



My Lawyer, My Rights

Enhancing children's rights in criminal proceedings in the EU

The role of the youth lawyer in welfare and criminal proceedings in Belgium

National report

September 2016 - February 2017

Defence for Children (DCI) - Belgium



Défense des Enfants
DEI-BELGIQUE

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This research report has been written in the context of the project « My Lawyer, My Rights - Enhancing children's rights in criminal proceedings in the EU », co-financed by the justice program of the European Commission. The content of this report does not necessarily reflect the position of the European Commission and thus does not imply in any way its endorsement of the views expressed in this report. If inaccuracies or mistakes are to be found in this document, they can only be attributed to the authors of this report. This report was written by Marine Braun, Géraldine Mathieu, Florence Bourton and Louis Triaille, and coordinated by Marine Braun under the supervision of Benoit Van Keirsbilck.

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Marine Braun
Coordinator of the project « My Lawyer, My Rights »

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List of abbreviations

ADCO	Act deemed to constitute an offence
AGAJ	<i>Administration générale de l'aide à la jeunesse de la Fédération Wallonie-Bruxelles</i> (Youth support general administration of the Wallonia-Brussels Federation)
AJ	<i>Agentschap jongerewelzijn</i> (Agency for youth social welfare of the Flemish community)
AMO	<i>Services d'aide en milieu ouvert</i> (Open environment support services)
AVOCATS.BE	<i>Ordre des barreaux francophones et germanophone de Belgique</i> (Order of the French and German speaking bar associations)
BAJ	<i>Bureau d'aide juridique</i> (Legal aid office of the French speaking part of Belgium)
BJB	<i>Bureau juridische bijstand</i> (Legal aid office of the Flemish speaking part of Belgium)
CAJ	<i>Commission d'aide juridique</i> (Commission for legal aid)
CCP	Code of criminal procedure
CoE	Council of Europe
CPAS	Centres publics d'action sociale (Public centres for social action)
CRC	United nations committee on the rights of the child
DGDE	<i>Délégué générale aux droits de l'enfant de la Fédération Wallonie-Bruxelles</i> (General Delegate of the Youth Support of the Wallonia-Brussels Federation)
ECHR	European convention on human rights
ECtHR	European court of human rights
ECJ	European court of justice
FJD	Federal justice department
GI	<i>Gemeenschapinstelling</i> (Community institutions of child protection in Flanders)
HRC	United Nations human rights committee
ICCPR	International covenant on civil and political rights
INCC	<i>Institut national de criminalistique et de criminologie</i> (National institute of criminalistics and criminology)
IPPJ	<i>Institut public de protection de la jeunesse</i> (Public institutions for child protection of the Wallonia-Brussels Federation)
OVB	<i>Orde van Vlaasme balies</i> (Order of the Flemish bar association)
KRC	<i>Kinderrechtencommissaris</i> (Commissioner for Children's Rights of the Flemish Community)
KRW	<i>Kinderrechtswinkels</i> (Children's rights service in the Flemish speaking part of Belgium)
PR	Police report
SAJ	<i>Service d'aide à la jeunesse</i> (Youth support services)
SAMIO	<i>Sections d'accompagnement, de mobilisation Intensifs et d'observation de Fédération Wallonie-Bruxelles</i> (Intensive support, mobilisation and observation sections in the French speaking part of Belgium)
SDJ	<i>Service droits des jeunes</i> (Juvenile's rights service)
SPJ	<i>Service de protection à la jeunesse</i> (Youth protection service)
TFEU	Treaty of the functioning of the European Union
UFM	Unaccompanied foreign minors
UNCRC	United Nations convention of the rights of the child

Lexicon

Minor in conflict with the law	We use the term « minor in conflict with the law » to talk about minors who have committed or are suspected of having committed a « act deemed to constitute an offence », meaning a fact that would be considered as a crime if the interrogated person was an adult (an offence, a misdemeanour or a felony).
Youth Lawyer	Lawyer assisting children in Belgian welfare and/or criminal proceedings.
Interrogation <i>model III</i>	Police interrogation of a suspect who is not deprived of his ¹ liberty and asked about facts punishable with a prison sentence.
Interrogation <i>model IV</i>	Police interrogation of a suspect who is deprived of his liberty and asked about facts punishable with a prison sentence.

