

 JUST CLOSER 

EXECUTIVE SUMMARY

NATIONAL REPORT ON THE YOUTH JUSTICE
SYSTEM - BELGIUM



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Introduction

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. 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

The Youth Justice Decree outlines the obligation for all involved parties to clearly and comprehensibly explain the rights and procedures to young persons involved in the youth justice system. This includes informing them about their rights during interrogation, such as the right to remain silent and the right to legal counsel. While a written statement of rights is provided to young persons before their first hearing, concerns have been raised about its complexity, prompting some actors to verbally clarify these rights during the interrogation process.

During the preparatory and merits phases of the youth justice proceedings, efforts are made to inform young persons about the process and their rights, although standardised information brochures are lacking at the level of the public prosecutor and youth court. When placement measures or sanctions are imposed, young persons are provided with information about the community institution they will be placed in, including their rights and the institution's rules. Counseling staff regularly engage with young persons to provide information and answer questions, ensuring they understand the treatment plan and court reports.

The language used in legal proceedings is determined by the territoriality principle, meaning Dutch is used in the Dutch language area. If a young person being interrogated does not understand or speak the language of the proceedings, or if they have hearing or speech impairments, a sworn interpreter is provided at the state's expense. However, if no sworn interpreter is available, the young person may be asked to record their statement themselves. Throughout the investigation and before the youth court, the young person has the right to free assistance of an interpreter if needed, although there are instances where interpreters may not be readily available, leading to delays or reliance on family members for interpretation.

Regarding communication in community institutions, it's mandated that communication with young persons should be in a language understandable to them and appropriate for their age and maturity. This may necessitate the involvement of interpreters or other personnel to provide necessary explanations to ensure effective communication.

When interrogated, minors are entitled to the assistance of a lawyer, and this assistance is always provided free of charge. Additionally, whenever a young person appears before the youth court, they are entitled to legal assistance, which is also free of charge. If the minor does not have their own lawyer, one will be assigned to them by the Bar Association. Furthermore, young persons in community institutions have the right to contact their lawyer for assistance or advice if needed, as stipulated in the institution's house rules.

Age-appropriate

At the prosecution level, settlement options are evaluated individually for each young person, considering specific conditions. However, not all police forces have social departments to aid in this assessment. The youth court adheres to the principle of separate handling, trying each young person separately even in cases related to adult crimes. The judge determines responses based on available information, including police investigations and social examinations. These examinations aim to understand the young person's personality and environment to make informed judgments on appropriate measures. Measures are tailored to meet the age and needs of the minor, with provisions for assessments and orientations before imposing sanctions like closed guidance. However, challenges exist, such as insufficiently updated social service reports and the effective enforceability of responses like electronic monitoring and closed guidance, which are not fully implemented in practice.

Concerns regarding police use of force and handling of minors have prompted calls for better training focused on de-escalation and specific protocols for situations involving children. There are four notable child-specific regulations at the police level. Firstly, rooms in police stations where minors are temporarily held must meet certain conditions regarding food, drink, and sanitation. Secondly, there is a specific reporting obligation for the police to notify parents or spouses when a minor is deprived of liberty. Thirdly, handcuffing of minors is prohibited except in exceptional circumstances such as transfer or guarding of suspects, but must be justified and recorded. Lastly, regulations on nude searches now include specific rules for minors, limiting such searches to cases of judicial deprivation of liberty and with the consent of the public prosecutor. Research suggests variations in interrogation styles and assessment approaches among police officers, with a majority adopting an information gathering style and using suggestive questions.

When placed in a community institution, a young person's study and work activities outside the institution are interrupted. Education provided within the institution has been criticised for not leading to official certification, hindering educational progress. Additionally, the limited educational offerings may not align with the young person's interests and goals. However, young persons may eventually be allowed to leave the institution for education or work purposes for one or more days a week.

Speedy procedures

New response options at the prosecution level, such as conditional dismissal and positive projects, were introduced to expedite the process. Strict deadlines were set for the maximum duration of the preparatory

phase, typically nine months but extendable under certain circumstances. However, the average timeframes for youth justice proceedings in practice remain unclear due to limitations in registration systems, making it difficult to assess whether deadlines are being met.

Diligence

There is no specific legal framework in Belgium regulating the establishment of a specialised youth service within the police structure. Each police force decides independently whether to create a separate department to handle cases involving minors. Consequently, some districts lack specially trained officers or units, leading to a situation where all officers handle cases involving minors. The National Police Academy and accredited police schools provide standard training for police officers, which includes some coverage of youth protection topics, albeit to a limited extent.

