



# TWELVE

Children's right  
to participation  
and the juvenile  
justice systems

**NATIONAL REPORT  
BELGIUM  
12/09/2015**



This project is co-founded  
by the Fundamentals Rights  
and Citizenship Programme  
of the European Union



**Defence for Children  
DCI-BELGIUM**

*The worldwide movement for children's rights*

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## I. ABBREVIATIONS

**ASOE : Aid Services in Open Environment**

**ASBL : Association sans but lucratif (non-profit organisation)**

**LAO : Legal Aid Office**

**UNCRC: UN Convention on the Rights of Children**

**CCP : Code of Criminal Procedure**

**PYPI : Public Youth Protection Institution**

**UM : Unaccompanied Minors (Unaccompanied Minor Alien Children)**

**YSS : Youth Service System**

**JCPS : Judicial Child Protection Service**

## II. INTRODUCTION

Under article 12 of the CRC, a child who is capable of forming his or her own views has the right to express his or her thoughts, what he or she feels and what he or she wishes for about all the questions that concern him or her. He or she has the right to freely express his or her opinion and the right that this one is duly taken into consideration. He or she has the particular right to be heard in any legal and administrative proceeding, which concerns him or her, and to participate in it actively.

Project Twelve aims to promote and improve the implementation of the principles introduced in article 12 of the CRC as well as those of justice adapted to children. The main goal of the project is to reinforce and standardize the skills of professionals who are in contact with children who are in different stages of the legal procedure (judges, lawyers, educators, social workers, police officers, etc.), in criminal matters (educational) exclusively, in order for the principles of article 12 to be better respected.

The coordination of project Twelve, co-financed by the “Fundamental Rights and Citizenship” programme of the European Union, is insured by DCI-Italy. It was created in partnership with DCI-Belgium, DCI-Spain, ARSIS in Greece, Pulse Foundation in Bulgaria and the University of Tartu in Estonia.

Concretely, Project Twelve started in October 2014 and it includes three stages, within a period of eighteen to twenty-four months. At first, it is a matter of describing the current state of children’s needs and the professionals regarding the hearing and the participation of children in procedures which them, in three countries: Italy, Spain and Belgium.

Furthermore, DCI-Italy is in charge of elaborating a multidisciplinary training tool on the basis of assessments made during the national research. In this context, experimental trainings will be organized within the six partner countries for the professionals concerned, in order to perfect the tool by incorporating the results of these trainings. Finally, a wide distribution of this tool (which will be translated in seven languages) is planned at European level and this will particularly lead to the organization of a final presentation seminar.

From then on, this report constitutes the intermediary stage. It presents an overview of the situation in Belgium, more precisely in the French community, with regards to juvenile justice and the right to participate granted to children. It outlines the current regulation as much as the existing practices and it gives a full account of the positive progress but also great shortcomings of the Belgian system.

### III. METHODOLOGY

For this report we used the following procedure:

First of all, we analysed the current regulation with reference to the rights admitted to the minor in conflict with the law, which allow him or her to participate in all stages of the procedure, from the first questioning by the police until being eventually placed into care.

In parallel to this theoretical research, we lead a series of individual interviews with groups of professionals (managers and staff of institutions, social workers, psychologists, judges, etc.) as well as with young people, both locked up and not. Furthermore, we gathered four focus groups composed of professionals in various fields such as judges from the Juvenile court, members of the Public Prosecutor's department, criminologists, police officers, psychologists, social workers, lawyers, etc., all of them being in contact with children in conflict with the law in the context of their professional practice.

These interviews conducted individually or in groups, allowed us to measure the gap (often notable) between theory and practice, to note illegal practices, power abuses, little respectful practices of the rights of the child, but also to observe positive and promising initiatives.

#### A. SAMPLES

See Annex 1.

#### B. LIMITS

The methodology used for the project Twelve was expected to include the carrying out of four focus groups as well as individual interviews with professionals whose jobs required them to be in contact with minors in conflict with the law. Both focus groups and individual interviews were successfully led to an end without any difficulties and they gathered a panel representing all the different professions involved in this matter.

However, it has been quite hard to get in touch with the children, despite the use of a methodology, which has been adapted to arouse their interest (ie. drafting postcards with a simple and "catchy" text). We sent our postcards to a wide range of lawyers, institutions, judges, members of the public prosecutor's department, police officers, but without any success. Several hypotheses may explain this lack of reaction from the children: with regard to those who got out of the system, they are less reachable, usually they "moved on", they wonder what good it could do to them, and they express a certain apprehension or even mistrust since they are having difficulty in sorting out the various actors who are involved. For those who are deprived of their freedom, since it was impossible for us to reach them

directly, everything was up to the good will of the management: on the one hand to relay our postcards to them and, on the other hand, to explain the ins and outs of the whole project to them.

At the end, we managed to meet with a young man, who was free at that time, thanks to the help of a psychologist working in a PYPI (Public Institute for Youth Protection) where he was living for a while and where he unfortunately experienced abusive and entirely illegal practices. His cooperation can be explained by the support he received from his former psychologist. We also benefited from a warm welcome from the new staff working at the Saint Hubert Centre. Some work has been done with the young offenders, thanks to an initiative from the head educator, to make them understand the importance of participating in this project, even though it will not have a direct impact on them. Among the eleven teenagers staying there, eight agreed to meet us, first altogether, then individually - following a piece of advice we accepted from the educative team – in order to improve our chances at having genuine and sincere discussions with each of them. These meetings have offered us a wealth of information, most of the juveniles living there having stayed in a PYPI prior to this section.

## IV. DESK RESEARCH

### 1. PREREQUISITE: A PROPER UNDERSTANDING OF THE BELGIAN NATIONAL REPORT

#### *1.1. Peculiarities bound to the federal nature of Belgium*

Belgium is a federal state made up of three Communities (Flemish, French and German) and three regions (Flemish, Walloon and Brussels-Capital). The decision-making power is not centralized but shared out between the Federal State, the Communities and the regions. Each of these three autonomous political levels has at its disposal distinct skills and is responsible for international cooperation, which includes the conclusion of treaties depending on their set of skills.

The young people who committed or are suspected of having committed an “act qualified as offence” are divided between the skills of the Federal State and those of the Communities.

Moreover, the distribution of skills has just known changes by the transfer of certain skills of the Federal State towards the Communities. If the transfer happened on January 1<sup>st</sup>, 2015, there are still several difficulties related to it and to the "re-assumption" by the French Community of the management of centres previously devolved to the Federal state.

- **The skills of the Federal State:**

- **The organization of youth jurisdiction;**
- **The territorial competence of youth jurisdictions;**
- **The procedure to be followed in youth jurisdictions;**
- **The deprivation of freedom** (law related to pre-trial detention) and the rules related to the hearing of minors (Code of criminal procedure and the law of April 8<sup>th</sup>, 1965 related to the protection of youth, the management of minors who committed an act qualified as offence and to the compensation of the damage caused by this act).

- **The skills of the Communities :**

- **The establishment of measures** which can be taken towards minors who committed an act qualified as offence;
- Their **nature** and their **object**, criteria and conditions, their duration, extension and revision;
- The **hierarchy** of the measures, specific motives, organization of private and public services to carry out the investigations and to implement the measures;

- The determination and organization of the **terms** and the **impacts** of the **relinquishment** of the Youth Court in case of an incompatibility of the measures is noticed;
- The functioning of the Public Youth Protection Institutions (“PYPI”) and the Gemeenschapsinstellingen (hereinafter “GI”).

Except for the functioning of PYPIs and GI, all these skills have been transferred to the Communities during the last State reform in 2014.

### *1.2. Federal legislation*

The law of reference for juvenile justice used in Belgium is the **law which dates from 8 April 1965, related to the protection of the Youth, the management of minors who committed an act qualified as offence and to the compensation of the damaged previously caused** (hereinafter “law of 8 April 1965”), substantially modified in 2006 (law of 13 June 2006, came into force on the 16<sup>th</sup> of October 2006).

The philosophy of the law mainly relies on an “educational” approach: it is a question, at least in theory, of **protecting** the child and not punishing him or her. The emphasis is on **empowerment**.

The expression “act qualified as offence” serves as a reminder that the minor is not part of the scope of criminal law. As a matter of fact, the law irrefutably presumes that the minor does not have the necessary analytical ability for such, i.e. the ability to understand the criminal law characteristic of an act he committed. Therefore, he/she cannot be subject to a classic criminal sanction (incarceration, fine, etc.) but only to **custody and to protection and education measures** that need to have, above all, an educational and preventive purpose. In order for one of these measures to be taken towards the minor, the “act qualified as offence” has to be established with regard to the material element as much as to the moral element<sup>1</sup>.

There is no minimum age for a minor, who committed an “act qualified as offence”, to be answerable to the youth court. Besides, any criminal offence committed by an underage remains within the competence of the youth Court<sup>2</sup>, even if he is only taken to trial after coming of age.

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<sup>1</sup> M. PREUMONT, *Mémento du droit de la jeunesse*, Waterloo, Kluwer, 2012, p. 224.

<sup>2</sup> There are some exceptions to this principle: the traffic infractions falls under the competence of the Police Court; the incivilities may be subjected to communal administrative sanctions (see *footnote*); acts committed by a minor after he has been subject of a definitive relinquishment fall under the competences of ordinary



The law of 13 June 2006 included a preliminary title worded as follows into the law of 8 April 1965:

***Preliminary title : juvenile justice administration principles***

*The following principles are recognised and applicable to juvenile justice administration :*

*1° criminal prevention is essential to protect society permanently and it expects competent authorities to examine underlying criminal youth cases and that they build a multidisciplinary framework of action;*

*2° All administration for youth justice is ensured by judges who have been **specifically trained and are still training in the field of youth rights**, when possible;*

*3° Administration for youth rights pursues education-related objectives, aims at responsabilization and social re-integration, together with society protection;*

*4° **Underaged youths should never be compared to adults, in terms of responsibility and consequences to their behaviour.** However, youths who committed an offence should become aware that they are to deal with the consequences;*

*5° **Youths enjoy rights and certain allowances, as a result to what is cited in the Constitution and in the International Convention for the Rights of the Child, and more importantly the right to make oneself understood during the procedure, leading to decisions which affect them, and to take part in the process:***

*a) young people have the right to **be informed about the content of their rights and liberties**;*

*b) Parents are responsible for meetings, education and safeguard of their children. As a result young people cannot be entirely or partially removed from the care of their parents;*

*c) The situation of minors who committed an offence requires surveillance, education and discipline. However, their own situation of dependance, their level of maturity and development create special needs, such as **listening**, advice and assistance;*

*d) all measures should be educational and aimed at encouraging the youth to integrate social norms;*

*e) within the framework of underaged youths' care and custody, measures provided by the law are subject to appeal where possible, to substitute legal procedures, however without interfering with social protection;*

*f) within the legal framework, **youths' right to freedom can only endure a minimum number of obstacles expected by the protection of society**, taking youths' needs into account, together with their families' expectations and rights of the victims.*

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jurisdictions.

We shall also mention the law of June 17th 2004, which come into effect the April 1<sup>st</sup> 2005, modifying the new communal law and reviewing its article 119bis which allowed city counsellors to establish sentences and administrative sanctions repressing offences to their regulations or their ruling as well as some offences included in the criminal Code (threats, simple hits, insults, simple thefts and some destructions)<sup>3</sup>.

The persons entitled to record these offences are: a member of the police force, an auxiliary police agent, and some communal agents, certain agents from public transport companies as well as security agents.

