for this. In contrast, hearings of the youth court in principle take place at fixed times, so no adaptability to the study or working activities of the young person is possible. For example, the hearings of the youth court in Leuven always take place on Wednesday mornings from 9am till 12pm.

When the young person is placed in a community institution, his study and working activities outside the institution are interrupted. Education is provided in the institution itself.[96] However, this education has been criticized, e.g., because it is not official education leading to attestation (diploma or certificate), which hinders the educational path of many young persons. Also, the educational offer in the institution is limited, which sometimes means that the lessons do not match the young person's interests and learning goals.[97] Over time, however, it is possible for young persons to leave the institution one or more days a week to pursue education in their own schools and/or to have a job.

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[92] Act of 8 November 2023 amending the act of 5 August 1992 on the police service, with a view to introducing a registration and justification obligation in case of so-called nude searches, *Belgian Official Gazette* 24 November 2023.

[93] See the suggestion for this in Vanderhallen, M., van Oosterhout, M., *Belgium: Empirical Findings*, cit., p. 94.

[94] See articles 91*bis*-101 Code of Criminal Procedure; circular No. COL 03/2021 of the College of Public Prosecutors General at the courts of appeal of 29 November 2022 on the audiovisual recording of the interrogation of minor and vulnerable adult victims or witnesses of crimes, www.om-mp, www.om-mp.be/nl/meer-weten/omzendbrieven; PUT, J., *Handboek Jeugdbeschermingsrecht*, cit., pp. 535-539.

[95] VANDERHALLEN, M., VAN OOSTERHOUT, M., *Belgium: Empirical Findings*, cit., pp. 94, 96 and 116.

[96] Flemish Government Order of 5 April 2019 establishing community institutions and implementing various provisions of the decree on juvenile delinquency law (Community Institutions Order), *Belgian Official Gazette* 3 July 2019.

[97] CVTJ, *Maak van afzondering de uitzondering. Jaarverslag 2022*, 2023, p. 56-57.
There are currently plans to reform this education, see for example the report of the meeting of the Welfare, Health, Family and Poverty Commission on 14 June 2023, www.vlaamsparlement.be/nl/parlementair-werk/commissies/commissievergaderingen/1727603/verslag/1747289.

Speedy procedures

> The principle of urgency must be applied in order to provide a quick response, in the light of the child's best interest. Preliminary decisions must be reviewed.

The third section focusses on the speed of the youth justice procedures. The Flemish juvenile delinquency law aims at quick responses to youth offences.[98] The time between the commission of the offence and the reaction to that offence should be as short as possible in order to have a positive impact on the young person. Time limits should be set for certain decisions to be taken, without prejudice to young person's rights and legal safeguards.[99] To this end, the response options at the prosecution level were expanded. To the options already available to the public prosecutor (dismissal,[100] with or without a warning letter or warning summons, mediation,[101] referral to the youth court (judge) and involvement of child protection), the Youth Justice Decree added conditional dismissal[102] and the positive project[103].[104]

Relatively strict deadlines were also set for the maximum duration of the preparatory phase. The duration of this phase is limited to a nine-month period, which runs from the prosecution's order and ends at the time of the youth court's judgment. There is an exception to the nine-month deadline in the following two cases: (1) the investigation into the facts or an expert investigation into the personality of the young suspect has not yet been completed; (2) the youth offence involves an offence that, for adults, could lead to five years' imprisonment or a more severe sentence. If either condition is met, the maximum period is twelve months. If both conditions are met, the maximum term is two years. However, the extensions do not apply automatically: the youth court judge must make an explicit, particularly reasoned decision to this effect, after summoning the young person and his parents. He can also only decide on a three-month extension each time. This means that he must take a decision before the expiry of the initial nine-month period, and then every three months. Very exceptionally, the duration of the preparatory phase can even be extended to a period longer than two years. This must also be done by express decision, after summoning the young person and his parents. The youth court judge can only decide to do so as long as the two conditions remain fulfilled (serious youth offence and investigation not yet completed). The youth court judge must decide on the extension every month (instead of every three months). In his justification,

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[98] Article 3, § 1 Youth Justice Decree.
[99] Explanatory memorandum to the draft decree on juvenile delinquency law, *Parl.St.* Vl.Parl. 2017-18, nr. 1670/1, pp. 5, 8 and 23.
[100] This is a revocable decision of non-prosecution.
[101] If the mediation agreement was carried out as agreed, the public prosecutor takes it into account when deciding whether or not to dismiss the case. If he decides to dismiss, the youth justice proceedings lapse (art. 12 Youth Justice Decree).
[102] If the conditions are complied with, the youth justice proceedings lapse (art. 11 Youth Justice Decree).
[103] This means that the young person is given the opportunity to respond in a participatory and constructive manner to the offence, taking the form of an activity, a program or carrying out a task or project. If the project has been carried out in accordance with the agreements, the youth justice proceedings lapse (art. 13 Youth Justice Decree).
[104] Articles 8-13 Youth Justice Decree; PUT, J., *Handboek Jeugdbeschermingsrecht*, cit., p. 321.

he must specifically state the reasons why he deems the extension absolutely necessary. Furthermore, the (initial or extended) time limit of the preliminary hearing is suspended in case of an appeal against an order (from the filing of the notice of appeal to the delivery of the judgment). Similarly, if a postponement is decided at the preliminary hearing of the youth court, there is also a suspension of the time limit (from the date of the preliminary hearing to the time when the case is under consideration).[105]

The average timeframes for youth justice proceedings in practice are not clear. The preliminary study 'Monitoring and evaluation of the youth justice decree' examined the various registration systems. This shows that it is currently unclear whether the term of the preparatory phase can be calculated on the basis of the registered data. In principle, the date of the claim and summons could be taken for this, but what if, for example, the case is not summoned? It also does not appear to be possible in the existing systems to enter a decision to extend the preparatory phase, so these decisions are not recorded.[106]

Diligence

> Diligence is the quality in which commitment, care, thoroughness and converge. Juvenile-friendly justice must encompass all of these qualities, respecting the rights of children and always acting in their best interests.

In this fourth section, we look in the context of diligence at the specialisation of actors. In Belgium there is a general requirement in the Youth Care Act that all administration of justice with regard to young persons should be carried out, as far as possible, by actors, officials and magistrates with specific and permanent training in youth law.[107] This is also reaffirmed in the Flemish Youth Justice Decree.[108]

Specialisation of the police

There is no legal framework regulating the creation and organisation of a specialised youth service or youth brigade within the police structure. It is therefore up to the police forces themselves to determine whether and to what extent a separate department is introduced to deal (exclusively) with cases involving minors. As a result, there are districts without specially trained police officers or units, where every police officer just deals with the cases that he is confronted with. In addition, the specialisation of officers or units in other districts occurs in a variety of organisational forms.[109] The standard and permanent training of Belgian police officers is organised by the National Police Academy [*Nationale Politieacademie, ANPA*],

[105] Article 21 Youth Justice Decree; PUT, J., *Handboek Jeugdbeschermingsrecht*, cit., pp. 373-375.
[106] COECK, I., HADERMANN, E., VAN KELECOM, E., PUT, J., PLEYSIER, S., GOEDSEELS, E., *Vooronderzoek 'Monitoring en evaluatie van het decreet jeugddelinquentierecht'*, cit., p. 214.
[107] Preliminary Title Youth Care Act.
[108] Article 3, § 2 Youth Justice Decree.
[109] LEENKNECHT, J., *An EU cooperation in youth justice matters: mission impossible? An analysis of the EU competence in criminal matters and the diversity of youth justice systems*, PhD thesis in law KU Leuven, 2022, pp. 203-204; PUT, J., *Handboek Jeugdbeschermingsrecht*, cit., pp. 293-294.

which has six training centres spread over Belgium, and nine accredited police schools.[110] In the standard training, youth protection is amongst the topics studied, be it only marginally.[111] Besides the initial and permanent training, there are 'functional trainings' which are defined as "*courses designed to provide certain staff members with special professional skills enabling them to carry out specialised tasks linked to the exercise of their specialised employment and/or to take up tasks resulting from their special competence*".[112] The audio-visual questioning of minor victims or witnesses is the only functional training course related to the police interaction with minors.[113] Finally, a number of voluntary additional training modules are offered.[114]

Specialisation of the public prosecution

In each court of first instance, of which the youth court is part, there is a specialised unit of the public prosecutor's office. That unit consists of youth public prosecutors, one or more (part-time) public prosecutor criminologists, (possibly) one or more public prosecutor jurists, (possibly) one or more judicial trainees and administrative staff. It is not always the case that the youth sections form their own, distinct organisational unit within the public prosecutor's office of the first instance: in some public prosecutors' offices, they are in fact part of a broader '(youth and) family' section, which, in addition to youth cases, also deals with cases of intra-family violence, sexual offences within the family, etc. In these public prosecutors' offices, the distinction between the youth public prosecutors and the other public prosecutors of the '(youth and) family' section is not always clear, as each public prosecutor of this department should in principle be able to handle all cases coming in. In the court of appeal, the public prosecutor's office at the youth chamber is exercised by one or more public prosecutors of the general prosecutor's office.[115] In both cases, they must be public prosecutors who have received specialised training, including an in-depth training on sexual and intra-family violence, set up by the Institute for Judicial Training [*Instituut voor gerechtelijke opleiding, IGO*].[116] However, in exceptional circumstances, for the proper administration of the court and for a specified period, a non-qualified public prosecutor can be appointed by a reasoned decision.[117] The initial training consists of (1) a 'family' module and (2) a 'youth' module, each consisting of six half-day sessions, (3) a two-day module concerning the interrogation of minors, and (4) a work visit to community institution De Zande.[118] The special in-depth training on sexual and intra-family violence

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[110] Article 142*bis*, § 1 and article 142*ter*, first section Act of 7 December 1998 organising an integrated police service structured at two levels, *Belgian Official Gazette* 5 January 1999; LEENKNECHT, J., *An EU cooperation in youth justice matters: mission impossible? An analysis of the EU competence in criminal matters and the diversity of youth justice systems*, cit., p. 207; FEDERALE POLITIE, *Opleiding ten voordele van de Geïntegreerde Politie*, https://rapportannuel.policefederale.be/politie-werkgever/opleiding/.