In each court of first instance, including the youth court, there is a specialised unit within the public prosecutor's office consisting of youth public prosecutors, criminologists, jurists, judicial trainees, and administrative staff. However, these units are not always distinct; some are part of broader sections that handle youth and family cases, including intra-family violence and sexual offenses. In the court of appeal, the youth chamber is overseen by specialised public prosecutors from the general prosecutor's office, who undergo training in sexual and intra-family violence. The youth and family court operates as a distinct section within the court of first instance, present in each of the twelve judicial districts in Flanders. Depending on the size of the district, there may be one or more youth chambers, each presided over by a youth court judge who acts individually. The judge overseeing both the preparatory and merits phases remains the same. To become a youth judge, one must have served at the general court of first instance for at least a year and undergone the same training as public prosecutors handling youth cases. The youth court's social service provides assistance to youth public prosecutors and courts in each judicial district in Flanders. Young suspects have the right to choose their own lawyer, but if they do not, one may be appointed by authorities ex-officio. To facilitate this, youth permanencies are organised by the Legal Aid Office of each bar association in Flemish regions, providing lawyers for various proceedings involving minors without legal representation. Most Flemish bar associations enforce this training.

Adapted and focused on the rights of children

When a young person commits a youth offense, they can be arrested, initiating a preparatory phase and a phase on the merits, both potentially involving deprivation of liberty. Closed placement measures, as a last resort, may be imposed during both phases, beginning with a closed orientation and potentially extending to closed guidance or long closed guidance. Restorative justice options take precedence over measures or sanctions, with an order of priority based on intrusiveness, where closed placement responses are last.

Medical examination is not mandatory for closed placement in a community institution, but it can be ordered by a youth court judge during the preparatory phase. However, it is compulsory before imposing long closed guidance or terbeschikkingstelling. The right to healthcare is guaranteed by the Belgian Constitution and Patients' Rights Act. In police custody, children have the right to request medical

assistance, though only prescribed medication is administered. Community institutions provide medical care, allowing young persons to consult with nurses or doctors. A questionnaire revealed that some young persons in community institutions faced challenges accessing mental health services or specialist care.

In the Flemish youth justice system, alternative measures like probation or electronic monitoring for early termination of placement are not provided. However, in the phase on the merits, electronic monitoring can serve as an alternative to placement. It may be imposed with special justification or in cases where placement is under consideration. Electronic monitoring must always be accompanied by guidance and support for the young person.

The Flemish Youth Justice Decree includes provisions for two specific residential interventions for young persons with psychiatric problems. Firstly, a young person may be placed in a forensic child and adolescent psychiatric unit of a psychiatric hospital for diagnosis and treatment of psychiatric issues. This placement lasts up to six months, renewable for additional three-month periods, until the minor turns 19. Secondly, the youth court may place the young person in an open or closed section of a youth psychiatry unit in cases where psychiatric conditions impair judgment or control.

Respecting the right to a due process

Reports indicate challenges in accessing legal counsel consistently. Some young persons struggle to reach their lawyer, leading to irregular contact. Additionally, continuity in legal representation is not always ensured, as young persons may receive assistance from different lawyers due to practical reasons or administrative shortcomings. Disparities in the quality of legal representation exist among youth lawyers, with some facing criticisms for lacking substantive knowledge or violating professional ethics. Many young persons facing the justice system for the first time are unaware of their rights, including the right to legal assistance. Preparation for legal proceedings is often rushed, leaving little opportunity for young persons to ask questions or switch lawyers if needed.

In the Flemish juvenile delinquency law, decisions made by the youth court judge can be appealed or reviewed through various mechanisms. At the preparatory phase, a measure imposed by the judge can be appealed by the young person. At the phase on the merits, both judgments and sanctions can be challenged through resistance or appeal. Additionally, final appeal judgments on measures or sanctions can be further appealed in cassation, where procedural compliance and correct interpretation of laws are assessed. Furthermore, the youth court judge has the authority to review measures or sanctions at any time, either ex officio or upon request.