If the acts constitute an administrative breach and a penal breach simultaneously, the public prosecutor has to be informed, since he is the one who decides whether he should take the offender to court himself or close the case in order to allow administrative prosecutions.

An administrative fine can be given to a minor who is over 16 years old, up to 125 euros maximum. A preliminary mediation regarding the compensation or the reparation of the damage is compulsory and a lawyer must assist the minor.

An appeal can be introduced against the administrative penalty by the minor himself before the youth Court, through a free written request.

### ***1.3. The decree of the French Community***

The legal reference text in French Community is the decree of March 4th, 1991 concerning youth aid (*M.B.*, June 12<sup>th</sup> 1991 – hereafter “the decree”).

Just like the law of April 8th 1965, it contains a preliminary title which points out its philosophy. This preliminary title which initially appeared in the preamble, has been inserted by the law November 29<sup>th</sup> 2012, which came into force on March 21<sup>st</sup> 2013. It reads:

***PRELIMINARY TITLE. – General framework including the Decree for Youth Outreach.***

*The decree is founded on the following principles :*

*1° Specific youth outreach is complementary to other forms of social aid. 2° Priority goes to general prevention. 3° Youth aid falls within a de-legalisation perspective, and subsidiarity of forced assistance compared to voluntary assistance 4° All measures for imposed assistance, which also includes providing the child with a form of custody, if needed as a matter of urgency it is activated*

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<sup>3</sup> See article 24, paragraph 2, from the law of December 21<sup>st</sup> 1998 related to security during football matches which allows, after a procedure lead by a civil servant specially appointed to that end, to administratively ban minors over 14 years old who have unwanted behaviours during a football match, for a duration which varies between three to five months. The minor is invited to present his or her oral defence. A copy of his hearing is transmitted to him or her. If he or she does not have a lawyer, one is appointed to him automatically. The minor has the right to appeal in front of the youth Court.

by the French Community within the framework of a legal decision. The same goes for custody in a public institution, intensive educational accompaniment measure, or a measure which includes surveillance and a legal protection service. Any objections related to the **authorisation**, all refusals and ways individual aid measures can be applied within the framework of the decree are taken to the Youth Court. 5° Assistance measures should develop within the living environment. 6° **Youths and families have the right to specialised assistance and to Youths enjoy rights and certain allowances, as a result to what is cited in the Constitution and in the International Convention for the Rights of the Child**, including, rights for a child separated from his/her parents to regularly keep contact with them, with the exception with it being against the interests of the child, and therefore **the right to participation**. 7° **Through the participation of beneficiaries, some innovative and evaluatory practices are accepted and made public, so that the concerned administration will be oriented towards improving the quality of assistance for young people and their families**. 8° Custodies at services for youth care and public institutions respond to the needs in terms of youth criminality, aimed at social reintegration, and have a restorative and educational role. 9° Coordination and grouping within the different sectors who are due to apply the present decree are being sought. 10 The French Community guarantees **information and training, and lifelong staff training for youth aid services which are currently applying the present decree**. 11° The French Community guarantees **information from citizens in terms of youth aid and protection**

#### 1.4. The players

For juvenile justice, the different players involved are:

- **The police** (which usually disposes of a youth section)
- **The public prosecutor's youth department**

One can remark that as of September 1<sup>st</sup> 2006 a criminologist, who completes three essential missions, supports each public prosecutor's department:

- He meets with the child and his/ her parents and informs them about the possibility to consider mediation, or even a parental training course for some parents (however this measure is no longer used because there is a lack of services able to operate it)
- He forms collaborations with schools, and health centres (PMS) in order to fight against school absenteeism
- He forms collaborations in order to strengthen the fight against child abuse
- **The investigating judge** (nevertheless this role is very much reduced)

- **The juvenile judge and the juvenile appeal judge**
- **The lawyer of the minor**
- **The youth protection department and the manager of the youth protection system**
- **Public services** (Public Youth Protection Institution – below “PYPI”)
- **Private services**

### *1.5. The elements of the procedure*

There is a distinction between **temporary** measures and **substantive** measures.

**The temporary measures** are taken before judgment, during a hearing in the judge’s chambers and not in a courtroom. They cannot anticipate what is to come for the public hearing, and, in principle, they have a maximum duration of six months<sup>4</sup>.

The child can be imposed at once, but so can a series of temporary measures, despite the fact that the judge has not yet pronounced a judgment for his/her guilt and the measure that needs to be taken towards him in this context.

It is important to point out that the temporary measure is not meant to punish the child. It can only be to protect the child himself or the society or to facilitate the proceedings of the investigation.

The juvenile judge can also decide that the child should remain with his/her family and impose specific conditions to respect, such as no longer going out with certain people or yielding to an exit ban. The temporary measure may lead to a placement with someone trustworthy (e.g. a grandparent), or in an appropriate establishment (e.g. a host family), in a hospital, in a PYPI, or in a child psychiatric ward.

**Substantive measures** are taken at the moment of the judgement. Their duration is set by judgement (annual review). In principle they should end when the child turns eighteen years old. If the child adopts a genuinely dangerous behaviour for himself or for others, the youth Court can decide whether or not to extend the measures beyond his 18<sup>th</sup> birthday, up to his 20<sup>th</sup>. If the child committed an offence after the age of seventeen, the juvenile judge can, from the date of the judgement, ask for certain measures until the child reaches the age of twenty years old.

Any decision is subject to appeal.

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<sup>4</sup> After this period is over, the juvenile judge can only extend on a monthly basis and providing exceptional motives. Each month, the child can ask for the revision of the temporary measures.

We shall note that as soon as the court is taken for an act qualified as offence, it has to inform the people who exercise parental authority towards the minor, and, as the case may be, the people who have custody in law or fact. The subpoena will be addressed to them, as well as to the minor if the action tends to revoke his/her emancipation, or to take or modify a measure towards him because he committed an act qualified as offence while being at least 12 years old. Besides, at any time given and as long as it is seized, the youth court can summon the minor, his parents, tutors, his guardians, or anyone else he deems interesting to hear.

### *1.6. The types of measures*

At first, the public prosecutor's youth department is informed, through an official report from the police, that the child is suspected of having committed an act qualified as offence. It is up to the public prosecutor's department to define the facts and determine the direction the case is about to take.

Even if the public prosecutor can always take a juvenile delinquent immediately to the youth court, he can also take certain measures that fall under his authority:

- Suggest a parental training when the persons who exercise the parental authority over the minor (who admits the facts) express a lack of interest towards the delinquent behaviour of the latter ; when this disinterest contributes to the problems of the minor and that training could be beneficial to the minor<sup>5</sup>;
- Address a warning letter to the presumed juvenile perpetrator of an act qualified as offence informing him/her that he/she acquainted with the facts, that the public prosecutor estimates the minor is responsible for these established facts but that he decided to close the case;
- Summon the presumed juvenile perpetrator of an act qualified as offence and his legal representatives and provide them with a reminder of the law and the risks they undergo;
- When the victim is identified, propose a mediation;
- On the same condition, make an offer for mediation or for a restorative group dialogue<sup>6</sup>.

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<sup>5</sup> We would like to remind you however that this measure is not applied anymore for lack of services supposed to operate it.

<sup>6</sup> Group consultation is a form of dialogue between the victim, the youth and other people who support them. An independant mediator holds the dialogue between the victim, the youth and their social environment. The aim of this dialogue is to agree on acceptable arrangements for the parties concerned, aimed at restoring order from the consequences of what was committed. For more information on restorative measures, please see the ministerial circular n° 1/2007 of March 7th 2007 related to the laws of May 15th 2006 and June 13th 2006 modifying the legislation related to youth protection and the treatment of juveniles who have committed an act qualified as an offence, *M.B.*, 8 March 2007, spec. pp. 11488 à 11500.

Towards the persons who are summoned to him, the youth court can take custody measures, protection and education measures. One should remind that these measures are not punishments and that they must be always taken in the interest of the child.

It is necessary to distinguish three types of measures: those that keep the child in his/her family circle, those that allow the child to be removed from his family and the relinquishment, which is a measure used on exceptional occasions. The choice the judge has to make between these measures will be made according to the child's personality, his degree of maturity, his living environment, the seriousness of the act, the circumstances in which it has been committed, the damages and the consequences on the victim, the previous measures taken towards the child and his behaviour during their accomplishment, his safety, the public safety, the availability of the means of treatment, the education programmes or any other planned resources and the benefit he can gain from them.

In theory, the judge always has to favour a measure, which allows the child to be kept within his/her family circle. From then on, he can only resort to a placement measure on an exceptional basis, as an ultimate remedy, when no other solution can be considered. This is the application of **the subsidiarity rule**: it expects to give priority to the less radical measure, such as a restorative offer (mediation or restorative group dialogue) before considering a placement.

- *Measures that maintain the child in his/her family circle:*

- Reprimand
- Surveillance + conditions (attend school, community services, paid work, mental health or educational orientation centres, training modules, sport or cultural activities, not going to certain places or seeing certain people...)
- Intensive educational support
- Written or oral excuses
- Damage compensation
- Restorative offers (mediation – community work)
- School rehabilitation programme
- Apprenticeship and training programmes
- Ambulatory treatment

We shall precise that the child can by himself formulate a proposition inside a **written project**. This proposition may consist of fixing the damage in nature or symbolically. The child hands the written project over to the juvenile judge on the day of the judgement at the latest. The juvenile judge has to make sure that the project is practicable. If he approves him, he will ask to the competent social services department to verify its implementation. The measure "project of the young person" should in theory be priority compared to other measures, which could be taken, to the extent that it fully ensures the exercise of the right of the child to participate in all the decisions that affect him/her. In practice, it is not used very often and when it is used, the idea usually comes from the lawyer and from the child.

- *Removal measures from family environment:*

- Custody with a reliable private person
- Custody in a private institution
- Custody in a PYPI, open or closed section
- Custody in a hospital setting , in a therapeutic or psychiatric (open or closed) facility
- + Conditions

If the child committed an act qualified as offence **before the age of twelve**, he may only be subject to measures which keep him in his living space: a reprimand, an intensive educational support, an individualized supervision or a follow-up care by competent social services. This service depends on Communities and is joined to each youth court. Indeed, children under 12 years old who committed an act qualified as offence are presumed in danger and have to be even more protected.

Regarding minors who are over 12 years old, the court can only order a custody measure in a PYPI in an open educational section if:

- They committed an act qualified as offence which, if it had been committed by an adult, would have led to a sentence to 3 years in prison or a to a heavier sentence, with regards to the criminal code, or other particular laws;
- Or they committed an act qualified as assault and battery;
- Or they used to be the focus of a final judgment ordering a custody measure in an open or closed educational section of a PYPI and they committed a new act qualified as offence;
- Or they are the focus of a reviewed measure if they did not respect this or these measures, which were previously imposed to them, in which case the custody can be ordered for duration of six months maximum without the possibility of extension. At the end of this period, other measures can only be imposed after a review by the court;
- Or they are the subject of a review and are placed in a closed educational section of a PYPI during the review.