[111] DE BONDT, W., VERCRUYSSE, L., *Social Field Research (FRANET). Procedural safeguards for children who are suspect or accused persons in criminal proceedings - Belgium*, cit., p. 14.

[112] Article I.I.1., 27° Royal Decree of 30 March 2001 regulating the legal status of police service personnel (RPPol), *Belgian Official Gazette* 31 March 2001.

[113] Article 93 Code of Criminal Procedure; LEENKNECHT, J., *An EU cooperation in youth justice matters: mission impossible? An analysis of the EU competence in criminal matters and the diversity of youth justice systems*, cit., p. 207.

[114] DE BONDT, W., VERCRUYSSE, L., *Social Field Research (FRANET). Procedural safeguards for children who are suspect or accused persons in criminal proceedings - Belgium*, cit., pp. 14-15.

[115] Articles 137-151 Judicial Code; PUT, J., *Handboek Jeugdbeschermingsrecht*, cit., p. 295.

[116] Article 151 Judicial Code.

[117] Article 143, § 2/1 and article 151, third section Judicial Code.

[118] IGO, *Jaarverslag 2022*, www.igo-ifj.be/sites/2123/files/jaarverslag_2022_nl_def.pdf, p. 40.

consists of a general introduction to the subject, a two-day advanced training on sexual violence and a two-day advanced training on intra-family violence.[119] In addition, IGO also organises voluntary training modules.[120]

Specialisation of the youth court (judge)

The youth and family court is a separate section within the court of first instance. In each of the twelve judicial districts in Flanders there is a court of first instance, and consequently a youth and family court. Depending on the size of the judicial district, the youth court consists of one or more youth chambers. Each chamber is presided over by a youth court judge, who always acts as a single judge.[121] The judge ruling in the preparatory phase is the same as the one ruling in the phase on the merits.[122] The court of appeal does not consist of different sections but does contain one youth chamber, which is presided over by a chamber president or a councillor who also rules alone.[123] To be appointed as youth judge, one should have seated at the general court of first instance for at least one year and have followed the same training as public prosecutors in charge of youth cases.[124]

Specialisation of youth court's social service

Youth public prosecutors and – especially – youth courts are assisted by the youth court's social service [*sociale dienst jeugdrechtbank, SDJ*], a service of the Flemish Community organised in each judicial district. The social service consists of consultants (as staff), a team leader and, where appropriate, volunteer consultants. The consultants mentioned should hold a diploma demonstrating sufficient pedagogical or social knowledge. The Administrator-General of the Growing Up Agency [*Opgroeien*] is authorised to set the diploma conditions.[125] According to a youth court judge surveyed in a study by De Bondt and Vercruysse, cooperation with social services can mitigate the 'gaps' in the limited training for youth court judges: "*We are fortunate to be able to work with a social service. Those people are pedagogues, they have had training for that, they are people with a psychological education as a background – I actually learn a lot from them.*"[126]

Specialisation of the lawyer

As for the assistance of a lawyer, young suspects are in the first place allowed to freely choose a lawyer. If they do not choose a lawyer, sometimes a lawyer is appointed ex-officio by the authorities. To achieve

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[119] LEENKNECHT, J., *An EU cooperation in youth justice matters: mission impossible? An analysis of the EU competence in criminal matters and the diversity of youth justice systems*, cit., p. 218.
[120] DE BONDT, W., VERCRUYSSE, L., *Social Field Research (FRANET). Procedural safeguards for children who are suspect or accused persons in criminal proceedings - Belgium*, cit., p. 14.
[121] Articles 76 and 78 Judicial Code.
[122] PUT, J., *Handboek Jeugdbeschermingsrecht*, cit., p. 385.
[123] Article 101 Judicial Code; PUT, J., *Handboek Jeugdbeschermingsrecht*, cit., p. 300.
[124] Article 259*sexies* Judicial Code.
[125] Article 56 Decree of 12 July 2013 on integrated child protection, *Belgian Official Gazette* 13 September 2013; article 77 Flemish Government order of 21 February 2014 on integrated child protection, *Belgian Official Gazette* 28 February 2014.
[126] DE BONDT, W., VERCRUYSSE, L., *Social Field Research (FRANET). Procedural safeguards for children who are suspect or accused persons in criminal proceedings - Belgium*, cit., p. 15.

this, youth permanencies are organised by the Legal Aid Office [*Bureau voor Juridische Bijstand, BJB*] of each bar association (Antwerp – Brussels – Dendermonde – Ghent – Leuven – Limburg – Oudenaarde – West Flanders). Through these permanencies, lawyers are called for interrogations by the police regarding offences for which a custodial sentence can be imposed,[127] interrogations by the investigating judge, cabinet hearings and court hearings of minors who do not have a lawyer at that time.[128] Which lawyers exactly appear on the youth permanency list varies between the bar associations.[129] The Order of Flemish Bars [*Orde van Vlaamse Balies, OVB*] merely formulates the recommendation that the list should only include lawyers who have attended the accredited training course for lawyers of minors or undertake to attend the course.[130] In the absence of an enforceable legal basis, it is up to the regionally organised bar associations to decide whether or not to follow this recommendation when drawing up the permanent list. However, already seven of the eight Flemish bar associations impose training for lawyers of minors, with the exception of Bar Oudenaarde. At Bar Oudenaarde, trainees are still appointed as lawyers of minors without having followed the training or committing to it.[131]

The training course referred to by the OVB concerns the 80-hour long special training in youth law organised by the OVB. It is a multidisciplinary course that studies children and their rights, child protection and youth justice from a legal, criminological, psychological and socio-educational perspective. Communication skills are also covered. The course consists of a theoretical part, a practical part, an individual paper and the submission of an individual internship file.[132] The obtained training certificate[133] is acquired permanently and, in addition, no form of quality follow-up is mandated by the legislature or the OVB.[134] In the CLEAR-Rights study lawyers confirmed the lack of any real quality control or systematic supervision; they indicated that they did not feel they received supervision or were evaluated on a regular basis.[135]

Vercruysse's research shows that a mandatory specialisation for lawyers appointed ex officio is hardly debated. What does meet with some opposition is a general specialisation rule limiting the free choice of a lawyer to the choice of trained youth lawyers.[136] In addition, this study also shows that some Bar Associations face a shortage of youth lawyers, which means that a youth lawyer cannot always be appointed. If a youth lawyer is not available, the Legal Aid Offices supplement the permanent lists with non-specialist lawyers out of necessity in order to still provide young persons with some assistance during

[127] Unless one of the exception situations occurs; see COL 11/2018.
[128] Article 49 Youth Care Act; article 54*bis* Youth Care Act; COL 11/2018.
[129] VERCRUYSSE, L., *Een kwaliteitsvolle jeugdadvocaat: Een must-have voor minderjarige verdachten*, in *Panopticon*, 2022, p. 386.
[130] OVB, *Aanbeveling aanstelling jeugdadvocaten*, 7 December 2005, consulted on www.dei-belgique.be/index.php/nos-publications/rapports/send/37-rapports/149-rapport-mlmr-complet-nl.html.
[131] VERCRUYSSE, L., *Een kwaliteitsvolle jeugdadvocaat: Een must-have voor minderjarige verdachten*, cit., p. 387.
[132] Training regulations special training programme for youth law 2022-2023, www.advocaat.be/nl/fetch-asset?path=ovb/Documenten/opleidingen/20220613-Opleidingsreglement-BOJ-2022-2023_finaal_0.pdf.
[133] A list of lawyers who hold a 'special training certificate for youth law' can be found at www.advocaat.be/zoek-een-advocaat/.
[134] VERCRUYSSE, L., *Een kwaliteitsvolle jeugdadvocaat: Een must-have voor minderjarige verdachten*, cit., p. 387.
[135] GRAZIANI, L., *Europese analyse van rechtsbijstand voor kinderen in de praktijk en van lacunes in de rechtsbijstandsystemen in België, Frankrijk, Hongarije, Roemenië & Nederland*, cit., p. 60.
[136] VERCRUYSSE, L., *Een kwaliteitsvolle jeugdadvocaat: Een must-have voor minderjarige verdachten*, cit., p. 388.