¹ In this report, the masculine gender is used in order to avoid complicating the text.

INTRODUCTION

1. Report purpose and structure

This report describes the results of the Belgian national research that was conducted in the framework of the « My Lawyer, My Rights » project (as described hereinafter). Its goal is to present an overview of the applicable legislation, the role, the mandate and the training of lawyers when they defend minors in conflict with the law in Belgium, as well as to describe the modalities that allow these minors to exercise their rights. It also aims at pointing out inspiring practices or, on the contrary, highlighting the obstacles to the actual execution of these rights.

The first part of this report describes the international and regional relevant legal instruments that are binding for Belgium (**part A**). It draws a distinction between binding instruments and instruments considered as *soft law* and studies the actual Belgium's position towards these two categories.

In the second part we will itemise the national legal framework in the context of the Belgian juvenile justice system, with a particular emphasis on the procedural rights of minors in conflict with the law (**part B**).

The third part studies the role and the mission of the youth lawyer in national procedures, the legal aid system, as well as the different socio-legal services (public and private) which are beneficial for the minors to guarantee an optimal respect for their rights in these procedures. Several practices will be brought forward (**part C**).

Finally, the last part contains the conclusion and the recommendations addressed to the different professionals involved in the juvenile justice system. The recommendations originate from the professionals themselves or are based on observations made during the research (**part D**). They all share the same purpose: to enhance the respect for the procedural rights of minors confronted with the Belgian justice system and to facilitate the mission of lawyers defending minors in conflict with the law.

2. Organisation and team in charge of the research

Defence for Children International DCI-Belgium has as a mission to protect and defend children's rights, both in Belgium and abroad in collaboration with the national sections (35) of the international Movement and other partners everywhere around the world. Their action consists mostly of training, educating, and raising awareness about children's rights when they are not respected and to guarantee that the Belgian authorities abide by their European and international obligations. DCI-Belgium's fields of intervention are mainly: access to justice for children, juvenile justice, migrant children's rights, freedom of expression and right to participation.

The DCI-Belgium team in charge of the Belgian national research is composed of **Marine Braun**, coordinator of the project « My Lawyer, My Rights » and expert in juvenile justice; **Géraldine Mathieu**, expert in juvenile justice, in charge of the research in the French speaking community; **Florence Bourton**, assistant of the juvenile justice project; **Louis Triaille**, assistant of the juvenile justice project; **Aurélie Carré**, in charge of the financial and administrative management of the project and **Julianne Laffineur**, in charge of the advocacy and communication, under the supervision of **Benoît Van Keirsbilck**, director of DCI-Belgium.

3. Methodology

The national research serves a double purpose:

- To investigate the role, mandate and training of lawyers defending minors in conflict with the law so that improvements can be made in regard to their situation;
- To research the transposition and application of several European directives ensuring the procedural rights that an individual has when he is suspected or accused in a criminal proceeding: the right to receive the relevant information concerning his rights and the procedure, the right to interpretation and translation, the right of access to a lawyer, the right to be assisted by a lawyer and the right to legal aid). Today, there are still some serious doubts regarding the application of these directives in the Belgian juvenile justice system (the so-called “welfare procedure”). This study aims to clarify those points.

The research was conducted based on a **common research methodology** that was developed within the European project and has been applied by the six national partners.

The national report is the result of a national investigation that was conducted on two levels:

- The first level consisted of **desk research** (study of existing documentation and literature). On the one hand, it aimed to verify the application at the national level of international and regional standards and instruments, as well as to identify the national legal framework in the field of juvenile justice and the right of access to and assistance by a lawyer, and on the other hand, to analyse the existing system that guarantees the role and training of lawyers regarding their work defending minors in conflict with the law.
- The second level was dedicated to **field research**. It consisted of the interviews of at least five youth lawyers (at least two males and two females), at least two professionals from the juvenile justice sector (juvenile judges, prosecutors, social workers, educators, mediators, police officers, psychologists, ...) (at least one male and one female) and at least five children and/or adolescents who are (or have been) suspected or accused in a welfare or criminal proceeding (at least two boys and two girls).²