The court may only order a custody measure in a closed education section of a PYPI for children over 14 years of age and who:

- Either committed an act qualified as offence which, if it had been committed by an adult, would have led to, as required by the criminal code or particular laws, a custodial sentence from five to ten years or a to a more serious sentence;
- Or committed an act qualified as an indecent assault with violence, or as a criminal conspiracy aiming to commit crimes, or as a threat against people as explained in article 327 of the criminal code;
- Or used to be the subject of final judgement ordering a custody measure in an open or closed educational section of a PYPI and who committed a new act qualified as

offence which is qualified as assault and battery or, if it had been done by an adult, would have led to, as required by the criminal code or particular laws, a sentence of three years in prison or a more serious sentence;

- Or committed a premeditated act qualified as assault and battery which led either to a disease or to the inability to work, to a seemingly incurable disease, to a severe mutilation, to the loss of an organ; or they could have caused damages to buildings or steam engines, committed in group or as a band and with violence, through an unlawful act or threats, or having broken out a rebellion with weapons and violence;
- Or are the subjects of a review of the measure in the eventuality that they have not respected the measure(s) previously imposed to them, in which case placement may be ordered for a six-month period maximum without the possibility of extension. At the end of this period, other measures can only be imposed after a review by the court.

Court may also order a measure of custody in a closed educational section in a PYPI for a child between twelve and fourteen years old who caused serious harm to the life or health of someone else and whose behaviour is particularly dangerous.

Let us note that confinement is thankfully accompanied by educational measures specifically adapted to the children, also aiming at preparing their reinstatement in society in the best possible conditions<sup>7</sup>.

We shall note that due to the need for information and investigation, the youth Court or the investigating judge can, by way of reasoned order, forbid the child to communicate freely with specifically appointed persons, during a three calendar day period maximum. The youth Court or the investigating judge may also, on the opinion Centre management and under the conditions the court or the judge have determined, authorize the concerned party, by reasoned order, to leave the institution for a specific period or to have contact with third parties he designates.

The child can appeal against the youth Court's orders through a statement to the management of the Centre who immediately notifies the competent courts administration service. The youth chamber of the appeal Court investigates the case and returns a verdict within fifteen working days from the act of appeal.

- *Exceptional measure: the relinquishment*

The Belgian system exceptionally allows to judge a minor by a Court for adults or to apply to him/her the same sentences they order to adults. This system is called relinquishment. It applies to minors who were over sixteen years old when the offence was made, and who will be sent back, depending on the cases, to the criminal Court, to a chamber specifically created within the Youth Court (which will apply the criminal code the way it is done with

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<sup>7</sup> However, these special measures are not planned for minors detained in prison (in another wing of Saint-Hubert's) after a relinquishment.



adults).

Relinquishment can be pronounced in the hypotheses where the juvenile judge considers a custody, protection or educational measure, which means he assumes no measure proposed or imposed to the child (such as mediation, surveillance, community services, placement, etc.) would be effective. These relinquished minors, at the end of their trial, may have to serve a sentence in a specialized centre, such located in Saint-Hubert where they will be separated from the adults or they could spend time in prison with adults.

Belgium is often pointed at due to the relinquishment procedure, which is thought to be against the CRC as well as against other international conventions. As a matter of fact, the Convention's message is clear: a minor remains a minor, which implies he has to be treated according to a specific system for them, different to the one for adults<sup>8</sup>.

- *Particular measures regarding the criminal minor suffering from psychiatric troubles (projects FOR-K)*

Young delinquents suffering from psychiatric problems can be placed in a section specialized in child psychiatry in order to receive intensive care. Treatment programs aim at improving the quality of life for young people, at favouring the social reintegration (integration in education, better "functioning" in the context of the family, etc.), at stimulating collaboration with ambulatory support services, the justice and the PPI and at preventing recidivism.

Five units with 8 beds in total have been created to put together this project. Those units are located in the OPZ of Geel and the Middelheim Ziekenhuis of Antwerp for Flanders in the Jean Titeca hospital complex for the Brussels-Capital region; and in the teaching hospital La Citadelle in Liège and in the regional hospital, Les Marronniers in Tournai for Wallonia.

### *1.7. Private services*

***Aid Services in Open Environment (aSOE)***: they offer preventive help for young people in their living environment and for their connections with the social environment. The HOE are not appointed; they only intervene if requested by the child, his family or his close friends.

***Educational Advice Centres (COE)***: their mission is to give the child, his parents or his close friends a social educational or psychological support in the socio-family environment or, following the support they can help the child become autonomous. They are assigned by the Juvenile Court, by the Counsellor or the Manager of the Youth Outreach.

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<sup>8</sup> See B. VAN DER MEERCHEN, "Le dessaisissement est contraire aux obligations internationales de la Belgique", February 13<sup>th</sup>, 2007, <http://www.avoxautre.be/spip.php?article1190>. (Relinquishment is against international obligations of Belgium)

**Restorative and educational action services (SARE** – formerly known as: educational and philanthropic action - SPEP): they reach out to minors who committed an act qualified as an offence. They work with the Youth Court and their mission is to give an educational answer to juvenile delinquency by organizing educational and philanthropic services for the social rehabilitation of the concerned children.

**Tutelage services (SP)**: Tutelage services' exclusive activity is to search for and accompany guardians (i.e. people qualified to exercise custodial right) the right to education, representation right, right to consent and the right to administer the possessions of the child whose parents have been partially or completely deprived of their parental authority. These services work on behalf of the Counsellor of Youth Outreach.

**Foster placement services (SPF)**: they organize the welcome and education by private individuals of children in need of a specialised support outside of their home environment and ensure the educational and social supervision of these private individuals. Besides, if possible, they work on the preservation of personal relationships of children and their close families by setting up aid programmes in sight of their rehabilitation in their home environment or in independent housing. They work on behalf of the Youth Court, Counsellor or manager of Youth Outreach.

**Emergency reception centres (CAU)**: they offer a collective reception of youngsters urgently requiring accommodation and are limited to a short lapse of time outside their family setting. They are also elaborating an aid programme, which is to be put in place at the end of the stay. They work on behalf of the Youth Court, the counsellor or manager of the Youth Outreach.

**Aid and educational intervention services (SAIE)**: they provide to the young people and their families an educational aid in the home setting and in independent housing.

**Host and educational aid services (SAAE)**: they organize the hosting and education of youngsters who require a specialised support outside of their home setting, they put in place aid programmes in order to facilitate rehabilitation into their home environment, they offer help to children and to their families in difficulty through socio-educational actions in their living environment and they assure supervision, social and educational support of young individuals who live in independent housing.

**Aid centres for children who are victims of mistreatment (CAEVM)**: these services, in collaboration with SOS-Children teams, are assigned with the mission of organizing continuously (and in cases of emergency when necessary) the housing of children for whom we suspect or notice signs of mistreatment; they have the mission to offer these children the specialised and multidisciplinary support they need and elaborate an aid programme to set up for the future; to give a psycho-social or educational form of aid to individuals who take care of the child.

**Specialised reception centres (CAS)**: they collectively receive youngsters who require urgent and specialised assistance because of violent or aggressive behaviours, psychological problems or acts qualified as offences.

**Day centres (CJ):** they are assigned to provide educational assistance by welcoming young people during the day and by guiding them in their home setting.

**Services implementing particular educational projects (PPP):** these services organize exceptional and particular assistance projects to the young people in difficulty in accordance with conditions not intended by the specific judgements, in order to allow them to make a success of an original and positive life experience. These services may work with or without a mandate.

**Support, Intensive Mobilization and Observation Sections (SAMIO):** they are part of the Judicial Protection Services (JCPS) and through intensive educational support in the living environment of the child; they are an alternative to placement in PYPI. They are directed to youngsters (boys and girls) from 14 to 18 years old (exceptionally from 12 years old) sued after having committed an act qualified as offence.

## 2. THE IMPLEMENTATION OF CRC ARTICLES IN RELATION TO PARTICIPATION AND WITH THE JUVENILE JUSTICE SYSTEM IN BELGIUM

The right to participation could not be considered as an autonomous right. If the founding principle of this right is, without a doubt, the right of the child to express his opinion, acknowledged by article 12 of the CRC, it has to be linked with several other rights admitted by the Convention: the right to freedom of expression which includes the right to seek, receive and impart information (art.13); the freedom of thought and religion (art.14); the right to freedom of association (art.15); the right to access information (art.17); the right to rest and leisure (art.31) and finally the right to challenge the legality of his/her deprivation of liberty (art.37).

In the following section, we shall examine the way these rights are admitted in the Belgian juvenile justice system.

### 2.1. Introduction

Article 4 of the decree<sup>9</sup> specifies that *“anybody who contributes to the implementation of this decree is required to respect the rights admitted to the child and to act in his best interest [...] the child, his family and his acquaintances have the right to take the appropriate administration to court for not respecting their rights, by sending a post-letter to the civil servant in charge of this administration”*.

Article 19bis of the decree specifies that the public institutions must respect the code of the public institutions ordered by the government. In this regard, it is necessary to refer to the order of the French Community’s government from March 13<sup>th</sup>, 2014 related to the code of public youth protection institutions (*M.B.*, July 17<sup>th</sup>, 2014, came into effect on May 1<sup>st</sup>, 2014)

Within the general principles specified in this code, article 3 underlines that a placement in PYPI is made under some conditions which **respect the rights of the youngsters admitted by international conventions, particularly by the Convention on the Rights of the Child** and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Article 4 insists on the importance, for the staff members of the PYPI, to ensure **the evaluation of the child’s image**.

Article 8 admits that while their function is being exercised, the competent administration provides its entire staff with an **in-service training**. Both the basic and the in-service training have to deal with the respect of the child’s rights and interests.

Each PYPI has to have an **educational project** including differentiated educational actions, which tend to answer in the best way possible the placed child’s needs (article 13 of the Code). It especially has to include the evaluation tools used for the children, such as those allowing his word to be heard.

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<sup>9</sup> We shall note that measures from 1 to 11 of the decree of March 4<sup>th</sup>, 1991 of the French Community related to Youth aid concern as much granted help than forced help.

## 2.2. The article 12 of the CRC: the right to express his opinion and to be heard

- Audition by the police

The minor interviewed by the police has a certain number of rights<sup>10</sup>. Among them, let us be reminded of those related to article 12 of the CRC:

- ✓ The right to **be informed** about the facts he is accused of and his rights ;
- ✓ The right to consult and be assisted by a **lawyer; the minor cannot give up this right** ;
- ✓ The right to **ask** to receive a determined **act of information or interview**;
- ✓ The right to stay quiet and not **incriminate oneself**;
- ✓ The right to **read the official report again**.

In practice, when there is a youth section in a precinct, police may interview the minor as soon as his lawyer arrives. When there is not, the police officer has to immediately inform the King's prosecutor who will decide when and how the child should be interviewed. The minor will be heard over the next ten days with his lawyer or immediately by the judge. This decision depends on the seriousness of the fact and the deprivation (or not) of the child<sup>11</sup>.

The notion of **police audition**<sup>12</sup>, which leads to the right to be assisted by a lawyer. According to the circular's terms, the audition includes the interrogation lead by the person or the judicial authorities appointed to an individual regarding misdeeds or offences for which he can be charged; the sentence may generate an arrest warrant. Still according to this, the interrogation may also mean the suspect has been deprived of his freedom, and its progress has to be in accordance with articles 47*bis* and following ones, and 2*bis* of the law of July 20<sup>th</sup> 1990 concerning the preventive deprivation and the form requirements which are enumerated there.

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<sup>10</sup> Articles 47*bis* of the Code of Criminal Procedure modified by the law of August 13<sup>th</sup>, 2011 (called the "Salduz" law, referencing to the European Court of Human Rights ruling Salduz vs. Turquie from November 27<sup>th</sup>, 2008, which was the origin of its adoption), which came into force January 1<sup>st</sup>, 2012 and by the law of April 25<sup>th</sup>, 2014 which came into force on May 24<sup>th</sup>, 2014.