interrogation.[137] Finally, it is also relevant that certain regionally organised bar associations attach additional requirements to acting as a youth lawyer, such as mandatory attendance of in-service trainings.[138]

Case consultations

The legislation defines the duties of each of the abovementioned actors. As part of this, they interact a lot on a daily basis. In terms of consultation structures and coordination between different legal and non-legal partners in the youth justice system, many experiments regarding a 'chain approach' [*ketenaanpak*] now exist in Flanders. This involves bringing several partners together at one table, allowing for shorter deadlines and immediate sharing of relevant information. An example is KOMPAS+, which aims to prevent and stop juvenile delinquency by young persons who have with various problems in Antwerp. It is a collaboration between social services, education, youth advocacy, the city of Antwerp, the local Antwerp police, the Antwerp public prosecutor's office and the Antwerp court, in which these actors work closely together and consult bi-weekly on files.[139] In the Flemish youth justice action plan of 2023 a decree basis of the forms of chain approach and case consultation around juvenile delinquency is envisaged.[140] To this end, a preliminary draft decree currently provides for anchoring of a chain approach to juvenile delinquency at least for each judicial district and regulates which partners can participate in a case consultation within the framework of a chain approach, with which finality and according to which modalities a case consultation can take place with the application of article 458*ter* of the Criminal Code.[141]

Adapted and focused on the rights of the child

> The entire proceedings must be carried out with the child's needs and rights in mind. Any form of deprivation of a child's freedom must be a measure of last resort and of the shortest duration possible. Alternative means must be encouraged if they are in the best interests of the child. This section may concern, in particular, detention (in child institutions) and probation.

The next principle that receives attention in this report is the adaptability of the Flemish youth justice system to the rights of the child. In the context of that, in this section we will look at the measures of deprivation of liberty that can be imposed on (alleged) youth offenders, medical examination and alternative means.

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[137] VERCRUYSSE, L., *Een kwaliteitsvolle jeugdadvocaat: Een must-have voor minderjarige verdachten*, cit., p. 390.
[138] VERCRUYSSE, L., *Een kwaliteitsvolle jeugdadvocaat: Een must-have voor minderjarige verdachten*, cit., p. 393.
[139] See www.antwerpen.be/info/werking-kompas. A participatory practice-based study was recently conducted on KOMPAS+: NUYTIENS, A., *Een participatief praktijkgericht onderzoek naar KOMPAS+*, 2023.
[140] Flemish youth justice action plan, VR 2023 0906 MED.0204/2BIS, 15-17. See also *Vr. and Antw.* Vl.Parl., Vr. no. 538, 27 March 2023 (K. VERHEYEN), https://docs.vlaamsparlement.be/pfile?id=1951331.
[141] Preliminary draft decree amending the decree of 15 February 2019 on juvenile delinquency law as regards the removal of age limits and the possibility of electronic monitoring at the preparatory phase and other amendments, VR 2023 1310 DOC.1356/2.

Deprivation of liberty

The moment a young person has committed a youth offence, he can be arrested and a preparatory phase and a phase on the merits may follow. All three phases have the possibility of depriving the young person of liberty. Article 12 of the Belgian Constitution stipulates that, except in cases of flagrante delicto, a person can only be taken in pre-trail detention pursuant to a reasoned court order to be served within 48 hours of the deprivation of liberty.[142] The Pre-Trial Detention Act further elaborates on this. A person against whom there are serious indications of guilt of an offence may be placed at the disposal of the public prosecutor – or exceptionally the investigating judge – for up to 48 hours. If that person attempts to flee or attempts to evade the supervision of a police officer, protective measures may hereby be taken pending a decision by the public prosecutor – or exceptionally the investigating judge.[143] Also, if the person is caught in flagrante delicto, that person can also be deprived of liberty for up to 48 hours and made available to the court.[144] This means that a young suspect can be placed in pre-trail detention, where he must be brought before the youth court judge within 48 hours to decide on further arrest (which will then take the form of a measure of placement in a community institution).[145] Without court intervention within the time limit, the young person must be compulsorily released. The Supreme Court states that after the expiry of this period – and thus after the young person's release – the court may no longer impose custodial measures for the same acts. To do so, there must first be new or serious circumstances that would necessitate a new measure. The youth court judge may, however, order another provisional measure.[146] If the young person is released within the 48-hour period, the youth court judge cannot subsequently take a deprivation of liberty order for the same offences, unless new or serious circumstances have arisen since the release. A second remand is therefore possible only if new evidence is present.[147]

In the preparatory phase and the phase on the merits the youth court (judge) may subject the young person to the measure or sanction of closed placement in a community institution. The closed placement initially takes the form of a 'closed orientation' [*gesloten oriëntatie*] of up to one month in community institution 'De Grubbe' te Everberg.[148] This orientation phase can be followed by closed guidance [*gesloten begeleiding*] of up to three months, extendable (preparatory phase), or three, six or nine months, not extendable (phase on the merits) in the community institution 'De Kempen' with 'De Hutten' and 'De Markt' in Mol as campuses, or the community institution 'De Zande' with the campuses Ruiselede, Beernem and Wingene.[149] Exceptionally, the sanction of long closed guidance of up to two, five or seven

[142] Article 12 Belgian Constitution.
[143] Article 2 Pre-trial Detention Act.
[144] Article 1 Pre-trial Detention Act.
[145] PUT, J., *Handboek Jeugdbeschermingsrecht*, cit., p. 315.
[146] Cass. 31 August 2010, AR P.1.1472.N.
[147] Cass. 20 December 2011, AR P.11.1981.N.; PUT, J., *Handboek Jeugdbeschermingsrecht*, cit., p. 316.
[148] Article 20, § 2, first section, 4°, article 26, article 29, § 2, first section, 6° and article 35, first section Youth Justice Decree; Explanatory memorandum to the draft decree on juvenile delinquency law, *Parl.St.* Vl.Parl. 2017-18, nr. 1670/1, p. 17.
[149] Article 20, § 2, first section, 5°, article 27, article 29, § 2, first section, 7° and article 36 Youth Justice Decree; article 3 Community Institutions Order.

years is possible; which may be followed by a *terbeschikkingstelling* of up to ten years.[150] A closed placement measure or sanction is considered as a last resort.

After all, juvenile delinquency law provides for handling at the level of the public prosecutor, if possible, to take precedence over judicial handling; a restorative justice offer (mediation or restorative group consultation) takes precedence over a measure or sanction; and there is an order of priority, in ascending order of intrusiveness, between the various measures and sanctions, with closed placement responses being last in the order and the rule that closed orientation is preferred over closed guidance, and closed guidance over long closed guidance.[151] No direct consequence is attached to this order of priority, but it can be read together with the principle of subsidiarity in article 3, § 5 Youth Justice Decree. After all, the condition is that the purpose of the measure or sanction cannot be achieved in any other way, which means that in case of (expected) equal effect, priority goes to the lightest measure or sanction.[152] Furthermore, reactions should be taken for the shortest possible duration.[153] Finally, it is also important to note that closed orientation, closed guidance and long closed guidance (with possible *terbeschikkingstelling*) can only be imposed if the age, substantive and procedural conditions for doing so are met. Whether deprivation of liberty in Belgium is really used as a last resort is a question on which the opinions of the interviewees in a study of De Bondt and Vercruysse are divided.[154]

Noteworthy with regard to the last resort nature of the placement responses is a recent preliminary draft decree that seeks to enshrine by decree the practice of short-term stays of up to 14 days in a community institution.[155] That practice was established at the end of April 2020 as an experiment to increase the entry opportunities of community institutions; to reduce the number of refusals on so-called 'buffer facts'[156] due to lack of space and the feeling of impunity; and to strengthen and accelerate the necessary partnerships on closed guidance decisions.[157] However, this raises questions about its compatibility with the principle that deprivation of liberty should be the last resort.[158]

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[150] Article 29, § 2, first section, 8° and article 37 Youth Justice Decree.
The *terbeschikkingstelling* will enter into force only three months after publication in the *Belgian Official Gazette* of the last of the consent acts of a cooperation agreement between the Flemish Community and the federal state (article 89, third section Youth Justice Decree). No such cooperation agreement has been concluded to date.
[151] Articles 3, 20 and 27 Youth Justice Decree.
[152] PUT, J., *Handboek Jeugdbeschermingsrecht*, cit., p. 349.
[153] Article 3, § 5 Youth Justice Decree.
[154] DE BONDT, W., VERCRUYSSE, L., *Social Field Research (FRANET). Procedural safeguards for children who are suspect or accused persons in criminal proceedings - Belgium*, cit., pp. 58-59.
[155] Preliminary draft decree amending the decree of 15 February 2019 on juvenile delinquency law as regards the removal of age limits and the possibility of electronic monitoring at the preparatory phase and other amendments, VR 2023 1310 DOC.1356/2.
[156] Community institutions are tasked to reserve a number of beds (buffer capacity) for young persons who have committed very serious offences (article 3 Ministerial decree of 3 March 2023 establishing the capacity of community institutions and the Flemish detention centre, *Belgian Official Gazette* 24 March 2023).
[157] Explanatory memorandum on the preliminary draft decree amending the decree of 15 February 2019 on juvenile delinquency law as regards the removal of age limits and the possibility of electronic monitoring at the preparatory phase and other amendments, VR 2023 1310 DOC.1356/3, p. 3.
[158] Pleysier, S., *Kortverblijf als 'ultimum remedium'? Over de wankele principes van het jeugddelinquentierecht (bis)*, in *Tijdschrift voor Jeugd en Kinderrechten*, 2023.