We held 14 interviews with lawyers and 18 interviews with other professionals (juvenile judges, a police officer, social workers, a psychologist, directors of different institutions and several members of the voluntary sector). We were allowed by the competent authorities of the Wallonia – Brussels Federation ³ (The youth support general administration, hereinafter “AGAJ”) and the Flemish community (the agency for youth social welfare (hereinafter “AJ”)) to access the Public institutions of child protection (hereinafter “IPPJ”) and the Community institutions (hereinafter “GI”) to meet a random sample of children (13) in conflict with the law. After taking note of an informative document and having signed a consent form (in an understandable and adapted language), they volunteered to take part in our study and to share their views on the role of their lawyer(s) during individual interviews (or focus groups) that were conducted following rules outlined in a **procedural and ethical guide (Appendix 1)**.

² In this report, the masculine gender is used in general in order to avoid complicating the text.

³ Wallonia – Brussels Federation is the new official name of the French speaking community.

4. Limit of the research

The research and the drafting of the report took place **from September 2016 to February 2017**. Even if it is **limited in time**, this national report has the ambition to be a true reflection of the role and mandate of lawyers defending minors within the field of so-called “protectional” (welfare) or criminal proceedings.

The research was conducted **throughout the entire Belgian territory**, both within the Flemish community with the help of the competent stakeholders and the Order of the Flemish bars (hereinafter: “OVB”) as well as within the Wallonia- Brussels Federation with the help of the competent stakeholders and the Order of French - and German speaking bars (hereinafter: “AVOCATS.BE”).

The research is **limited to the role of the youth lawyers defending minors having committed or being suspected of having committed an act deemed to constitute an offence** (hereinafter: “ADCO”). We decided to adopt this approach after having considered the framework of international and regional texts and more specifically the framework of the European directives mentioned in this study and which guarantee common procedural rights and minimum standards to individuals suspected or accused in criminal procedures. The directives also concern “administrative and minor offences” which do not lead to prison sentences. Nevertheless we decided not to include the latter ones in our research.

We are aware of the fact that a lawyer do not only treat cases of minors who committed an ADCO and thus that these cases are only a part of their work. Besides these cases, there are the cases of minors “in danger”, which are brought before the judge in order to guarantee their safety and wellbeing. We advocate that all children, no matter what kind of proceeding they are involved in, get an equal access to procedural rights, including the right of access to and assistance by a lawyer.⁴ The lawyer has to make sure the child understands the case he is involved in as well as the procedure. He also has to offer them a defence that is adapted to their specific needs. The current study, even though it is limited to the first category of children, is the occasion to remind us of this fundamental criterion of equality in terms of guarantees for all children when in contact with the law.

Except in one case⁵, all interviewed **children were placed in IPPJs, GIs or closed facilities** at the time of their interview. It turned out to be difficult to collect testimonies of children who were never subject of a placement measure. We recognise there may **be variations in their perception of what a lawyer is and should be**, which we couldn’t take into account in the random sample of children we interviewed.

⁴ All interviewed actors share the same view (judges, social services, lawyers...); certain lawyers even see their role to be entirely the same both in FQC cases as in cases where minors are in danger.

⁵ We spoke over the phone with a young adult who had been in conflict with the law.

A. INTERNATIONAL AND REGIONAL LEGAL FRAMEWORK (Appendix 2)

1. The international framework

1.1 Ratified treaties

In Belgium, the provisions in international treaties ratified by the State are directly part of the Belgian legal system and have precedence over the contradicting national provisions.⁶ In consequence, the Belgian courts (of appeal) have to verify which of these provisions have a direct effect in the **internal order** and apply them rather than the domestic laws.

Below you will find an overview of the instruments ratified by Belgium in relation to the right to a lawyer for a minor in conflict with the law, as well as the main recommendations addressed to Belgium by the corresponding monitoring bodies.

a) The International Covenant on Civil and Political Rights⁷

Article 14 of the Covenant concerns the right to information (14.3.a), the right of access to and assistance by a lawyer (14.3.b and d), the right to legal aid (14.3.d) and the right to translation (14.3.f).