<sup>11</sup> Regarding the Belgian police audition of suspected minors, see: C. CLAEYS, "L'audition policière des suspects mineurs : adaptée aux enfants ?", *J.D.J.*, November 2014, pp. 10 to 22. We shall add that according to article 48*bis* of the law of April 8<sup>th</sup>, 1965, when a minor is deprived of his freedom after his arrest or has been released against the promise to appear before, or against a signature in an agreement, the member of the police force responsible for his deprivation of freedom has to inform the parents, tutor or guardian about his arrest, his motives and the place he is held, by oral or written message. If the child is married the notice has to be delivered to his wife/husband rather than to the above-mentioned persons.

<sup>12</sup> See the circular 8/2011 of September 23<sup>rd</sup>, 2011 of the College of public prosecutors related to carrying out the Salduz law.

Besides three principles may be applied to the situation of minors<sup>13</sup>:

- ✓ The minor has to dispose of the same rights as an adult;
- ✓ Considering the assumed vulnerability linked to his minority status, he cannot validly refuse these rights;
- ✓ He must always benefit from additional rights planned by the law related to youth protection.

Besides, the circular clarifies that the information stated in article 47bis of the CIC have to be communicated to the child in a clear way in order for him to understand the extent of the procedure. At all events, it is for the best to avoid any suggestiveness in the way to introduce the facts.

- Before the judge

Article 52ter of the law of 1965 indicates that from the age of 12, the child has to be heard personally by the juvenile judge before any measure is taken<sup>14</sup>, except if he is in poor health, if he refuses to be heard or obviously if he cannot be found. In some cases, the juvenile judge may sometimes have a one-to-one discussion with the child.

The judge's order includes a summary of the elements touching on the personality of the child, his environment, justifying the decision and, if need be, a summary of the facts he is accused of. It also mentions the audition or the reasons for which the person concerned could not be heard. A copy of this order is handed to the child after his audition, as well as to his parents, tutors or guardians if they are present during the hearing. If it cannot be made, the decision will be notified by registered missive.

- Inside the PYPI

The PYPI code indicates that the staff must encourage the child to express him or herself, particularly in terms of the conditions of his custody.

The manager has to arrange to gather children's speeches by verifying that the following principles are respected:

- ✓ The word collection has to be directed to all children;
- ✓ The child cannot be forced to express himself. However, his expression is favoured;
- ✓ The child has to be able to express himself on the contents of his custody, on the institutional rules and operations;
- ✓ The children receive guaranteed anonymity regarding what they say. They are informed about the interest and the use of this gathering;
- ✓ The terms and conditions of this gathering and the analysis of their word have to allow structured communication and a reflection on the questions asked by the

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<sup>13</sup> Circular 12/2011 of November 23<sup>rd</sup>, 2011: Addendum 2 of the circular COL8/2011 related to the organisation of counsel by a lawyer as from the first audition as part of the Belgian criminal procedure – situation of minors and persons suspected of having committed an act qualified as a misdeed before the age of 18 years old.

<sup>14</sup> Article 52ter of the 1965 law.

children.

A document, which gathers all the elements of the code, linked to the rights and duties of the child during his custody and to the proceedings of the measure he received. This document has to be as clear as possible and handed to each child, with a complete explanation at the moment of his admission in the public institution.

### ***Extracts from the PYPI regulation***

#### ***Your opinion and participation are important***

*During your stay in the institution you will be asked to express yourself especially with regards to the conditions of your current placement, details regarding your custody and rules and regulations of the PYPI.*

*In which ever way you will be addressed, your anonymity will be guaranteed: you are therefore entirely free to express yourself*

*You will not be forced to do so, but you should know that for some cases your opinion could allow the PYPI to attend to young people's needs more efficiently.*

#### ***The aims of your custody in the PYPI:***

*Our work with you during your custody is aimed at raising you awareness about the reasons why your judge decided to place you in the Institute and the consequences these facts may have led to.*

*However the various people who will take care of you will also be keen to remind you of your qualities and your strong points, and help you develop as an individual, which will be useful for you, the people in your life and society. Activities which you are required to attend are designed to attend to said objectives.*

*The evolution and progress of this project with you will be mentioned during meetings with your judge and in reports addressed to him.*

***You will, always, be able to share your opinion.***

*The PYPI will associate your family and your environment to this project.*

We shall also note that the Belgian Constitution<sup>15</sup> plans - in article 22bis, paragraph 2 - that "each child has the right to express himself on any question which concerns him; his opinion is taken into consideration, considering his age and his analytical ability". This article does not give more information than article 12 of the CRC but the fact that the right to participate is included in the Belgian Constitution, a fundamental founding text, gives even more weight to it.

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<sup>15</sup> Law of December 22<sup>nd</sup>, 2008, came into force on December 29<sup>th</sup>, 2008.

### *2.3. Article 13 of the CRC: the freedom of expression and the right to seek, receive and impart information*

- **The right to receive information**

The preliminary title of the law of 1965 (see *supra* 1.2.1.) states that young people have the right to be **informed** about the content of their rights and freedom, every time the law is likely to detract them.

We also saw that the child who is questioned by the police has the right to be **informed** about what he is accused of and about his rights.

Regarding the access to the file, the law states that parties and their lawyers are informed about the submission of the file to the court's administration services. They may be able to take note of the file's content from the notification of the subpoena<sup>16</sup>. They may also get access to it when the public prosecutor requires a measure of temporary custody as well as during the time to appeal of the orders imposing such measures. However the documents regarding the personality of the person concerned and about his living environment can neither be communicated to him nor to the prosecution. The complete file, including these documents, has to be available to the lawyer of the accused when the latter is on trial. We shall precise that minors are not considered as parties during the debate when it is about taking measures towards their parents, except if temporary measures, which may affect them, are considered<sup>17</sup>.

Besides, any decision, whether it is about a temporary measure or about substantive measure, taken by the juvenile judge or the juvenile court, in first instance or on appeal, it is passed on that very day to **the lawyer of the minor**. A copy of the judgements and orders made in public hearing is transmitted directly, during the rendering of the decisions, to the child who is twelve years old or more and to his parents, tutors or guardians if they are present during the hearing. If these documents were not transmitted, the decision is notified by registered missive. The copy of judgements and orders indicates the ways to appeal to them as well as the forms and periods that need to be respected.

#### ***Extract from PYPI regulations – Consulting your record***

*You have the right to consult your lawyer or a tutor for all decisions which concern you, such as : your order of custody, the judge's limit on your number of outings, bans from contacting certain people, sanction-related decisions and determine whether or not you should be in isolation.*

*If you wish to consult your record, please submit a written request to a member of the educational team. You will be able to do so within 72 hours of your submission.*

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<sup>16</sup> Article 55 of the law of 1965.

<sup>17</sup> Article 56 of the law of 1965.



## The right to communicate with others

One must remark that whoever is deprived of their freedom, (the person being of age or younger) is given certain rights, including the one of **confidentially consulting with a lawyer of his choice**<sup>18</sup> upon arrest and prior to the next questioning by the police or, failing that, by the king's prosecutor or the investigating judge. If he/she has not chosen a lawyer or if the lawyer is prevented from participating, contact is made with the bar. If the person in question does not have sufficient resources, he/she has the right to a lawyer working within the framework of legal aid. From the moment contact is made with the chosen lawyer, confidential consultation must take place **within two hours**. If not, a confidential consultation by phone can still take place with the permanent staff, after which the hearing can begin.

Youths also have the right to choose **a person they trust** who will be informed of the arrest by the person leading the questioning, or a person designated by him, using the most appropriate means of communication.

Article 12 of the decree also says that any young person hosted under a measure taken by an investment authority has the right to communicate with any person of his choice.

Unless otherwise decided and confirmed in writing from the youth court, young hosted people under a measure of legal protection have the same right.

The right to communicate with others includes the right to write, call and have visitors (for the latter, it is clear that the rules of the institution may define scheduling, their location and frequency).

The young person has the right to correspond for free with any person of his choice. To this end, PYPI must provide paper, writing materials, envelopes and stamps. The confidentiality of correspondence is guaranteed. However, shipments and mail with content other than letters may be subject to supervision by the management team. In this case, the young person is invited to open up the shipment in the presence of a member of the management team who, in the case of a threat to safety, may require the surrendering of objects or substances that accompany the letter.

Young people also have the right to be visited by persons of their choice during designated times in each PYPI. If the youth enjoys outings, he must have at least one visiting hour per week as instructed by the PYPI. If the youth does not enjoy outings, he should benefit from at least a two hour visit per week as instructed by the PYPI. The possibility of an additional visit on appointment is guaranteed. *At the very least* for half the duration of the visit, confidentiality is ensured and staff members may carry out only visual control.

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<sup>18</sup> Article 2bis of the law of July 20th 1990 related to preventive detention, issued by the law of August 13th 2011 («Salduz»). In view of these particular circumstance, and as long as there are compelling reasons, the king's prosecutor or the investigating judge in question can exceptionally derogate from the law by reasoned decision.

In the case of a threat to safety or policing at the institution, the Director may, however, prohibit the entrance of a visitor, impose continuous presence of a staff member during the visit or limit the number of people admitted simultaneously. For the same reasons, he/she may require visitors to present their identity document and deposit their belongings in a locked up place. In addition, a visit may end prematurely if the visitor or the young person performs acts that conflict with public order or morality. Moreover, as soon as a request for contact is formulated, the PYPI may request a restriction or prohibition of contact with the court of youth when it considers that this contact is likely to harm the young person or have a negative influence on the educational work done with him. The PYPI justifies its request and specifies the type of contact that it wants to limit or forbid. As regards the decision of the court of youth, the PYPI may prohibit or limit contact. The decision of the court of youth is given to the young person in question.

Visits to youths by the following persons are neither restricted in number nor in their duration:

- ✓ the youth's judge;
- ✓ the youth's lawyer<sup>19</sup>;
- ✓ the youth's guardian in the case of an unaccompanied foreign minor;
- ✓ MPs;
- ✓ Consular officials and the diplomatic service of the youth's country of origin;
- ✓ Counselor of youth welfare or his delegate;
- ✓ the Director of youth assistance or his delegate;
- ✓ General Delegate of the French Community for Children's Rights or his representative;
- ✓ the agreed services of youth assistance including the services for rights for young people.

They must be reported to the management.

The young person also has the right to free calls at least three times, for ten minutes per week to people of their choice, at the times set by each PYPI. In addition, the young person can call for free, as many times as necessary, and without limited periods, provided that these calls do not interfere with the conduct of an activity. They are allowed to call the following people:

- ✓ His lawyer;
- ✓ Guardian in the case of an unaccompanied foreign minor;
- ✓ The judge;
- ✓ Consular officials and the diplomatic services of the country of origin of the youth;
- ✓ The general director for youth assistance or a person delegated;

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<sup>19</sup> The young person placed in a pre-established residential home or in a public institution pursuant of a legal decision which follows the law of 8th April 1965 or the decree, must be informed of his right to consult his lawyer, after his custody. Therefore the person in charge of the residential home or the institution must upon entry ask the young person to sign a document declaring that he/she has been given all information on this right, encouraging its use.

- ✓ Counselor of the youth welfare or his delegate;
- ✓ Director of youth assistance or his delegate;
- ✓ General Delegate for Children's Rights or his representative;
- ✓ The agreed services of youth assistance including the services for rights for young people.

If one of the people on this list calls the PYPI to talk with the young person, the request is granted. If the young person is not immediately available, the institution shall ensure that the call will be returned as soon as possible.