Medical examination

Medical examination is not a standardised requirement for the imposition of a closed placement in a community institution. In the preparatory phase, the youth court judge may order an investigation into the young person's person and living environment. As part of this, he may also subject the young person to a medical-psychological examination by an expert. Such medical-psychological examination is thus not mandatory.[159] However, such an investigation, carried out by a multidisciplinary team, is compulsory before a long closed guidance or *terbeschikkingstelling* can be imposed.[160] There are some exceptions to this obligation for long closed guidance. No medical-psychological examination is required if (1) the young person refuses to participate in this examination; (2) a sentence has already been passed in an earlier case against a young person who is not yet 18, who has been convicted for certain offences committed after the age of 16 and is now being prosecuted again for one or more of the same offences; (3) the young person is prosecuted for an offence, committed when aged 16 or older, and punished with a penalty exceeding 20 years' imprisonment and is only prosecuted after reaching the age of 18.[161]

The right to obtain healthcare is guaranteed in article 23 of the Belgian Constitution: everyone has the right to live a humane dignified life, which includes the right to health protection and medical assistance. Article 6 of the Patients' Rights Act[162] then stipulates that every patient has the right to free choice of professionals and to change this choice. So, when children are deprived of their liberty in a police cell and ask for medical assistance, this is of course possible. However, the police themselves may not administer any medication; all medication must be on prescription.[163] Young persons also receive medical care during their stay in the community institution. The outdated house rules of the community institutions stipulate that the young person can contact the nurse with medical questions. It is also possible to have a consultation with a doctor.[164] For other physical problems, the medical team can also refer the young person to other doctors (e.g. the dentist or ophthalmologist). The young person may only take medication prescribed by the doctor or psychiatrist of the institution. If the young person has medication with him when he enters the institution, the medical team will decide whether the young person can continue to take it. If the young person wants to stop or reduce his medication, he must discuss this with the doctor. The young person is not allowed to store his medication himself.[165]

In a questionnaire conducted by the NCRK among 338 young persons who were in a community institution in the Flemish Community or in a public youth protection institution [*institution publique de protection de la jeunesse, IPPJ*] in the French Community between mid-September and mid-October 2018, 29% of 307 young persons indicated that they could not see a psychologist or psychiatrist when needed. 22% of 309 young persons and 38% of 50 girls reported the same on access to medical services and a gynaecologist,

[159] Article 50 Youth Care Act.
[160] Article 37, § 6 and § 8 Youth Justice Decree.
[161] Article 37, § 6 Youth Justice Decree.
[162] Patient Rights Act of 22 August 2002, *Belgian Official Gazette* 26 September 2002.
[163] DE BONDT, W., VERCRUYSSE, L., *Social Field Research (FRANET). Procedural safeguards for children who are suspect or accused persons in criminal proceedings - Belgium*, cit., p. 63.
[164] Whether this is a doctor inside or outside the institution is not further stipulated.
[165] Rule 12 House rules community institutions, www.jeugdhulp.be/sites/default/files/documents/algemene-huisregels.pdf.

respectively.[166] When asked "*How soon did you get an appointment at the medical service?*", 58% of the 263 young persons replied it was the same day or the day after.[167]

Alternative means

The Flemish youth justice system does not provide for alternative means, such as the options in adult criminal law of probation or of the use of an ankle bracelet (electronic monitoring) as possibility for early termination of a placement. However, at the phase on the merits electronic monitoring offers an alternative to placement. It can – with special justification or in cases where the youth court is considering a placement sentence – be imposed as a modality or in support of a positive project, an ambulatory sanction or conditions. It must always be accompanied by guidance of the young person and is therefore not a 'bare ankle bracelet'.[168] In practice, the possibility of electronic monitoring is not yet rolled out, but the implementation will soon start with a pilot project in Antwerp.[169] Moreover, the above-mentioned preliminary draft decree aims to enable electronic monitoring also at the preparatory phase, both as a stand-alone response and in support of a positive project, an ambulatory measure or conditions.[170]

Placement measures specifically for young persons with psychiatric problems

For young persons with psychiatric problems, the Youth Justice Decree provides for two specific residential interventions, whose specific regulations are not further discussed in this report.[171] Firstly, a young person can be entrusted to a forensic child and adolescent psychiatric unit of a psychiatric hospital (For-K) in the preparatory phase or in the phase on the merits, when the need for this is shown by a psychiatric expertise. The placement consists of a residential stay for a maximum of six months, renewable once (as a sanction) or twice (as a measure) for three months at a time,[172] with a view to further diagnosis and treatment of a psychiatric problem. It must be imposed before the minor turns 18, and runs until his or her 19th birthday at the latest.[173]

Secondly, the youth court may place the young person in an open or closed section of a youth psychiatry unit [*jeugdpsychiatrie*] at the phase on the merits. This is not a real sanction, however, as it is intended for young persons who, because of their psychiatric condition, and the related impairment of their

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[166] BOURGEOIS, A ., VAN LAETHEM, K., *Kinderen geplaatst in een Gemeenschapsinstelling of in een Institution publique de protection de la jeunesse en hun rechten. Wat denken zij hierover?*, 2022, pp. 201-202, 205, 211-212 and 215.

[167] BOURGEOIS, A ., VAN LAETHEM, K., *Kinderen geplaatst in een Gemeenschapsinstelling of in een Institution publique de protection de la jeunesse en hun rechten. Wat denken zij hierover?*, cit., pp. 204 and 214.

[168] Article 29, §§ 4-5 Youth Justice Decree.

[169] Explanatory memorandum on the preliminary draft decree amending the decree of 15 February 2019 on juvenile delinquency law as regards the removal of age limits and the possibility of electronic monitoring at the preparatory phase and other amendments, VR 2023 1310 DOC.1356/3, p. 15.

[170] Preliminary draft decree amending the decree of 15 February 2019 on juvenile delinquency law as regards the preparatory phase of age limits and the possibility of electronic monitoring at the preparatory phase and other amendments, VR 2023 1310 DOC.1356/2.

[171] See for example OPGENHAFFEN, T., PUT, J., PLEYSIER, S., *Gesloten opvang van minderjarigen in de forensische kinder- en jeugdpsychiatrie in Vlaanderen: een rechtspositieregeling*, 2022.

[172] The duration of the FoR-K measure is imputed to the duration of the of FoR-K sanction.

[173] Article 6, article 20, § 2, article 21, § 5, article 25/1, article 29, § 2 and article 34/1 Youth Justice Decree.

judgment or control ability, cannot be held 'guilty' or responsible for their alleged behavior.[174] It is therefore more of a 'safety or protection response'.[175] For a placement in an open section, the judgement or ability to control actions of the young person must be seriously impaired. This must be shown by an independent report prepared by a child psychiatrist that is less than a month old.[176] For a placement in a closed ward, the conditions of subsidiarity and dangerousness in the Protection of the Mentally Ill Person Act[177] must be met: no other suitable treatment must be available, and the placement is necessary because the mentally ill person is seriously endangering his health and safety or because he poses a serious threat to another person's life or integrity.[178] However, the cited distinction between open and closed sections is problematic in practice, as criteria on the nature of the section are unclear and youth psychiatric units never label themselves as 'closed'.[179]

Respecting the right to a due process

Children, like adults, must be guaranteed all the principles of due process, such as the principle of legality and proportionality, presumption of innocence, right to a fair trial, right to legal assistance, right of access to justice.

One of the basic principles of the Youth Justice Decree is the importance of legal safeguards and quality requirements in decision-making and implementation of responses to youth offences. Essential principles are the principle of legality, presumption of innocence, assistance of a lawyer at every stage, proportionality and subsidiarity.[180] For example, during the preparatory phase, no measure may be taken with a view to immediate sanctioning, nor with a view to obtaining confessions or enforcing certain statements.[181] Furthermore, each actor is obliged to inform the young person of the legal safeguards in a timely manner, in a manner he can understand; the young person is also handed the text of the applicable articles of the UN Convention on the Rights of the Child.[182] In this section we focus on the quality of the legal assistance by a lawyer in practice and the available legal remedies and review procedures.