In their last observations in 2010, the HRC recommended Belgium *“to take all the necessary measures in order to guarantee the access to a lawyer within the first hours after having been deprived of liberty, both in the case of a judicial or administrative arrest and when in custody, as well as the systematic right of access to a doctor”*⁸

b) The Convention on the rights of the child⁹

In their final observations in 2010, the CRC encouraged Belgium *“to set up information and training programmes systematically supporting the principles and provisions of the Convention for the children, parents and the groups of professionals working with and for children, including judges, lawyers, police officers, teachers, medical staff and social workers”*.¹⁰ They also asked Belgium *“to include human rights, including children’s rights in the educational programmes of all primary and secondary schools.”*

Furthermore, the CRC urges Belgium *“a) to review their legislation in order to erase the possibility that children would be tried like adults and placed in detention with adults and to remove all children from adult prisons immediately; b) to make sure that children are assisted by a lawyer and a trusted adult in all stages of the procedure, including their interrogation by the police; c) to create legal provisions to allow children to introduce a legal procedure without the assistance of a youth lawyer;...”*¹¹

⁶ Cass., decision « Le Ski » of 27 May 1971, *Pas.*, 1971, I, p. 886, with conclusions of the general prosecutor VAN DER MEERSCH.

⁷ 21 April 1983, Belgium ratified The International covenant on civil and political rights (hereinafter « ICCPR»). Belgium submitted 5 periodical reports to the United Nations committee on human rights (hereinafter « HRC»), in accordance to article 40 of the Convention.

⁸ HRC, Final observations addressed to Belgium, CCPR/C/BEL/CO/5, 18 Nov. 2010, §17.

⁹ 16 December 1991, Belgium ratified the United Nations convention on the rights of the child (hereinafter « UNCRC »). Belgium submitted 3 periodical reports to the United Nations committee on the rights of the child (hereinafter « CRC »), in accordance with article 44 of the Convention. The next report has to be submitted by Belgium by 14 July 2017.

¹⁰ CRC, Final observations addressed to Belgium CRC/C/BEL/CO/3-4, 18 June 2010, §26.

¹¹ CRC, Final observations addressed to Belgium CRC/C/BEL/CO/3-4, 18 June 2010, §83.

Further in the report we will see that Belgium has followed up on some recommendations, even though it hasn't replied in writing yet, and even exceeded them at times. On the contrary, other recommendations remain without response from the Belgian authorities, both in theory and in practice.

c) The third Additional Protocol to the UNCRC

On 30 May 2014, Belgium ratified the third Additional Protocol to the UNCRC. The minor (or his representative) can submit an individual communication to the CRC, when he thinks his rights haven't been respected, and when national remedies have all been used. Until today, not a single complaint has been submitted.

1.2 The rules of soft law

The rules of soft law are contained within the international instruments that aren't legally binding or do not create any obligation in the internal law. However, these rules suggest guidelines to the States, without the obligation to conform to them.

In the field of children's rights we can mention:

- United Nations standards minimum rules for the administration of juvenile justice (Rules of Beijing) ;
- United Nations guidelines for the prevention of juvenile delinquency (Riyadh Guidelines) ;
- United Nations rules for the protection of juveniles deprived of their liberty (Rules of Havana) ;
- The general observations (n°1 to 20) of the CRC ;
- Guidelines for action on children in the criminal justice system (1997).

To these rules we can add the UN basic principles on the role of lawyers (1990).

In their final observations of 2010, the CRC *"urged Belgium to assure **the full application** of the rules related to the justice for minors, in particular the provisions in articles 37 b), 40 and 39 of the Convention **as well as the whole of minimum standards of the United Nations concerning the justice administration for minors (Rules of Beijing), the United Nations guidelines for the prevention of juvenile delinquency (The Riyadh guidelines) and the United Nations rules for the protection of juveniles deprived of their liberty (Rules of Havana), taking into account the General comments (n°10) of the CRC in the justice system for minors"**.*¹²

Until today, Belgium hasn't formulated a response to the recommendations of the CRC.

Moreover, there are very few references to the different rules of *soft law* to be found in the Belgian legislation and parliamentary proceedings. Therefore we're not able to indicate if Belgium takes the necessary measures to promote these rules.

¹² *Ibid.*, §83.

2. THE REGIONAL FRAMEWORK

2.1 The European directives of the European Union

The European Union formulated a series of directives to create a common framework for European States in criminal justice.¹³ The directives guarantee common minimum standards regarding procedural rights for people suspected or prosecuted in criminal proceedings, in order to favour judicial cooperation, recognition and mutual trust between the Member States of the European Union.