All young person's telephone calls are private and confidential. They cannot be heard.

Finally, the PYPI should encourage contacts with all the young people and institutions to contribute to the reintegration project.

### ***Extracts from the PYPI settlement***

#### ***Contacts with the outside***

*Unless decided otherwise by your judge, you have the right to have contact (correspondence, through visits, phone) with people of your choice.*

*The PYPI could however ask your court to limit or ban a contact that could hurt you or harm the educational work being done with you during your placement.*

#### ***Correspondence***

*The secret of your correspondence is guaranteed by the PYPI.*

*You can correspond for free with any person of your choice. The PYPI provide you with paper, writing materials, envelopes and stamps.*

*Mail you send or you receive that contain anything other than letters, could be checked by the management team: in this case you would be prompted to open the package in the presence of a team member which may ask you to surrender the items or substances that accompany the letter, if they present a threat to safety.*

#### ***Visits***

*People of your choice can visit you, unless prohibited by your judge.*

*If you benefited outputs, you have the right to a one hour visit per week.*

*If you are not in output condition, you are entitled to two-hour visits per week.*

*It is possible to arrange a further visit by appointment.*

*For the benefit and comfort of each person, and depending on the size of available space, it is possible that the number of people who can come and visit you at the same time is limited.*

*For at least half the length of the visit, the PYPI staff will leave you alone to talk to your visitors, but will make sure that the visit takes place in a calm and respectful manner, or it could be shortened.*

*Visits with your juvenile court, your lawyer, your delegate JCPS, General Delegate for Children's Rights or any person or service that is useful for you meet may be unlimited, however an appointment is preferable.*

### **Phone calls**

*You can make free calls at least three times for ten minutes a week to people of your choice, unless prohibited by your judge.*

*You can call for free, as many times as necessary, without limited time and as long as your call does not interfere with the conduct of an activity: your judge, your JCPS delegate, the Youth Aid Service, your lawyer, General Delegate for Children's Rights, the General Directorate of Youth Assistance, or any person or service that is useful in that you contact as part of your efforts.*

*Your telephone calls are private and confidential.*

## **2.4. Article 14 of the CRC: freedom of thought and religion**

Judicial and administrative authorities as well as natural or legal people, works, institutions or establishments responsible to provide assistance to measures taken in law enforcement must respect the religious and philosophical convictions and language of the minor's families<sup>20</sup>.

Article 4 of the decree also ensures the respect of the rights of young people and their religious, philosophical and political, as well as compliance with a code of ethics.

The PYPI Code recognizes the young person's right to respect his religious, philosophical and political beliefs. It states that the freedom to practice or manifest religion or beliefs may only be subject to restrictions prescribed by law and are necessary to protect public safety, public order, health or morals or the fundamental rights and freedoms of others. It insists that the stakeholders cannot in any case expose their philosophical, religious or political beliefs to the young.

The young person has the right to practice his religion or philosophy individually or in a community with others, respecting the rights of others and everyday rules of the institution. The PYPI ensures to ease the carrying out of these practices, particularly with regards to diet and observance of fasting times. It provides a place for the practice of worship. The young have the right to religious assistance, spiritual or moral, of a representative of his or her religion or philosophy attached or admitted to the PYPI for this purpose. Upon arrival, he will have shared this choice. The philosophical and religious counselors can talk alone with a young person who so requests in his room, or in the room where he is placed in isolation. Religious or moral assistance includes both individual and collective dimensions, according to the job profile for philosophical and religious counselors. In all cases, assistance cannot lead to proselytize to the young. The educational project and the education program of philosophical and religious counselors are brought to the attention of management.

With regards to this the settlement of PYPI states:

### ***Your religious and philosophical practice:***

*At your arrival in the PYPI, you are asked to fill out a form expressing your choice.*

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<sup>20</sup> Article 76 de la loi du 8 avril 1965.

*You have the right to practice your religion or your philosophy, alone or with other young people in the philosophy courses, while respecting the rights of others and daily life rules in PYPI.*

*You can be assisted by a philosophical or religious figure when you need to do so. Your exchanges are confidential.*

### **2.5. Article 15 of the CRC: freedom of association**

In Belgium, any person who carries out a function (eg chair or treasurer) in a non-profit organization must do so within the framework of a mandate. Article 1990 of the Civil Code explicitly authorizes the **emancipated minor** to be chosen as a representative, but the doctrine and jurisprudence in some cases authorize a **non-emancipated minor**.

Note that in criminal matters, the responsibility of the minor could be held in the manner provided for children (this falls within the youth court). In civil cases, his liability draws his parents' responsibility unless they prove they have not committed a personal fault in their child's education or supervision. This is a very sensitive issue because on the one hand, parents could be presumed responsible for their under aged child acts, on the other hand, they can oppose to their child's freedom of association.

Neither the decree nor the code nor Regulation of PYPI is addressing this issue.

If the young person is placed in open regime, nothing *a priori* seems to forbid him to exercise his right to associate freely, in compliance with the law and any conditions imposed on his/her investment.

In closed regime, the use of this right will be necessarily limited and can only be used through contacts from the outside (phone calls, letters, visits, outings), in compliance with the PYPI regulation.

### **2.6. Article 17 of the CRC: access to information (media or other sources)**

Neither the decree nor the code nor the settlement of the PYPI specifically addresses the right to access information via the media or other sources.

Please note, however, that the list of personal items, which the young person may have at PYPI include books, magazines and a radio.

In the center of Saint-Hubert for minors who have been subjects of a divestiture, there is a TV in every room.

In general, access to the media including the internet is authorized and supervised in a timely manner.

One should also note that, in connection with access to information, every young person placed for a period of more than two weeks is entitled to receive education adapted to their needs and abilities, designed to prepare school reintegration. The PYPI will ensure the

accompaniment of the minor to prepare the external general test to obtain a certificate (basic study or secondary education).

If education is provided within the institution, qualified teachers should primarily offer it.

Without prejudice to the interest of the young person, the team liaises with the school attended by the young person before his/her placement in order to establish collaboration for the monitoring of the program and to facilitate his/her reintegration after the lifting of the investment. It shall also inform the family of the young.

The director pays particular attention to the specific needs of young illiterates or youngsters who do not speak French. A suitable education is provided to them.

***Extract from the regulations of PYPI***

*During your placement, you will receive an education adapted to your needs and possibilities to prepare your return in a school during the placement (if possible), or when you leave the PYPI.*

*If you were enrolled in a school before your placement team (teachers, social workers) will contact it to continue the program that you started and help you get back from your output PYPI. Your family will be informed of this.*

***2.7. Article 31 of the CRC: the right to rest, leisure, play and recreational activities and the right to participate freely in cultural life and arts***

- Activities

Within PYPIs, the activities planned by the educational project (courses, sport, etc.) are obligatory and refusal to participate gives most often rise to a sanction. This binding will is, in our opinion, against the very principle of participation, which cannot have a voluntary basis.

However, in the Saint-Hubert centre for young people, the activities are free. It was reported that participation is nevertheless almost systematic, with young people wanting to enjoy activities in order to leave their rooms.

In general, it seems that young people would like to have more of a say when it comes to choosing between the proposed activities. They would like to do meaningful activities for their reintegration; alternatively they would like to choose more fun ones and more suited to their conditions, not just sports and handiwork.

**Testimony of F., detainee section of Saint-Hubert:**

*I feel that my activities and the rules are imposed on me, and I do not have my say. A rap related activity had been organized based on youngsters' requests but it was canceled because too much bad language was being uttered.*

### **Testimony of M., detainee section:**

*The rap workshop we asked for was cancelled because of too many insults. This is ridiculous because we have a lot of repressed hate, and it would help us to express it.*

### **Testimony of A., detainee section:**

*I would like them to listen to us more when we propose ideas (eg do sport outside and not inside the building when it's hot).*

#### - Outings

Authorized outlets could enable young people to enjoy recreational activities and participate in cultural and artistic life outside the institution. Everything here depends on the good will, on the educational team's project and, of course, on the applicable regulations.

#### • In closed regime:

If the judge or the juvenile court did not ban the events for young people who are detained in a PYPI in a closed regime, this young person can benefit from outputs which satisfies the following conditions<sup>21</sup>:

- ✓ The institution's outputs for court appearances, medical needs or to attend a funeral in Belgium in the case of a family member's death to the second degree included, do not require a youth judge or youth court's authorization. However, the institution shall inform the youth judge or youth court of any output in this direction via fax beforehand.
- ✓ Output types described in the educational project, that the public institution provides to the juvenile judge or juvenile court stating the types of supervision by type outputs, may be prohibited by the juvenile judge or juvenile court. The ban may also cover certain types of activities and may be related to insufficient supervision;
- ✓ Outputs for activities, which are not explicitly part of the educational project of the public institution, are subject to an application on a case-by-case basis to the juvenile judge or juvenile court specifying the type of planned management. The application is made no later than ten days before the start of the activity. The juvenile judge or juvenile court shall decide within a period of eight days from the mailing date of the application. The Registry immediately communicates a copy of the application to the public prosecutor. The decision of the judge or youth court is notified by facsimile transmission to the public institution. The Registry communicates copy of the decision within 24 hours to the public prosecutor.

If one were prohibited from leaving the PYPI, the judge or the juvenile court mentions the reasons for this ban which are based on one or more of the following issues:

- ✓ The person concerned has a dangerous behavior for himself or another person;

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<sup>21</sup> Article 19<sup>ter</sup> of the decree.

- ✓ There are serious reasons to fear that the applicant, if released, will commit new crimes or offenses to evade the action of justice, or attempt to remove evidence or colludes with third parties;
- ✓ The interests of the victim or of others require that prohibition.

The judge or the juvenile court may, at any time, either *ex officio* or following the request of the prosecution, change the young person's output regime.

The PYPI code further specifies that without prejudice to Article 19b of the decree, the nature, timing and procedures for obtaining and implementing outputs for closed educational regime are set by the PYPI in its educational project. The outputs, which are not supervised by a speaker from the PYPI, are subject to an individual program, which has been established on initiative of the PYPI. Each unframed output by a representative from the PYPI has to be prepared with the youngster and, where appropriate, his family or his friends. An evaluation of the course of the output and the achievement of previously established objectives is systematically carried out at the end of the output. The PYPI includes its assessments in the reports released to the youth court.

- In open regime

Unless an opposite reasoned decision is uttered by the court of youth, each youth placed in an open education system for longer than 15 days has outputs whose terms are set by the PYPI in its educational project.

The outputs, which are not supervised by a speaker from the PYPI, are subject to an individual program established on initiative of the PYPI. Each output, which is not framed by a speaker from the PYPI, has to be prepared with the young person involved, and possibly with his family present. An evaluation of the output's course and the achievement of the previously established objectives is systematically carried out at the end of the output.

### *2.8. Article 37 of the CRC: the right to challenge the legality of the deprivation of freedom*

Young people who have committed acts categorized as offences can make an appeal to the Appeal Juvenile Judge.

Article 60 of the 1965 Act governs the revision of the judicial measures taken against juvenile offenders. Under this article, the juvenile court may at any time revoke or modify the measures taken for the minor, either *ex officio* or by request of the prosecution. It can also be entered for the same purpose by the minor himself after the expiry of a period of one year from the day the decision ordering the measure to become final.

Moreover, any investment measure (in particular, in a private facility or PYPI) of a young offender should be reviewed in order to be confirmed, revoked or amended before the expiry of the one-year period starting from the date on which the investment decision has become final.