Respecting the right to participate in and understand the proceedings

Children in Belgium have the right to express their views on matters concerning them. Article 52ter of the Youth Care Act mandates that children aged 12 and above must be heard by the youth court judge before any (provisional) measure or sanction is imposed, although this is a right, not a duty to speak. Initially, the young person must be heard in person by the youth court judge, but subsequent appearances can be conducted via videoconference, subject to certain conditions and the young person's consent. The process of informing young persons about their rights and the proceedings is largely the responsibility of

their lawyer. Research indicates that young persons often do not fully understand the proceedings or their participation rights. Moreover, the implementation of the right to be heard varies among youth court judges, with some young persons feeling that they are not given enough time to express their opinions, and many reporting that judges do not listen to them with interest.

In Belgium, in addition to hearing rights, the Constitution mandates that a child's opinion must be considered, taking into account their age and discernment, although the specific process for this consideration is not defined. Article 149 of the Constitution requires the youth court judge to provide reasons for each judgment. Research indicates that many young persons feel their opinions are given little weight in the decision-making process, and a significant portion believe the judge's decision is predetermined before the hearing. After the hearing, a copy of the decision is provided to the young person, and their parents receive it if present at the court session. The decision copy includes information about legal remedies and formal requirements. Additionally, a copy of the decision is sent to the young person's lawyer.

Respecting the right to a private and family life

Parties and their lawyers have the right to access the court file in Belgium, but certain information about the young person's personality and environment may not be disclosed to the young person or the civil party. Regarding entry in the central criminal register, sanctions imposed by the youth court are recorded, but notification is limited to judicial authorities and certain administrative entities if necessary for legal or regulatory purposes.

In Belgium, during the preparatory phase of youth justice proceedings, the youth court judge conducts closed hearings in their office. However, in the phase on the merits, proceedings are typically held in public court. Exceptions can occur if the court deems that public debates might threaten public order or morality. Parties involved and victims of specific crimes can also request closed-door proceedings. However, the judgment itself must always be delivered in public court. While the identity of a young person can be disclosed in court cases, there are legal restrictions and journalistic ethics guidelines regarding reporting on youth crime cases. Article 433bis of the Criminal Code prohibits the publication and dissemination of the record of debates before the youth court, investigating judge, and court of appeal chambers. Additionally, any publication revealing the identity of a prosecuted or convicted young person is prohibited.

When a young person is deprived of liberty in a closed community institution, efforts are made to facilitate reintegration and maintain family connections. The young person has the right to information and regular personal contact with parents, grandparents, siblings, and others with a special relationship. While most young persons report regular telephone contact with family, a significant portion do not receive weekly visits.

Respecting the right to integrity and dignity

Young persons subjected to measures or sanctions under juvenile delinquency law during the preparatory or trial phases are placed in community institutions. These facilities are exclusively for youth involved in

juvenile delinquency cases, ensuring separation from adults prosecuted under adult criminal law. However, the age range of residents in these institutions can vary between 12 and 25 years, reflecting the potential duration of their involvement in the system.

Article 28 of the Legal Status Decree outlines a specific regime for sanctions imposed during placement in community institutions for young persons involved in juvenile delinquency cases. These sanctions must be tailored to the young person's personality, proportional to the offense's severity, and focused on education without causing trauma. The decree prohibits physical punishment, mental violence, deprivation of meals, and, unless mandated by a court, deprivation of visiting rights. Temporary isolation or restriction of liberty is allowed only if the young person's behavior poses risks to their own or others' physical integrity or is materially destructive. Recent studies highlighted the need for improvements in the legal framework and practice, resulting in the development of a preliminary draft decree to update the Legal Status Decree.

Every young person in a community institution has the right to lodge complaints about its operation free of charge. Monthly commissioners conduct unannounced visits, focusing on young persons' treatment and reporting findings to relevant authorities. The Care Inspectorate oversees compliance through regular checks. Results from a survey indicated that most complaints were made internally, but many felt their complaints were not taken seriously. Reasons for not complaining included fear of repercussions, lack of belief in effectiveness, and not knowing how to complain.

Final comments

The Flemish Youth Justice Decree of 15 February 2019, alongside federal rules such as the Youth Care Act and the Criminal Code, governs the youth justice system. However, challenges remain in implementing these principles. Social service investigation reports may not always be updated adequately, and there are disparities in the quality of legal representation. Many young offenders are unaware of their rights, including access to free legal assistance.

Moreover, there is no child-specific regulation for interrogating young suspects, leading to variations in interrogation styles and assessments of vulnerability by police officers. The implementation of the right to be heard also varies among youth court judges, with reports of insufficient time given for young persons to express their opinions. Overall, while progress has been made to make the youth justice system in Flanders more child-friendly on paper, there is a need to improve its implementation in practice.



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