Quality of the legal assistance in practice

As already mentioned, the young person is entitled to free legal assistance of a lawyer at every stage of the youth justice proceedings. According to young persons surveyed in the preliminary study 'Monitoring and evaluation of the youth justice decree', their right to the assistance of a lawyer was always

[174] Article 39 Youth Justice Decree.
[175] PUT, J., *Handboek Jeugdbeschermingsrecht*, cit., pp. 406-407.
[176] Article 39, § 1, second section Youth Justice Decree.
[177] Act of 26 June 1990 on the protection of the person of the mentally ill, *Belgian Official Gazette* 27 July 1990.
[178] Article 39, § 1, second section Youth Justice Decree; article 2 Protection of the Mentally Ill Person Act.
[179] PUT, J., *Handboek Jeugdbeschermingsrecht*, cit., p. 409.
[180] PUT, J., *Handboek Jeugdbeschermingsrecht*, cit., pp. 291-292.
[181] Article 3, § 5, third section Youth Justice Decree.
[182] Article 3, § 3 Youth Justice Decree.

guaranteed.[183] However, the annual report of the Commission for the Supervision of Youth Institutions [*Commissie van Toezicht voor Jeugdinstellingen, CVTJ*] shows that some young persons in community institutions have difficulties reaching their lawyer.[184] This was more in general – and thus not limited to a stay in a community institution – also mentioned in the CLEAR-Rights research: young persons sometimes struggle to reach their lawyer and have contact with him on a regular basis. Conversely, some lawyers also reported that they sometimes find it difficult to get in touch with their client (e.g. when they have changed phone numbers) and sometimes do not even meet the young person until the first court hearing.[185]

Furthermore, a study by Vercruysse shows that a condition for quality legal aid is that the same youth lawyer always assists the young person, but that this is not always achieved in practice. Thus, young persons receive – due to practical reasons or because the administrative follow-up by the competent authority is insufficient – assistance from different lawyers throughout their trajectory.[186] In addition, there are large differences in quality among youth lawyers. Although the majority of youth lawyers do good work, it seems that every regionally organised bar association has a blacklist. During the interviews, some of the problems were linked to a lack of substantive knowledge and a number of violations of the professional ethics or deontology of the youth lawyer were identified.[187] This second category includes malpractices linked to the way the legal counsel fulfils the role of youth lawyer.

In the CLEAR-Rights study some professionals indicated that many children facing youth justice for the first time are unaware of the procedure and their rights, including the right to free assistance by a lawyer. Social workers added that preparation for a public hearing is often done quickly and at the last minute, which does not give the young person a chance to ask the questions he might have.[188] Besides, young persons usually do not know that they can switch lawyers.[189]

Legal remedies and review

The decision of the youth court judge at the preparatory phase imposing a measure can be appealed by the young person.[190] A judgment of the youth court at the phase on the merits can be both resisted [*verzet*, i.e. in case the judgment was rendered in absentia] and appealed.[191] Moreover, a final appeal judgment on measures at the preparatory phase or sanctions at the phase on the merits can be appealed in

[183] COECK, I., HADERMANN, E., VAN KELECOM, E., PUT, J., PLEYSIER, S., GOEDSEELS, E., *Vooronderzoek 'Monitoring en evaluatie van het decreet jeugddelinquentierecht'*, cit., pp. 75 and 84.
[184] CVTJ, *Maak van afzondering de uitzondering. Jaarverslag 2022*, cit., p. 49.
[185] GRAZIANI, L., *Europese analyse van rechtsbijstand voor kinderen in de praktijk en van lacunes in de rechtsbijstandsystemen in België, Frankrijk, Hongarije, Roemenië & Nederland*, cit., p. 57.
[186] VERCRUYSSE, L., *Een kwaliteitsvolle jeugdadvocaat: Een must-have voor minderjarige verdachten*, cit., p. 390.
[187] VERCRUYSSE, L., *Een kwaliteitsvolle jeugdadvocaat: Een must-have voor minderjarige verdachten*, cit., pp. 391-392.
[188] GRAZIANI, L., *Europese analyse van rechtsbijstand voor kinderen in de praktijk en van lacunes in de rechtsbijstandsystemen in België, Frankrijk, Hongarije, Roemenië & Nederland*, cit., p. 59.
[189] GRAZIANI, L., *Europese analyse van rechtsbijstand voor kinderen in de praktijk en van lacunes in de rechtsbijstandsystemen in België, Frankrijk, Hongarije, Roemenië & Nederland*, cit., p. 61.
[190] Articles 203, 204, 418 and 420 Code of Criminal Procedure; article 52*ter*, fifth and sixth section, article 58, first section and article 59 Youth Care Act.
[191] Articles 187-188 Code of Criminal Procedure; article 58 Youth Care Act.

cassation.[192] The Supreme Court does not rule again on the substance of the facts. This Court checks whether all procedural rules were complied with and the laws and rules of law were correctly interpreted or applied.

Besides remedies, juvenile delinquency law also includes a review option. The youth court (judge) may at any time, ex officio or at the request of the public prosecutor, review the measures or sanctions imposed on the young person, by revoking them or changing them to a less severe measure or sanction. The young person and his parents may also request the review of a measure imposed, with a view to a less severe measure or sanction. However, they are subject to a waiting period: the request for review is possible at the earliest three (measures) or six (sanctions) months from the day on which the decision became final. If the request is rejected, a new three- or six-month waiting period applies. The young person and his parents, and, if it so requests, the public prosecutor, shall be heard.[193] Furthermore, for all sanctions, the Youth Justice Decree stipulates that, save for exceptions[194], the public prosecutor must refer the case back to the youth court annually for confirmation, revocation or modification.[195] When reviewing, the youth court (judge) shall apply the same assessment criteria and limitations as those for the original decision. What is explicitly stipulated, however, is that the restorative nature of the measure or sanction and the interests of the victim must be taken into account. If necessary, the youth court (judge) may commission a social investigation.[196][197]

Respecting the right to participate in and understand the proceedings

> Children must be informed in a language they can understand about their rights and about all judgments and decisions that affect them. They must understand how the situation may or will evolve, what options they have and what the consequences will be. They have the right to be heard and to give their opinion in all matters that affect them.

This section on the right to participate in and understand the proceedings discusses the right to be heard by (accused) young offenders before the youth court (judge).

The right to be heard

[192] Articles 418 and 420 Code of Criminal Procedure.
[193] Article 16, § 2, first to fourth section Youth Justice Decree.
A different regime applies to the execution of a restorative justice offer, see article 16, § 2, fifth section Youth Justice Decree.
[194] E.g., long closed guidance is evaluated every six months (for minors) or annually (for adults) (article 37, § 5 Youth Justice Decree).
[195] Article 16, § 2, sixth section Youth Justice Decree.
[196] PUT, J., *Handboek Jeugdbeschermingsrecht*, cit., p. 412.
[197] Article 16, § 2, eighth section Youth Justice Decree.

In accordance with the Belgian Constitution, a child has the right to express his views on any issue concerning him.[198] The Preliminary Title of Youth Care Act stipulates that children have the right to be heard during the process leading to decisions affecting them and the right to participate in them. According to Article 52*ter* of the same act the youth court (judge) must hear a child of at least 12 years of age before imposing any (provisional) measure or sanction.[199] It concerns a hearing right, not a duty to speak.[200] It applies both to the original decision and to its modification.[201] Non-respect of this right to be heard leads to nullity of the decision.[202] However, the young person does not have to be heard when he cannot be found, his health condition does not permit it or if he refuses to appear. The obligation to hear the young person does not always receive the desired effect in practice. Sometimes 'written agreements' are used whereby the young person waives the right to appear and/or be heard. Such agreements are signed by the young person without prior consultation with the (youth) lawyer. The question thus arises as to whether the young person can adequately assess the consequences of this decision to waive his rights at that time.[203]

The first time the young person is heard by the youth court (judge) is always in person. From the second appearance, the young person can be heard by videoconference. The young person will be informed of this possibility during the first appearance. The choice to subsequently appear by videoconference lies with the young person, after consulting his lawyer. So it is not the youth court (judge) who decides, although he must agree. After all, the youth court (judge) can always order the personal appearance, even when the young person requested an appearance by videoconference. However, videoconferencing is not always possible, but only for the following appearances: (1) placements under the Provisional Detention Act of 1 March 2002[204]; (2) extension or review of a measure of provisional placement in a community institution; (3) extension or review of a measure of closed guidance, following the risk assessment (after 10 days) in the orientation phase; (4) extension or review of a measure of closed guidance; and (5) appearances on appeal. Finally, videoconferencing has to meet some conditions: (1) all participants must be able to see and hear everyone at the same time and without technical hindrance. They also should get a faithful representation of what is happening in the other space; (2) all parties can communicate effectively and confidentially with their lawyer. This should be possible before, during and after the hearing. Consultation should be possible without third parties being able to hear; (3) documents can be exchanged electronically between the parties and their lawyers before or during the videoconference; (4) storage and processing of the videoconference is excluded.[205]

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[198] Article 22*bis* Belgian Constitution.