The PYPI Code also states that the young person may contact the Director of the PYPI or the person who covers the executive function about any issue or decision personally related to him and for any negative sanction imposed on him<sup>22</sup>. To do so, the young person should submit a written application in a sealed envelope to a member of the educational team of their choice. This member must send the request to the manager without delay. The young person will receive a written reply within forty-eight hours of receiving the email. A copy of this reply shall be inserted in the young person's record. If the young person complains about a member of the PYPI staff's behavior, the director shall deal with the complaint in a fair way. In these cases, he will listen to the parties concerned and make a reasoned decision, which he will then communicate to those concerned.

***PYPI regulations - Inquiry, appeals, complaints***

*If you wish to ask someone about a decision that concerns you (eg a negative sanction imposed on you) or if you believe that your rights have been violated, you may send a written request, in a sealed envelope, to a member of the educational team of your choice.*

*The chosen person will send your envelope to the director (or his deputy) as soon as possible. The Director (or his deputy) will give you a written answer within two days of receiving your request.*

*You can also write a letter to the Directorate General for Youth Aid if you believe that your rights have not been respected.*

The PYPI Code also includes the implementation of the verification system and of the respect for all its provisions in each PYPI, by agents who are designated by the competent authority. This verification is also achieved through a regular member present.

When a complaint from a young person, his family, his friends or a third party is received, the competent administration shall act within a reasonable time and, in any case, within ten working days if the complaint is issued by the youth himself during his custody. The General Directorate for Youth Assistance or an assigned delegate can, for this purpose, meet young people as part of their investigations. In this framework, visits to youths in PYPIs are neither limited in number nor in duration.

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All provisions discussed above certainly prove the important role young people have in the field of law and that they are actors in the legal process, at least in theory. Their primary purpose is, in line with the Convention on the Rights of the Child, to make way for the young to have a say in all decisions that directly affect them. They also point out that the common thread of these decisions should be in their own interest.

We will now match said provisions to local situations to measure the potential gap between theory and practice.

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<sup>22</sup> See report *Children's rights behind bars*.

## V. MAINTENANCE AND FOCUS GROUPS

### 1. ENCOUNTERED PEOPLE AND INSTITUTIONS

In the four **focus groups** we held, we met the following people:

- Seven lawyers;
- Two youth judges;
- Two public prosecutor substitutes;
- A parquet criminologist;
- A University professor;
- A care path coordinator (TITEKA);
- A policeman;
- Two police assistants;
- A legal member of the SOS-Children team specialized in child abuse;
- A staff member of Radian (restorative and educational service - SARE - formerly educational or philanthropic service benefits - PFIC - working with teenagers aged twelve to eighteen years)
- The director of ASOE *Yellow Point - Youth Assistance Service*;
- The director of ASOE *The Débrouille - CPAS of Seraing*;
- A psychologist from a PYPI;
- A criminal mediation expert from a local public authority
- A responsible of urban crime prevention service.

We also visited various institutions, public or private, working with youth in open or closed environment:

- The Jean TITECA Hospital, a private institution which welcomes teens under voluntary or forensic statuses. It provides custody for those suffering from mental disorders, either in custody or released after the trial, and welcomes male teenagers put into care by the youth court, having committed an act qualified as infraction.
- The SAIRSO, which is an educational, counseling center specializing in psycho-socio-educational guidance of children, adolescents and their families. The Sairso works with youth judges under mandate allowing them to intervene with minors who have committed acts categorized as offenses and also with the YSS when it comes to minors at risk. When collaboration with the YSS is nonexistent, sometimes the judge instructs the Sairso to intervene under constraints vis-à-vis the family.
- The Pommeraie is an asbl in the field of youth assistance since 1974. It currently oversees five projects: accommodation (la Pom'), post-institutional support (l'Appui), Crisis & Emergency revival (SERM), the "breaking-out" trip in Belgium (! Racines!) and "breaking out" trip in Africa (Pieds-sur-Terre).

- The detainee section in St. Hubert. Before the reform, Saint-Hubert was a closed federal center. Today, Saint-Hubert was transferred to the French Community, which has a wide-ranging recruitment, especially educators and social workers<sup>23</sup>.

### **Testimony from F., detainee section:**

F. was offered the chance to lead a cultural activity under the guidance of a teacher in order to highlight the culture of the country of origin of the locked-up youth. They present their country and their culture to other young people.

- The director of the Saint-Hubert PYPI. Since January 1st, the closed federal center of Saint-Hubert has changed its status, becoming the sixth PYPI of the French Community. This change of status has led to internal changes including the establishment of an educational project and different admission requirements. It is no longer to host minors in cases just in case the PYPI were to run out of spaces, as it was before. The PYPI can now accommodate up to thirty young people and has three emergency places. The investment period now reaches thirty days, which can be renewed once.

We also met a **youth non-deprived of freedom** accompanied by his former psychologist from one of the PYPIs where the youth was cared for. Nearly 29 years old, the youth has experienced freedom deprivation on several occasions, both as a minor and as a young adult.

Finally, thanks to the collaboration of the educational team in the **detainee section** of Saint-Hubert, we met **eight out of ten young people** who are being held there.

## 2. OBSTACLES TO THE RIGHT TO PARTICIPATE

The main obstacles, identified thanks to our discussion with professionals and young people are the following:

- The law known as the "Salduz"<sup>24</sup> law requires the presence of a lawyer for the youth being questioned by the police. According to the law the lawyer must be present for two hours. Nevertheless lawyers are not generally present for availability reasons (they must be on-call for 24 hours a day) or mobility reasons (they must be flexible to move in case of an emergency), but also because they only receive two points in the framework of legal aid for a service delivery<sup>25</sup>. By contrast, most of the time they will be present during the hearing (de cabinet? Office?) this service will give them an extra six points<sup>26</sup>

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<sup>23</sup> The new management team supports the entire initiative for youth participation. For instance DEI was able to organise a photo workshop with these young people, for an exhibition on incarceration in Belgium

<sup>24</sup> See *supra*

<sup>25</sup> For this matter please see : A. MOUTON, « Salduz appliqué aux mineurs: bilan et perspectives », *J.D.J.*, 2013, pp. 6 à 13. ("Salduz applied to young people: statement and perspectives")

<sup>26</sup> The LAO point was fixed at 24,76 € for the year 2015 (4% compared to 2014 when it was at 25,76 €).

- Out of/from much evidence/testimonials come to the conclusion of very tense/uneasy relationships between young 'criminals' and police forces. The practices during the questioning are often abusive (the use of handcuffs, which is at times unreasonably tight to the point of leaving skin marks for days, repeated and unjustified ID checks, insults, humiliation, etc). In certain neighborhoods, violence from members of the police happens very often, which leads to the difficulty for a child to dare to utter a complaint. If youth detention standards are different, the distinction between under-aged people and adults is vague, even non-existent. Detention in certain courthouses is equally pointed out: the prison cells for adults and children are joined together, young people are taken from their cells to the hearings in handcuffs. A key element lies in the police force's lack of training in youth rights.

#### **Testimony from O. detainee section:**

When he was free he often had cash or narcotics on him. He tells us that policemen often stopped/arrested him to withdraw either one or the other without telling him what they would take from him (for example: 50 euros taken off him on the street while he was with his girlfriend). He explains that policemen often strike youths and due to the lack of cameras in their cars or police stations they seize the opportunity to beat them up. The policemen do not even consider the youth's lawyer, because they tell them that as it is late he will not even come. He has even had some clothes taken away, which have not been notified and that he will never find again

#### **Testimony from A., detainee section:**

Brussels police which circulate around his neighbourhood always hit him and at times for no reason (they grab them, and take them to their police van, hit them and put them back) Policemen have seized his clothes and his brother's mobile phone. He underlines the importance of camera installation, without which the police will get away with anything.

#### **Testimony from Z. detained section:**

Before saying anything Z is keen to inform us that the encounter with the police was not a pleasant one. Some policemen went to find him/her at home for having committed two different crimes, although the youngster only claims to have committed one of the two. He was sent off to the Saint-Gilles prison for six days although he was and still is not of age.

#### **Testimony from Y, detained/detainee section:**

Y tells us a similar story to those of other youths. He particularly mentions violent acts from the police, which frequently occur in certain neighborhoods in Brussels. This type of violence, he thinks, is a form of power abuse, often followed by them being robbed straight after being questioned. Y also tells how he had just been stopped/ arrested with money on him and at the police station this money was not mentioned in the minutes.

The testimonies similarly underline how difficult it is for under aged youths in conflict with the law **to have a say in court**: youths are often verbally attacked for lacking in culture or simply because they are not used to expressing themselves. The formality of public hearings and the specific nature of the terminology used by judges' results into young people feeling disregarded in their own trial. They do not understand the true value of what is being said, as they are not familiar with legal vocabulary. The framework of the hearing is too impersonal and overwhelming. Therefore the young people in question are not always encouraged to freely provide their opinion and explain things further.

Another issue worth stating is that judges do not make enough use of the range of **educational measures** at their disposal. These measures often end up in choosing between services being taken into custody. When it comes to choosing the kind of work it is always up to the judge to decide (examples of these choices include assigning homework, asking the youngster to write a summary of *The Little Prince*, etc). Decisions made by adults are not necessarily the most appropriate, which is why it is interesting to let the young person also have a say.

The **written project** made by the youngster seems like a theoretically good idea, but it does not work very well in practice. The project is very often dictated by the lawyer, missing the point as the child will not even understand what it is really about. There is a lack in specific guidance, to help the child put the project together, and there is hardly ever enough time to do so (only 15 minutes before the trial); thus the educational potential of this measure is reduced.

An essential point which the participants often refer to is the way the young person's level of participation is linked to **who has or does not have the right to speak**. In this case the lawyer's personality can have a great influence, and affect the final decision of the trial. Unfortunately most lawyers are barely really involved: some of them will not even personally know the youth, nor will they have seen his/her profile, which they should be defending. Moreover, their role is not always very clear. It seems that he attempt to present himself as lawyer of the youth's interest, and not as much for the youth himself (his 'spokesperson') as he should be. Furthermore youth protection is often considered to be a 'sub-group' in the field of law. Few lawyers are specialized in the area, which leads us to believe **young people are prejudiced**. The functioning of the youth-related sections differ from district to district (thus in Brussels a very high number of lawyers is specialized in youth protection, however in Dinant there are only **three training sessions** in the youth section, and several interns).

### **Testimony from O.<sup>27</sup>, encountered on 16<sup>th</sup> June and accompanied by Mrs M. psychologist at O.'s PYPI**

There are not any positive views on the lawyers. He tells us that he never benefited from the "Salduz" law as his lawyer never met up with him prior to meetings with the police. When meeting with the judge the lawyer hardly ever behaves the same way, at times hardly making any effort to change his position if the lawyer was not present to assist the youth

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<sup>27</sup> Aged nearly 20 years old, O. has experienced freedom deprivation on multiple occasions, and this worsened as he became of age

with the judge, O. points out that a *pro deo* lawyer whom he could talk to was constantly present with the authorities. Unfortunately that lawyer is for all people in the judicial unit. There is clearly a lack in common ground for O. who has never been assisted by the same person. Furthermore some of these lawyers are tactless and do not address him appropriately, they show lack of interest in their profile, and at times inability to do anything in his favour (*"I don't know what I can do for you"*)

#### **Testimony from F., detainee section**

In his experience, various judicial representatives have been neither efficient nor agreeable with him. First of all, the judge did not take the letter he wrote into consideration. Also, two different lawyers were present, and the first one did not even seem interested in his case, and according to F. he is the one who kept enforcing the matter. The following times he was assigned a new lawyer, much more efficient and pleasant. This one hears from him every week and makes sure the youth is well informed every time his profile needs updating, and that he knows of future possibilities.