This initiative takes its source in the realisation that the European court of human rights (hereinafter « ECtHR ») has been seized for numerous violations of the rights of the defence and more specifically the articles 5 and 6 of the European convention on human rights (hereinafter « ECHR »).¹⁴

We'd like to recall the following specifications: *“The directive is a flexible instrument mainly used as a means to harmonize national laws. It is binding on the countries to whom it is addressed (one, several or all of them) as to the result to be achieved, while leaving national authorities competence as to form and means. Once adopted on EU level, for a directive to take effect at national level, EU countries must adopt a law to transpose it. This national measure must achieve the objectives set by the directive. National authorities must communicate these measures to the European Commission.*

In principle, the directive only takes effect once transposed. However, the ECtHR considers that a directive that is not transposed can produce certain effects directly when: a) the transposition into national law has not taken place or has been done incorrectly, b) the provisions of the directive are unconditional and sufficiently clear and precise, and c) the provisions of the directive give rights to individuals. When these conditions are met, individuals may rely on the directive against an EU country in court. However, an individual may not rely on making a claim against another individual with respect to the direct effect of a directive if it has not been transposed.”¹⁵

The directives adopted by the European Union regarding procedural rights in criminal procedures are the following:

- **Directive 2010/64/EU** of 20 October 2010 on the right to interpretation and translation in criminal proceedings¹⁶;
- **Directive 2012/13/EU** of 22 May 2012 on the right to information in criminal proceedings¹⁷;
- **Directive 2013/48/EU** of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty¹⁸;
- **Directive 2016/800/EU** of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings¹⁹;
- **Directive 2016/1919** of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings²⁰;

¹³ Article 82 of the Treaty on the functioning of the European Union (hereinafter « TFEU »)

¹⁴ http://ec.europa.eu/justice/criminal/criminal-rights/index_en.htm.

¹⁵ <http://eur-lex.europa.eu/legal-content/ENG/TXT/?uri=LEGISSUM:l14527>.

¹⁶ Text available on <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:280:0001:0007:en:PDF>.

¹⁷ Text available on <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:142:0001:0010:en:PDF>.

¹⁸ Text available on <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:294:0001:0012:En:PDF>.

¹⁹ Text available on <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L0800&from=FR>.

²⁰ Text available on <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L1919&from=EN>.

These directives have been elaborated by the Commission, the Council and the European Parliament following a roadmap aimed at strengthening the procedural rights of all European citizens.²¹ However, it is fundamental to take into account the rights and specific needs of children, as it is specified in recital 55 of directive 2013/48/EU that intends to “*promote the rights of children and take into account the Guidelines of the Council of Europe on child friendly justice, in particular its provisions on information and advice to be given to children*”. Even though directive 2016/800 is the only one specifically devoted to this subject, it is essential to take into account children’s rights in the context of the transposition and implementation of all directives.

Today, only directive 2013/48/EU on the right of access to a lawyer and directive 2010/64/EU on the right to interpretation and translation have officially been transposed in Belgian law (**Appendix 2**). The Belgian legislation however does not pay special attention to the question of rights of minors, except for a few exceptions mentioned in the third part of the report («national framework»). The three other directives still have to be transposed.

2.2. The rules of soft law

a) The Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice

The Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (hereinafter: « Guidelines ») adopted in 2010 are about the place of the child, the role of the child and the importance of the child’s point of view in all criminal, judicial, civil or administrative proceedings (or in the alternative dispositions to these procedures). They establish fundamental principles that have to be guaranteed to children in all contexts. They apply to all situations in which children can presumably be in contact with justice, whether it is as a victim, a witness or if accused of having committed an ADCO, no matter how they became involved with the justice system and no matter what their status or legal capacity is in the procedure or the case.²²

It is about: (1) ensuring an optimal respect for procedural rights for children during the entire procedure; (2) taking into account that the children have a lower level of maturity and understanding than adults (justice , its procedures, its stakeholders, the stakes, etc. are more complicated for people who aren’t legally educated, *a fortiori* for children); (3) ensuring an accessible justice adapted to the age and needs of children; (4) guaranteeing that minors fully participate in the procedures (which implies a full understanding of the latter). All these objectives have to be met together; (5) all in respect of the private and family life of the children involved, as well as their rights to integrity and to dignity. It is the justice system that has to adapt to children and not the other way around.²³

b) European commission recommendation of 27 November 2013 on the right to legal aid for suspects or accused persons in criminal proceedings, C (2013) 378/03.

c) European commission recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings , C (2013) 378/02.