[199] Article 51, § 2 Youth Care Act. See also article 15, § 1 Youth Justice Decree.
Children younger than 12 do not have to, but can be heard by the youth court (Article 51, § 2 Youth Care Act; Cass. 27 January 2010, AR P.09.1686.F.). However, this is not relevant in youth justice cases, because children under 12 are outside the scope of juvenile delinquency law.

[200] GwH 11 February 2021, No. 22/2021, B.11.2.

[201] Article 60 Youth Care Act.

[202] Cass. 1 December 2015, AR P.15.1335.N.

[203] ALOFS, E., DE BUS, S., *De procespositie van de minderjarige in het jeugdrecht*, in *Tijdschrift voor Familierecht*, 2022, p. 151.

[204] Act of 1 March 2002 on the provisional placement of minors who have committed an offence described as a crime, *Belgian Official Gazette* 1 March 2002.

[205] Article 15, § 1 Youth Justice Decree; Flemish Government order of 23 October 2020 on the use of videoconferencing for the appearance of young suspects, *Belgian Official Gazette* 15 December 2020.

How the young person should be informed of these rights and their implementation, the course of the hearing, complaints, etc. is not regulated by law. However, the young person always enjoys the assistance of a lawyer, who can give him explanations and is largely responsible for this in practice. In the first section of this report, research was cited showing that lawyers consider it their duty to inform young persons about their rights and the course of the proceedings. They also check whether the young person understood this information.[206] Research by De Bondt and Vercruysse shows that young persons do not fully understand beforehand what the procedure would look like. They also do not always understand in what way they can participate in the proceedings. Half of the 27 young persons surveyed were not always properly prepared by their lawyer.[207] In this study it was also noted that complaints and appeals procedures concerning the right to be heard are rare. They raise the question whether young persons are sufficiently aware of the options they (should) have in this regard. [208] Furthermore, how the right to be heard should take shape and thus what the modalities are is also not regulated by law and in practice appears to vary from youth court judge to youth court judge.[209] Young persons also report not being given enough time to express their opinions, and the professionals surveyed also confirm the time pressure.[210] Unfortunately, 80 per cent of young persons reported feeling that the youth court judges do not (always) listen to them with interest.[211] The questionnaire conducted by the NCRK in 2018 revealed that more than half of the participating young persons in a community institution or IPPJ (56% of 319 children) did not feel that their youth court (judge) listened to them.[212]

Effect of the child's opinion

In addition to the hearing rights, the Belgian Constitution stipulates that the child's opinion must be taken into account considering his age and discernment.[213] How this should be done is not defined. According to article 149 of the Belgian Constitution, the youth court judge does have to give reasons for each judgment. More specifically, the decision ordering measures must contain at least the following aspects: (1) a summary of the elements relating to the personality or environment of the young person which justify the decision and a summary of the facts with which he is charged; (2) a reference to the fact that the person concerned was heard or to the reasons why he was not heard; (3) a reference to one or more decision-making factors from article 16, § 1 of the Youth Justice Decree; and (4) a special statement of

[206] COECK, I., HADERMANN, E., VAN KELECOM, E., PUT, J., PLEYSIER, S., GOEDSEELS, E., *Vooronderzoek 'Monitoring en evaluatie van het decreet jeugddelinquentierecht'*, cit., pp. 80-81.
[207] DE BONDT, W., VERCRUYSSE, L., *Participatie van minderjarigen in de jeugdrechtbank: getuigenissen over de Vlaamse praktijk*, in *Tijdschrift voor Criminologie*, 2023, pp. 50-51.
[208] DE BONDT, W., VERCRUYSSE, L., *Participatie van minderjarigen in de jeugdrechtbank: getuigenissen over de Vlaamse praktijk*, cit., pp. 60-62.
[209] DE BONDT, W., VERCRUYSSE, L., *Participatie van minderjarigen in de jeugdrechtbank: getuigenissen over de Vlaamse praktijk*, cit., p. 52.
[210] DE BONDT, W., VERCRUYSSE, L., *Participatie van minderjarigen in de jeugdrechtbank: getuigenissen over de Vlaamse praktijk*, cit., p. 55.
[211] DE BONDT, W., VERCRUYSSE, L., *Participatie van minderjarigen in de jeugdrechtbank: getuigenissen over de Vlaamse praktijk*, cit., p. 54.
[212] BOURGEOIS, A ., VAN LAETHEM, K., *Kinderen geplaatst in een Gemeenschapsinstelling of in een Institution publique de protection de la jeunesse en hun rechten. Wat denken zij hierover?*, cit., pp. 77 and 83.
See also Vlaamse Jeugdraad, *Touristenbevraging 2020: de resultaten*, 2020, p. 131.
[213] Article 22*bis* Belgian Constitution.

reasons in the event that no restorative justice offer was made.[214] How the young person's opinion was taken into account does not have to be motivated. The vast majority of young persons surveyed in De Bondt and Vercruysse's study are convinced that no (or negligible) weight was given to their opinions in the final decision-making process. Interestingly, more than 60 per cent of young persons surveyed have the perception that the decision of their youth court judge is often fixed even before the hearing takes place. This feeling is shared by the professionals.[215] In the preliminary study 'Monitoring and evaluation of the youth justice decree', young persons also cite the feeling that they are not being listened to.[216] Other research shows that it is not evident for young persons with psychiatric disorders to articulate what factors played a role in the decision-making process.[217] Prior research also shows that written justifications hardly contain any references to decision factors, but are mostly standard justifications.[218]

A copy of the decision is given to the young person after the hearing in the preliminary phase and at the trial on the merits itself. His parents also receive this copy if they are present at the court session. If the handing over could not happen, they will be sent a court letter. The copy states the possible legal remedies and the formal and deadline requirements to be complied with. Finally, a copy of the decision is sent to the young person's lawyer.[219]

Respecting the right to a private and family life

> The private life and personal data of children who are or have been involved in any proceedings should be protected. No information, images or data that could directly or indirectly allow the identification of the child may be disclosed. The authorities should provide limited access to records or documents, and all proceedings involving minors should take place behind closed doors.

According to article 22 of the Belgian Constitution everyone has the right to respect for his private and family life, except in the cases and under the conditions determined by law. Other instruments also establish and develop these rights. For example, article 25 of the Legal Status Decree stipulates that young persons have the right to respect for their privacy, including the protection of their personal data.

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[214] Article 195 Code of Criminal Procedure; article 37, § 2*quinquies* and article 52*ter*, third section Youth Care Act; article 16, § 1 Youth Justice Decree.

[215] DE BONDT, W., VERCRUYSSE, L., *Participatie van minderjarigen in de jeugdrechtbank: getuigenissen over de Vlaamse praktijk*, cit., p. 58.

[216] COECK, I., HADERMANN, E., VAN KELECOM, E., PUT, J., PLEYSIER, S., GOEDSEELS, E., *Vooronderzoek 'Monitoring en evaluatie van het decreet jeugddelinquentierecht'*, cit., p. 76.

[217] CAPPON, L., VANDER LAENEN, F., *Gehoord worden is nog geen inspraak: perspectieven van minderjarigen en ouders op de beslissingen genomen door de jeugdrechter*, in *Tijdschrift voor Jeugd en Kinderrechten*, 2015, p. 14.

[218] CAPPON, L., *Standaardmotiveringen? Motivering van jeugdrechters betreffende maatregelen bij minderjarigen met een psychiatrische stoornis*, in *Panopticon*, 2013; SMETS, S., PUT, P. *Rechtspraak in het jeugdbeschermingsrecht: een juridisch-empirische analyse*, in *Themis 88 – Jeugdbeschermingsrecht*, Brugge, 2014.

[219] Articles 10, 52*ter* and 61*bis* Youth Care Act.

In this section we address the rules on records, the open or closed character of court proceedings, press reporting and personal contact during youth detention.