#### **Testimony from Y., detainee section**

None of his previous lawyers took the time to visit him, he says. His first lawyer did not even bother to answer his phone calls.

#### **Testimony from Z., detainee section**

He is the only one who admits to have kept the same lawyer throughout, and that he has always been present when needed. He is called and he frequently pays him visits. However, after being questioned he had to face the police on his own.

- Generally speaking it seems that there are no legal experts who know enough about the subject of young 'criminals' conditions. They only focus on legal aspects and do not take the **socio-cultural dimension** into account enough. Therefore the gap between the lawyers' and judges' professional environment, and that of youths in conflict with the law does not encourage youth participation
- Within the same framework of ideas, the lack of training in the field of youth rights is an extra obstacle to youth rights to participation. Professionals and university students' training does not integrate this dimension. All those who take part in focus groups have been adamant on the need to organize proper training sessions; they should not merely consist of certification awards, but should also include a more specialized dimension.

#### **Testimony extracts in this respect:**

**At the Jean TITECA medical centre**, the issue of staff training was raised, and the answers was that not all sessions are the same given the variety of professions in the unit. Both the director and the coordinator in charge of the care path have explained that they followed

the trainings, and that these are available to whoever wishes to be trained, but at the same time it is not compulsory.

### **Testimony from O., encountered on June 16<sup>th</sup> accompanied by Mrs M., psychologist at O.'s PYPI**

Shortly after his hearing, O. was sent to the Wathier-Braine PYPI for 3 months. As O. seemed to be cooperative the educational and management teams adopted an equally respectful attitude towards him. He had the chance to make phone calls and receive visits. During his second stay here, O. adopted a less helpful attitude. He often had problems with the tutors, leading to a strict punishment, such as an 18-day period of isolation in his room. Within the framework of this measure, which one may qualify as punitive, not educational, the youth was forced to sit in his room alone without a mattress (from 7h to 21h) or anything to keep himself occupied during the first few days (not even a book). The tutors were supposed to be checking up on the youngster every two hours, but all they did was briefly glance into the room through the door, without even speaking to O. The here-present psychologist from the Institute confirms these facts (equally confirmed by F. who is currently being kept in the detainee center, but who had had the chance to see this PYPI: *when I was at the Wauthier-Braine Institute, the youths got punished by having their mattresses taken away and copying the rule (on a piece of paper?)*) The psychologist explains that she has to fight against this hierarchy and her colleagues to see her patient at least once a week during his isolation. O. also tells us that conversations with the psychologist did him very well, and that is what has helped him to make steps towards social re-integration. However, being confined to his room for such a long time after having committed an act of violence had repercussions on the progress he had made with the psychologist. After 18 days of isolation O. was transferred to Braine-le-Chateau, as the group had decided to leave him be despite the progress he had made before the incident. The psychologist explains to us that to cover up this illegal form of treatment, O.'s profile only showed that he benefited from an "individual regime", leaving it vague and unverifiable. According to the psychologist the power abuse of the tutors is the result of a lack of tools and training within the framework of conflict transformation. Unable to respond to a young "rebel's" conduct, tutors tend to choose the easiest option which is to lock up the person, cease to talk to him and stop him from enjoying his rights. According to the psychologist there is a severe lack of tools and information for the PYPI educational groups, lawyers, judges, which explains why these people do not know how to react when youths do not act as they expect.

- A problem regarding **wrap-up meetings in certain PYPIs** was equally raised. It is an archaic reporting system involving people reading their personal report out loud. Moreover the lawyer is not allowed to be present and the young person does not even have the chance to participate, and is only free to join them afterwards to hear the final word.
- The problem related to youth participation also lies in the high number of **social "actors"** who interact with them

- The final point raised was the **lack of information sharing** from social services, who value “professional confidentiality” and do not always encourage collaborative work in the interest of the youth

### 3. PATHS TO SOLUTIONS

Following our meetings with professionals and youths, several conclusions were drawn and are listed below, in order to improve youth rights to participation:

- See what the young ‘criminal’ has to say by looking away from what he committed, and begin to see him as a minor, someone who must have very likely been a victim before becoming in conflict with the law. For example, at a hearing before which the youth has been subject to violent acts from members of the police the framework will be set up to not affect the child’s feelings so that as soon as the roles are inverted with the child becoming the author he is not dealt with in the same way, yet the experience can still turn out to be upsetting
- Think of the youth as a presence in the legal system and an actor in the legal procedure. As stated by the 1965 law, the judge has to be aware of the youth’s personality and other factors before making his decision, and the most effective way to do so is to talk to him in person.

#### **Examples of good practices:**

**At the Jean TITECA medical centre** meetings revolve around the youth who is accompanied by his lawyer and referees also evaluating his steps towards development. Here the youth has the chance to speak for himself, and what he thinks about the discussed measures for him will be considered in the report.

The main idea at **Le Sairso** (asbl) is that regardless of his/her age the child should meet the person who is going to decide his fate, so that he is free to ask questions and better understand why specific measures were chosen for him. This will equally allow the judge to choose more appropriate measures.

Especially **La Pommeraiie** at times organizes ‘breaking-out’ journeys. This service is aimed at young people who are “at a dead end”, on whom previous measures had failed from being successful. The young person, male or female, is sent to live with a host family in Benin for three months in a completely different setting from his own, and he has a local tutor for reference. For three months the youth must take part in the local community life, and help the family with their daily tasks, which are normally agriculture-oriented. La Pomerraie can also ask the youth to take part in humanitarian projects set by local NGOs, in centres for disabled patients, orphanages, or more simply waste-sorting.



**Testimony from O.**, detainee section, on the subject of 'breaking-out' journeys (breaking journey?)

For O. this project is a very viable alternative. The judge refused to send him to Bénin fearing that he would escape to Morocco. However he knows people from his neighborhood who have been in trouble, have been sent abroad and it worked well for them

Furthermore, the team at La Pomerraiie underlines the importance of the young person saying what he thinks about the measures put together for him, mainly under their own project '**Racines**'<sup>28</sup>. The report to be drafted by the youth at the end of the measure is submitted to the judge by the tutors, but the director would like the youth to take it to the judge personally. The team also would like a '**life story**' technique to be put into practice using tools, which would allow youths to save a piece of their journey and hence rebuild their history.

Generally speaking, when a youth is taken into custody he is asked to prepare an individual project. This is a life project and it is related to the youth's professional development, with the aim of progressing towards independence. These projects are normally centered around being re-admitted into school, at the start of a new study program, training or a professional internship.

- A surveillance system with **audio-visual recording** should be implemented where possible during the questioning, in order to avoid abuse from the police. Youth hearings should also happen one time only, and not be continuously repeated. It will therefore be necessary to apply the technique used for under-aged witnesses and victims.
- Create a small '**Salduz**' role, to assist minors in conflict with the law. An idea could also be to provide the minor with a list of lawyers on duty, under the condition of a proper cooperation with the police, and enough budget.
- Have '**common thread**', in other words a person for each youth which would avoid the complexity of a services surplus, and avoid the youth having to deal with too many lawyers (the lawyer should remain throughout the stages). Moreover there is not a single text which gives the child the right to **general assistance** alongside the lawyer: psychological and affectionate assistance throughout the entire procedure,

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<sup>28</sup> This service is for youths who need 'breaking' but do not comply with the selection criteria needed to travel to Bénin. The work is assigned under mandate (so that the youth is forced to meet the judge) but can also have the 'surprise' effect on both the youngster and the judge, in confidentiality. According to the way this development will take place the judge is not entitled to give any explanation as to where the youth is to be sent, he simply asks the youth to write a report about his experience upon return. One-to-one encounters with the judge are also kept confidential: the judge will not have a say as to whether the taken measure has had a positive effect or not. This project allows youths to develop an individual project together with the educational team, and it should be seen as a focus on interaction with the youth, not solving the problem itself. It is a special measure for youths who have multiple problems (crime, danger, mental disorders, etc)

whether they be his/her parents, a tutor or some other trusted adult. This is recognized by international Treaties and non-binding acts<sup>29</sup>

- Encourage the implementation of a **prevention** policy, both with the police and social workers. Young people believe it is important for the trainers TO have a similar past experience of their own (for instance, having been in prison, been in a PYPI, etc): this would be a great asset to their work with young people (similar history, language, and similar experience to an adult who has left it behind).

### **Extract from O.'s testimony, detainee section**

O. originally comes from Marocco. When the police stopped him they really harmed him. O. has been in adult prison twice. When he was 16 (in 2013) he spent 11 months in adult prison. He returned to prison shortly after, when he was 17. We told him that this is completely illegal, but he did not know this at the time, and clearly so did his lawyer! He then changed lawyer. According to O. it is not until you decide to make a change, which you will begin to see a difference. He tells us something clicked inside him when he saw his mother cry. He thinks there should be more street social workers in the more difficult neighborhoods in Brussels, and that it is important that they have at least been to prison or spent some time in a PYPI because people who have never lived the experience cannot understand and as a result are not taken seriously.

- **Collaboration among services** should be put in place; judges and the police should link and share information as much as possible whilst respecting the laws on shared professional confidentiality.
- A form of '**education for citizenship**' should also be put in place, by making the right as accessible as possible. Those who take part in discussion groups have all claimed basic training for legal experts, to make them understand the importance of simplifying their language when addressing minors

### **Examples of good practices:**

**Le Sairso** created a pedagogical tool for young people, a book and letters from different people who act in favour of youth aid. Such letters are to be used by judges in order to adopt appropriate language skills

- Raising as much awareness as possible about the **Convention on the Rights of the Child**; illustrate what is behind the articles, its "philosophy". The treaties and other non-binding international acts agree to bring more focus on training facilities for legal

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<sup>29</sup> Please see: art. 40 letter B, paragraphs ii and iii of the CRC; art. 15.1 on the Rules of Beijing; art. 28 and 30 on the Council of Europe guidelines on suitable justice for children

staff and prison officials<sup>30</sup>. A binding rule is to be put in place for this, as it should not only be based on whether or not the people concerned are willing to follow the training. Moreover, the idea of “training” on a larger scale, at beginner level and on a continuous basis is crucial, bearing in mind the hiring of new staff and that national and international progress towards children’s rights in criminal matters is constantly being updated

- Integrate a **social and cultural dimension** in the training of legal experts
- Establish more **room for dialogue** for the youth, with both lawyers and judges
- **The role of the lawyer:** it is important that he calls the youth to responsibility by giving him his opinion as to what he should do (ie. come to terms with facts, stay calm, etc) but it is also important to let the youth say what he thinks. He should therefore give advice and information in the form of a productive dialogue
- **Developing tools to encourage youths to participate during their hearings:** making legal jargon more accessible to make the youth feel more included in his own audience, allowing him to react accordingly when asked something by the judge or the lawyer. Questions for the youth should not only concern his offence. The judge should certainly keep to the procedure, but he should neither refrain from listening to the minor, nor keep picturing him/her as a criminal.
- **A more accurate distribution of means**, which have already been put into place in the sector of youth aid between institutions and people

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<sup>30</sup> Part V, letter 1 of the Council of Europe Guidelines on an appropriate form of justice for children; article 6 of The Beijing Rules; article 63 of The Rules of Riyadh.

## VI. CONCLUSIONS AND RECOMMENDATIONS

Aside from a detailed study on norms which are currently in place, Project Twelve was the opportunity to gather a large variety of professionals who deal with young ‘criminals’: lawyers, judges, social workers, psychologists, policemen, etc.

At the same time we managed to visit a number of institutions, of both open and closed regime

We were finally able to get in touch with up to 10 youths who had been or were still involved in the Belgian juvenile justice system.

Various conclusions can be drawn following our research and meetings.

First of all, it is important to underline that there are many ways to make youths more involved in legal procedures, the most important one being the opportunity to express themselves and to be completely understood. This means that clear, easy and understandable information should be delivered for the benefit of youths. Efforts are yet to be made, especially by members of the police, judges and lawyers.

We believe that mediation and restorative group dialogue are the most effective measures to be chosen for youths in conflict with the law, and the most pertinent to directly operate the youth’s right to participate. It should be up to the main judge to suggest this measure. This measure implies the adhesion from both sides (victim and author). The youth will have the chance to address the victim, assisted by his lawyer and a trusted person of choice (this person can be neither of the author’s parents) throughout the procedure. The main aim of the measure is to encourage the youth to speak up and become more responsible.

Another measure, which *a priori* seems to encourage the youth’s right to participate, is the written project. Judges however rarely choose this measure, as it doesn’t really cast light on the youth himself. The project always ends up reflecting the lawyer’s opinion; it does not contain expressions or ideas which the youth can understand, and therefore the very youth is even more detached from it; this is why it practically always results into failure.

At the focus groups many obstacles to youths fully exercising their participation rights were identified. The most significant obstacles are reported below.

First of all, although the Salduz law states that a lawyer must be present during the two hour questioning by the police, they are hardly ever present. This problem is notably due to the poor budget destined to juvenile justice: in order to assist their young clients at the police station lawyers are poorly paid<sup>31</sup>. On the contrary for public hearings they are indeed well paid, hence their presence is practically systematic. Their efficiency is very much linked to their own motivation and implication. At times the lawyer is to defend a youth whom he does not even know, nor will he have seen his profile beforehand! More often than not, the lawyer also tends to adopt an ambiguous role, which has the slight tendency to lean towards

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<sup>31</sup> See *supra*, footnote page 29

what the judge says (“Us adults know what is best for you, better than you!”) as opposed to truly defending his client’s rights.

Moreover a recurring notion is that youth participation is highly affected by the legal jargon, which is often hard for an ordinary person to understand, and generally speaking the difficulty in understanding the judicial system.

Young people also appear to suffer from a lack of continuity in terms of who defends them. It is very unsettling for their lawyers to always be changing without warning, as they never know what to expect from them; this means they have to deal with people who do not know their history as well. How could they possibly help them in these circumstances?

In terms of the institutions (PYPI), despite an improvement in their internal code of conduct youth participation still very much depends on the goodwill and motivation of the staff. If youth’s rights are to be respected it is up to them to behave accordingly. As soon as the youth ceases to stick to the rules some educators do not hesitate to punish them, at times violating the youths rights. Confining the youth to his room in isolation for a very long time is a rather frequent punishment, as tutors sometimes do not know what to do. Counter production of similar measures is therefore evident: the youth is led to become even more angry and frustrated<sup>32</sup>

However, thankfully not all is wrong in our juvenile justice system, Certain public or private establishments do what they can to give priority to youth participation and to launch innovative programmes. We had the chance to visit certain institutions who entirely devote their work on the children they host.

Le Sairso, for example, has launched a project, which aims at responding young children’s needs and understand about the various roles of people they have to meet. There is a publication in this respect, entitled “This may soon happen to you. Aid for youths in the French community explained to children... and to adults”. It is a pop-up book, which contains various cards each one representing a different character, and explaining the role of the actor in question in accessible language. This book was spread out among some children’s services. Judges at the youth court equally received a copy of the text.

As it is right in the middle of the country, children being kept in La Pommeraie are encouraged to help the staff in their every day tasks, such as wood harvesting, keeping kitchen and garden clean, feeding the animals, etc. It is a more original way to make youths more responsible. This institution also organizes “breaking-out” journeys. These “trips” are the last resort for youths on whom previous measures have had little effect. Before departure the staff preps the youth. He is then sent to Benin for three months to stay with a local family, and he is accompanied by a social worker. La Pommeraie have also implemented the “Racines” service, which is highly original. This is for youths who need to “break-out” but whose profiles do not meet the requirements needed to qualify for Benin. The work is compulsory (in this way the youth will be forced to attend a meeting with a judge) but remains confidential, guaranteeing a potential “surprise” effect both for the youth and for the judge. The judge is not to tell the youth where he is to be sent, he simply

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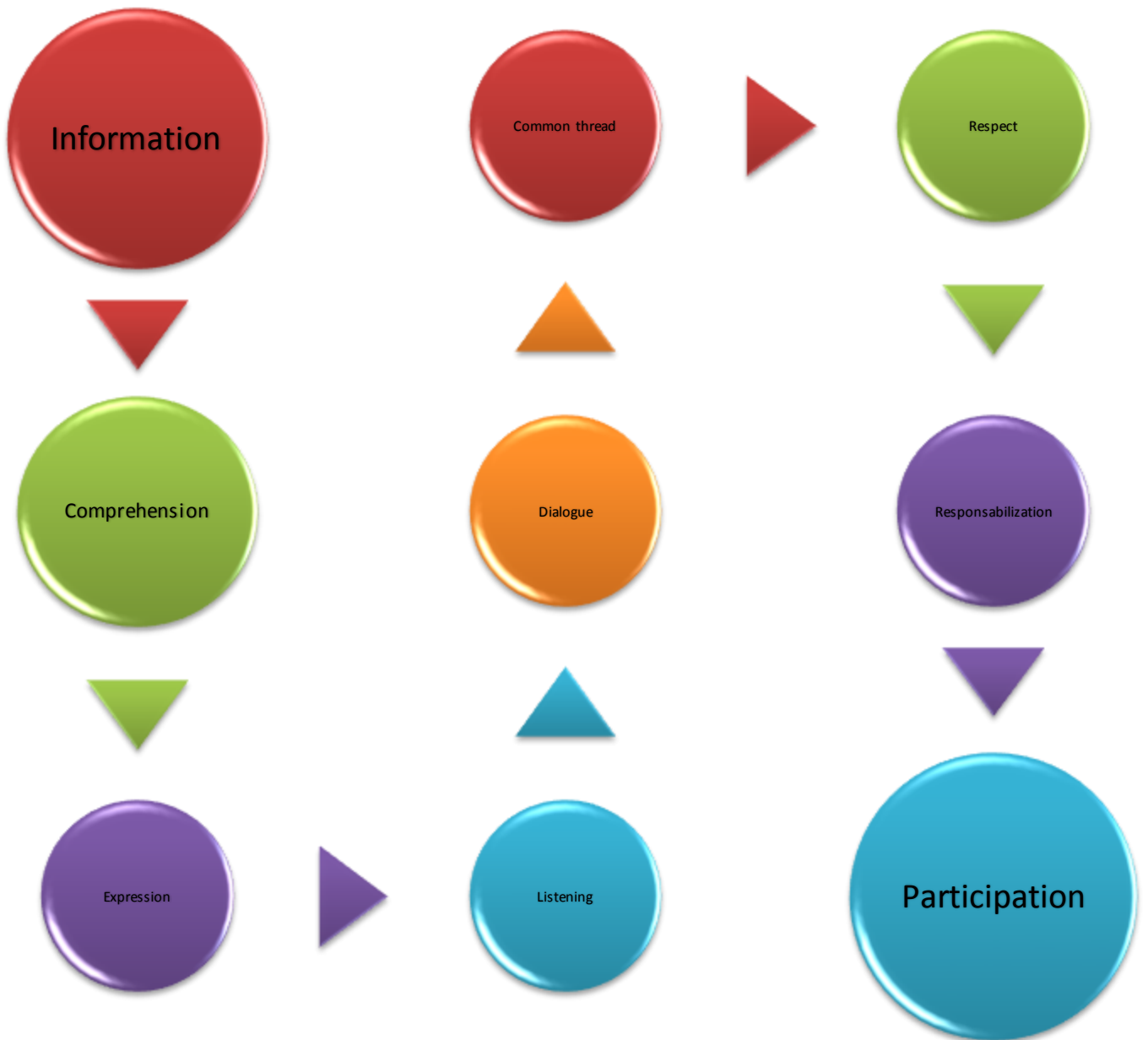
<sup>32</sup> See O.’s testimony, *supra* p. 37

asks him to write a report about his experience when he comes back. The one-to-one encounter with the judge also remains confidential. Racines allows youths to develop an individual project with the tutors, which will be centered around the youth's own development, and not on the resolution of the problem. It is a special measure for "outcasts" whose problems are not down to one single reason. The staff at La Pommeraie intends to analyze the youth's development following certain measures, especially when asked to do the "Racines" project. The report is sent to the judge by the tutors at first, however the director would like it to be the youth to hand it over to the judge. They would also like to launch the "life story" idea, with tools which would allow young people to break down their life journey and rebuild their history.

We now wish to point out these positive and promising initiatives, hoping they will serve as models and sources of inspiration for the future.

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At the beginning of each focus group we asked all participants to think of a word, linked to young people's right to participate when in conflict with the law. The words in the following graph are the most popular.



## Annex 1: list of meetings

### 1. Meetings with professionals

#### *1.1. Focus groups*

**11<sup>th</sup> May 2015 focus group:** two lawyers, two public prosecutor replacements and a staff member of a restoring and educational action service (REAS, in french SARE)

**13<sup>th</sup> May 2015 focus group:** three lawyers, a legal criminologist, a University professor and a care path coordinator.

**19<sup>th</sup> May 2015 focus group:** a Youth Court judge, a policeman, two police assistants, a legal expert from SOS-Children, specialized in the field of ill-treatment of children and two “open support” (AMO in French) directors.

**16<sup>th</sup> June 2015 focus group:** two lawyers, a psychologist working at a PYPI, a mediator for communal administration sanctions and a representative from an urban prevention service.

#### *1.2. Institution visits*

**4<sup>th</sup> May 2015, meeting with staff at the Jean TITECA medical centre** (private institution which notably takes in adolescent on a voluntary or medical/legal basis whose past measures had been selected based on their mental disorders, youths who have been either taken into care or let off “on probation”, or male adolescents who were assigned to custody for having committed an act qualified as an offence)

**21<sup>st</sup> May 2015, meeting with two members from the SAIRSO group** (educational centre, specialised in guiding children, adolescents and their family following a psycho-socio-educational path, exclusively working under Youth judges’ and/or councillors’ orders).

**29<sup>th</sup> May 2015, meeting with the director and staff at La POMMERAIE** (asbl which has been operating in the field of children ever since 1974: it is currently leading five projects: lodging [the Pom’], post-institutional accompaniment [the Support], Crisis&Urgence, the official Belgian host for children on “breaking out” missions [Racines!] and organizing journeys to Africa [Feet-On-Ground])

**5<sup>th</sup> June 2015, meeting the staff from the detainee section in Saint-Hubert.**

**9<sup>th</sup> June 2015, meeting with the director of the Saint-Hubert PYPI.**

### 2. Meetings with youths

#### *2.1. Youth non-deprived of his freedom*

**16<sup>th</sup> June 2015, meeting with a young 20 year old who spent his adolescence in a PYPI**

#### *2.2. Youths deprived of their freedom*



**1<sup>st</sup> July 2015, meeting with 8 youths from the detainee section in Saint-Hubert**