Records

The parties and their lawyer have the right to access the court file. The file on the young person's personality and the environment in which he lives may not be disclosed to the young person himself or to the civil party. The young person's lawyer, however, is allowed to see the full file.[220]

With regard to entry in the central criminal register, article 63 of the Youth Care Act stipulates that sanctions imposed by the youth court shall be entered in this register. They may be notified to judicial authorities but not to private individuals. Administrative authorities, notaries and bailiffs may be notified if they absolutely need this information for the application of a legal or regulatory provision.[221] From five years after the end of the sanction, the young person may request the removal of this entry in the criminal register. Thus, the youth court may not decide that the entry of a sanction in the criminal register should be removed at the time it ends the sanction. However, a circular of 31 August 1967 stipulates that sanctions can only be entered up to 10 years after the person's age of majority (i.e. 28 years).[222] The young person himself can always request an extract from the criminal register, for example to present to his (future) employer. Under no circumstances does that extract contain the youth justice sanctions that were imposed.[223]

Also noteworthy, national and European rules on the processing of personal data apply to the composition and retention of records.[224] Different rules apply to cases before bodies other than the youth court, such as community institutions.[225]

Open- or closed-door character of court proceedings

In the preparatory phase, the youth court judge sits in his own office; at this stage, the hearing has a closed nature. In the phase on the merits, on the other hand, the debates take place in public court. However, the youth court may at any time order the proceedings to be held in closed session if it considers that the public nature of the debates would endanger public order or morality.[226] Moreover, the parties and a victim of sexual offences, abuse of prostitution or trafficking in human beings for the purpose of

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[220] Article 55 Youth Care Act..
[221] See also articles 589-590 and 593-594 Code of Criminal Procedure; article 44 Youth Justice Decree; HERBOTS, K., DE SCHEPPER, T., ROM, M., *Het strafregister bij jeugddelinquentie: wie niet weg is, is gezien*, in *Tijdschrift voor Jeugd en Kinderrechten*, 2017.
[222] PUT, J., *Handboek Jeugdbeschermingsrecht*, cit., p. 583.
[223] Article 595, first section, 3° Code of Criminal Procedure.
[224] See for example Directive (EU) 2016/680 on the protection of natural persons with regard to the processing of their personal data by police and criminal justice authorities, and the free movement of such data; Act of 30 July 2018 on the protection of natural persons with regard to the processing of personal data, *Belgian Official Gazette* 5 September 2018. For information on archiving youth records, see: DROSSENS, P., *Wat gebeurt er met afgesloten jeugddossiers? Een nadere kijk op hun selectie, archivering en raadpleegbaarheid*, in *Tijdschrift voor Jeugd en Kinderrechten*, 2022.
[225] See for example articles 20-23 Legal Status Decree; article 6 Flemish Government order of 16 September 2022.
[226] Article 148 Belgian Constitution; PUT, J., *Handboek Jeugdbeschermingsrecht*, cit., pp. 301 and 574.

prostitution or other forms of sexual exploitation have the option to request closed-door proceedings.[227] The order to close the doors must appear from the records of the trial, otherwise the judgment following the trial behind closed doors is void.[228] Moreover, the youth court may withdraw into chambers at any time during the debates to hear the experts and witnesses, or the parents regarding the young person's personality. The young person himself is not present at the debates in chambers. However, the court may summon him if it considers it advisable. However, his lawyer must always be present.[229] The judgment of the youth court must always be rendered in public court.[230]

Press reporting

The young person's identity can be mentioned in a court case. However, article 433*bis* of the Criminal Code imposes restrictions on journalism with regard to reporting on youth crime cases. It criminalises the publication and dissemination of the record of debates before the youth court, before the investigating judge and before the chambers of the court of appeal. Only the motives and the dispositive part of the judicial decision pronounced in open court are an exception. However, publication and dissemination by any process whatsoever of texts, drawings, photographs or images that may reveal the identity of a prosecuted or convicted young person are prohibited. In addition to this criminal provision, there are also journalistic rules on the media coverage of youth justice cases. The Journalism Council's Code contains minimum professional ethics rules for all forms of journalism. According to article 23 of this code, journalists must respect the private life of individuals and may not go beyond what is necessary in the social interest of reporting. Journalists should treat people in a vulnerable situation, such as minors, with particular caution. Article 23 includes also a guideline on identification in a judicial context. Among other things, it stipulates that any identification of a minor subject to a youth court judge's measure is prohibited by law and therefore punishable. Professionally, however, identification may be justified in a number of cases: (1) when the reporting is not at all about the case in question and the youth court judge's measure is not mentioned; (2) to publish identification data released by the judiciary, police or Child Focus[231] itself, for example as part of a search operation. If at a later stage these bodies ask for special reasons to stop the dissemination of the data, the journalist takes this into account to the extent possible; and (3) to allow a minor to explain his side of the case. The crucial question in that case is whether identification is in the minor's own interest.[232]

Personal contact during youth detention

In case of deprivation of liberty in a closed community institution, it should preferably take place as close as possible to the place of residence of the (accused) young person, or of his parents.[233] During the detention reintegration of the young person is worked on.[234] In light of that, the young person enjoys the right to information about and regular personal and direct contact with his parents unless it is contrary to

[227] Article 190 Code of Criminal Procedure.
[228] Cass. 18 February 1981, AR 1543.
[229] Article 57 Youth Care Act.
[230] Article 149 Belgian Constitution.
[231] This is a foundation for missing and sexually exploited children. See https://childfocus.be/nl-be/Over-ons.
[232] Journalism Council's Code, p. 33.
[233] Article 17, § 1 Youth Justice Decree.
[234] Flemish Government order of 16 September 2022.

the best interests of the young person or a court decision.[235] Grandparents, siblings and other persons with a special affective relationship with the young person also have the right to maintain personal contact with the young person.[236] The legislation also provides that, to the extent permitted by the mission and organisation of the community institution, the young person enjoys the right to receive visits and interact with persons of his own choosing, unless a restriction on that right results from a court decision. If the limitation of this right does not result from a court decision, the limitation shall be motivated in detail in the young person's file.[237] The youth court judge may also grant permission to have contact with 'third parties' he designates. That provision is unclear, as it is not known who exactly is to be considered a third party and how that relates to the just mentioned visitation rights.[238] To realise these rights, young persons can make (video) calls, sent and receive letters and receive visits in the institution itself.[239] The outdated house rules of the community institutions contains a regulation on these aspects.[240] When responding to the 2018 NCRK questionnaire, 89% of 317 young persons said they had telephone contact with their family in the past seven days and 67% of 219 young persons said they did not receive weekly visits from their families.[241]

In addition, there are exceptions to the principle that young persons may not leave the institution. Leaving the institution is possible, without having to request permission from the youth court judge, for the following reasons: appearing before the youth court judge, medical reasons or attending a funeral in Belgium of a family member up to the second degree. In addition, the youth court judge may, on the advice of the management of the community institution and, where appropriate, under conditions to be determined, authorise leaving the institution for other reasons. Examples include a weekend stay at home. If the youth court judge refuses a requested admission, he must provide the reasons.[242]

[235] Article 14 Legal Status Decree.
[236] Article 375*bis* Old Civil Code.
[237] Article 25 Legal Status Decree.
[238] Article 27, § 3 and article 36, second section Youth Justice Decree.
[239] CVTJ, *Maak van afzondering de uitzondering. Jaarverslag 2022*, cit., p. 49.
[240] For example, at least once a week, the young person may make one or more telephone calls for 10 minutes with and receive visits from his parents, grandparents, brothers, sisters and other persons who have been authorised to do so by the youth court. The director may refuse the visit of certain persons in certain cases.
[241] BOURGEOIS, A ., VAN LAETHEM, K., *Kinderen geplaatst in een Gemeenschapsinstelling of in een Institution publique de protection de la jeunesse en hun rechten. Wat denken zij hierover?*, cit., pp. 143-153.
[242] Article 27, § 3 and article 36, second section Youth Justice Decree.

Respecting the right to integrity and dignity

Children must be protected from harm, including intimidation, reprisals and secondary victimisation. They must always be treated with care, sensitivity, fairness and respect, and with full respect for their physical and psychological integrity. Special protection and care must be provided for the children in special conditions vulnerability. If deprived of their liberty, they must be separated from adults. Children must not be subject to torture or inhuman and degrading treatment or punishment. This section also concerns the condition of detention.

The final principle in the report is the right to integrity and dignity. This right is also constitutionally enshrined. Article 22*bis* of the Belgian Constitution states that every child has the right to respect for his moral, physical, mental and sexual integrity. This is also highlighted in article 27 of the Legal Status Decree: no young person shall be subjected to inhuman or degrading treatment or punishment. In this section we take a look at some relevant aspects of this: the separation of minors from adults, sanctions during youth detention and complaint and monitoring mechanisms in youth detention.

Separation from adults

As already mentioned, young persons deprived of liberty as a measure or sanction in the preparatory phase or phase on the merits under juvenile delinquency law end up in a community institution.[243] These institutions are accessible only to young persons prosecuted under juvenile delinquency law. Thus, there is no joint placement with adults tried under adult criminal law. However, the age of young persons in a community institution can – given the possible duration of the response – range between 12 and 25 years.[244]

Sanctions during youth detention

Article 28 of the Legal Status Decree provides a specific regime on sanctions during placement in community institutions. Imposed sanctions must be adapted to the personality of the young person and be proportional to the seriousness of the offence. They should always promote education and should not be traumatic. Physical punishment, mental violence, deprivation of meals and, unless a court decides

[243] Articles 20, 26-27, 29 and 36-38 Youth Justice Decree.
[244] Article 6, first section and article 37, § 3 Youth Justice Decree.

otherwise, deprivation of visiting rights, are prohibited. Temporary isolation or temporary restriction of liberty are only possible if and for as long as the young person's behaviour: (1) poses risks to his own physical integrity, or (2) poses risks to the physical integrity of fellow residents or staff members or is materially destructive. The procedures to proceed to temporary isolation or temporary restriction of liberty must be clearly defined in the internal regulations and must be clearly communicated. If a security room is used, the house rules shall describe at least: the set-up and use of the security room, the security file, the duration of security and supervision. Recently, two studies on this topic were conducted: (1) a legal study on the legal position of minors in closed institutions in Flanders[245] and (2) an interdisciplinary study in which an intersectoral guideline for the prevention and use of seclusion and restraint in broad residential child protection was developed.[246] These showed that the current legal framework and practice can and should be improved. In aftermath, a preliminary draft decree was prepared with the aim of thoroughly updating the Legal Status Decree.[247] Community institutions are also fully engaged in implementing the intersectoral guide; among other things, their outdated house rules are currently being reworked.[248]

Complaint and monitoring mechanisms in youth detention

According to article 29 of the Legal Status Decree and article II.75 of the Executive Decree[249] any young person in the community institution has the right to lodge a complaint free of charge with that institution about its operation. The Executive Decree also defines the modalities for exercising this right to complain, including the possibility of submitting oral and written complaints, aspects of confidentiality, the preference for mediation, and the possibility of filing (higher) appeals with the Flemish Ombudsman Service.[250] The outdated house rules of the community institutions stipulate that when problems arise, young persons are first advised to talk to their individual counsellor, another counsellor or another care worker. They can also write a letter to the director of the institution.[251] When this mediation does not offer a solution, the young person can complain to the JO-line or the Flemish Office of the Children's Rights Commissioner.[252] The JO-line is a helpline of the Growing Up Agency where the child can address complaints about child protection by phone (0800 900 33), letter or e-mail (jo-lijn@opgroeien.be). It initially directs the child to the institution's internal complaints procedure. If that is already exhausted and the young person is still not satisfied, the complaint can be forwarded to Care Inspectorate [*Zorginspectie*]. The information

[245] CARLÉ, J., OPGENHAFFEN, T., PUT, J., PLEYSIER, S., *Gesloten opvang van minderjarigen in Vlaanderen: een rechtspositieregeling*, 2021.
[246] BEECKMANS, D., DROOGMANS, G., MERTENS, N., OPGENHAFFEN, T., VANHOOF, J., MAES, B. VAN ACHTERBERG, T., NIJS, S., PUT, J., VAN AUDENHOVE, C., DE CUYPER, K., *De ontwikkeling van een intersectorale richtlijn voor de preventie en toepassing van afzondering en fixatie in de brede residentiële jeugdhulp*, 2021; DE CUYPER, K., OPGENHAFFEN, T., DROOGMANS, G., BEECKMANS, D., VANHOOF, J., MERTENS, N., MAES, B., VANLINTHOUT, E., VAN ACHTERBERG, T., NIJS, S., PEETERS, T., PUT, J., VAN AUDENHOVE, C., *De preventie en toepassing van afzondering en fixatie in de brede residentiële jeugdhulp. Een intersectorale richtlijn met zicht op de toekomst*, 2021.
[247] Preliminary draft decree amending the decree of 7 May 2004 on the legal status of minors in integrated child protection and within the framework of the decree on juvenile delinquency law, VR 2023 1310 DOC.1317/2BIS.
[248] See www.jeugdhulp.be/organisaties/gemeenschapsinstelling/huishoudelijk-reglement.
[249] Executive decree of 7 December 2018, *Belgian Official Gazette* 19 December 2019.
[250] Articles II.76-II.87 Executive Decree.
[251] Rule 14.1 House rules community institutions, www.jeugdhulp.be/sites/default/files/documents/algemene-huisregels.pdf.
[252] Rule 14.2 House rules community institutions, www.jeugdhulp.be/sites/default/files/documents/algemene-huisregels.pdf.

received by the JO-line is confidential and subject to professional secrecy.[253] The Flemish Office of the Children's Rights Commissioner monitors compliance with children's rights in Flanders and investigates complaints relating to non-compliance with these rights.[254]

Functioning under the direction of this commissioner, an independent Commission for the Supervision of Youth Institutions has additionally been established for supervising institutions that organise closed care, such as community institutions. This supervision carried out on site by so-called 'monthly commissioners' [*maandcommissarissen*]: per (campus of a) institution, someone is appointed who visits the institution unannounced at least monthly. The focus is on how young persons are treated: the monthly commissioners can take note of this, mediate, refer to a complaint procedure, etc. The findings of the monthly commissioners are reported to the institution, the Children's Rights Commissioner, Care Inspectorate, recognised client organisations and the client forum.[255] The Care Inspectorate is part of the Flemish Department of Care and is itself a body that oversees community institutions. On a regular basis, they conduct announced checks on the institution's compliance with requirements imposed on it, such as legislation and conditions for funding, accreditation and licensing.[256]

The 2018 survey conducted by the NCRC probed the right to complain about non-compliance with rights within a community institution or IPPJ. Of the 25 young persons who indicated that they had once made a complaint and answered the question on how the complaint was made, 17 young persons indicated that they made a complaint to the staff or directors of the community institution or IPPJ. 6 young persons complained to external bodies specifically tasked with receiving complaints and 2 to their lawyer or youth court (judge).[257] The question "*Do you feel that your complaints were taken into account?*" was answered by 43 young persons; 33 of them answered that they did not have the impression that their complaints were taken into account.[258] The young persons who indicated that they had not filed a complaint about their rights not being respected within the community institution or IPPJ were asked about the reasons why they had not filed a complaint. Of the 57 young persons who answered this question, 38 felt that their complaint would have no impact due to the fact that they felt that making a complaint would be pointless, that they would not be listened to, that they would not be taken seriously, that they would never be vindicated or that persons to whom they would complain would not intervene. 10 young persons indicated that they had not filed a complaint for fear that it would aggravate the situation or affect their placement (duration or modality). The remaining 9 young persons gave other reasons, including being prohibited from making a complaint, not knowing how to make a complaint or not wanting to make a complaint.[259]

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[253] See www.jeugdhulp.be/over-jeugdhulp/jo-lijn-klachtenlijn.

[254] Articles 4-6 Decree of 15 July 1997 establishing an Office of the Children's Rights Commissioner, establishing the position of the Children's Rights Commissioner and establishing a Commission for the Supervision of Youth Institutions, *Belgian Official Gazette* 7 October 1997; See also www.kinderrechten.be.

[255] Article 2, 6° and articles 16-26 Decree of 15 July 1997. See also www.cvtj.be.

[256] Decree of 19 January 2018 on state supervision in health and welfare policy, *Belgian Official Gazette* 21 February 2018. See also https://dwvg-portaalsite.paddlecms.net/zorginspectie/publieke-jeugdinstellingen.

[257] BOURGEOIS, A ., VAN LAETHEM, K., *Kinderen geplaatst in een Gemeenschapsinstelling of in een Institution publique de protection de la jeunesse en hun rechten. Wat denken zij hierover?*, cit., pp. 222 and 228.

[258] BOURGEOIS, A ., VAN LAETHEM, K., *Kinderen geplaatst in een Gemeenschapsinstelling of in een Institution publique de protection de la jeunesse en hun rechten. Wat denken zij hierover?*, cit., pp. 223 and 229.

[259] BOURGEOIS, A ., VAN LAETHEM, K., *Kinderen geplaatst in een Gemeenschapsinstelling of in een Institution publique de protection de la jeunesse en hun rechten. Wat denken zij hierover?*, cit., pp. 224 and 230.

Final comments

The objectives and basic principles of Flemish juvenile delinquency law are putting the responsibility of the youth offender at the centre; ensuring a differentiated range of clear, swift, constructive and restorative responses to youth offences; working evidence-based; working with different frameworks (restorative, care, sanction and security); distinguishing the response to a youth offence from child protection; deploying subsidiarity and closed custody as a last resort; and attaching importance to legal safeguards and quality requirements in the decision-making and implementation of responses to youth offences. The youth justice system of the Flemish Community is mainly regulated by the Flemish Youth Justice Decree of 15 February 2019 and some federal rules, such as the Youth Care Act, the Criminal Code and the Code of Criminal Procedure. However, as of today, for instance, electronic monitoring and long closed guidance have not yet been rolled out in practice in Flanders, and the *terbeschikkingstelling* has not yet entered into force.

With regard to the implementation of the principles, as described in this report, some challenges in practice remain. The juvenile delinquency law is characterised by an individual assessment of the young person. However, not every social service investigation report is sufficiently updated. In addition, there are large differences in quality among youth lawyers. Many children facing youth justice for the first time are unaware of the procedure and their rights, including the right to free assistance by a lawyer. Also, no child-specific regulation for the interrogation of young suspects exists. As a result, individual differences exist between the interrogation styles and assessment approaches on the vulnerability of the young person adopted by police officers when interrogating young suspects. Furthermore, how the right to be heard should take shape and thus what the modalities are is also not regulated by law and in practice appears to vary from youth court judge to youth court judge. Young persons also report not being given enough time to express their opinions, and the professionals surveyed also confirm the time pressure. To conclude, on paper quite some progression has been made in Flandres to make the youth justice system more child-friendly. The next step is to enhance its implementation in practice.

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Young Perspectives

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