It is useful to recall that the recommendations aren’t binding, and therefore Belgium has no formal obligation to take them into account in its legislation. However, recommendations allow the

²¹ Council Resolution regarding the roadmap to strengthen the procedural rights of suspects or people prosecuted in a criminal procedure, 30 November 2009, JO C/295/1.

²² See Art.1 to3 (partI) and fundamental principles (partIII).

²³ It is effectively stated in the Guidelines on child-friendly justice that the lawyers should receive the necessary interdisciplinary training see Guideline IV. A. 4 paragraphs 14 and 15: <https://rm.coe.int/16804b2cf3>, p.23.

institutions to make their views known and to suggest a line of action without imposing any legal obligation on those to whom it is addressed.²⁴

As far as we know, not a single reference has been made to these 3 instruments of *soft law* (Guidelines of the CoE and Recommendations of the CE) in the Belgian legislation in the context of juvenile justice and legal aid. However, it is to be saluted that several laws adopted in Belgium correspond to the philosophy of the aforementioned *soft law* instruments.

2.3. The ECtHR and CJEU case-law

We haven't found any judgments of the ECtHR or the ECJ that has been rendered against Belgium and which concerns the right of access to a lawyer and the right of assistance by a lawyer in relation to a minor who has committed an ADCO.

However the authority *erga omnes* of these judgements makes the case-law rendered against other States applicable to Belgium (cf. *infra*).

²⁴ https://europa.eu/european-union/eu-law/legal-acts_en#recommendations.

B. NATIONAL LEGAL FRAMEWORK OF THE JUVENILE JUSTICE SYSTEM IN BELGIUM (Appendix 2)

This part will describe how the Belgian juvenile justice system works and the way procedural rights of minors are implemented.

After having considered some important definitions (section 1), we will briefly explain the Belgian welfare juvenile justice system, its stakeholders, its particularities (section 2) with a special attention to the role of the youth lawyer, and we will analyse the links between this system and the European legislation (section 3).

1. Definitions²⁵

1.1. The minor

The Belgian legislator defines a minor as “*an individual, male or female, who hasn’t reached the age of 18 years*”, the civil and political age of majority being fixed at this age.²⁶

On the criminal level, article 40 of the UNCRC imposes a minimum age of criminal responsibility to its Member States. However, Belgium hasn’t clearly defined an age below which children are not considered responsible under the criminal law. Therefore, there is no minimum age below which the minor can’t be the object of a measure by the youth tribunal. However, certain types of measures can’t be imposed below a certain age (cf. *infra*).

It is useful to recall that this report only concerns minors suspected or accused of an ADCO.

1.2. The right of access to a lawyer

The European legislation distinguishes the terms « right of access to a lawyer » and « right of assistance by a lawyer ». While directive 2013/48/UE grants every person suspected or accused in a criminal proceeding the right of access to a lawyer, directive 2016/800/UE gives in its article 6 every child suspected or accused in a criminal proceeding the right to be assisted by a lawyer.

In addition, while the right of access to a lawyer is formulated as a subjective right of the suspected or accused person, the second directive imposes the authorities an obligation to provide the assistance by a lawyer for the child. So it is not just a right the child has (and that he can possibly renounce) but an obligation for the authorities, independent from the will of the child.

The Belgian legislation make a distinction between the terms “access and assistance” to/by a lawyer. But they consider the right of access to a lawyer to mean at the same time taking contact with a lawyer, having a (preliminary) confidential consultation with a lawyer (in person or over the phone) before the interrogation by the police or a magistrate (prosecutor or investigative judge) and the assistance during the interrogation or hearing by a lawyer who will have an active role.²⁷

1.3. The right of assistance by a lawyer

See The right of access to a lawyer (*supra*, n° 1.2.).

²⁵ For more detailed information see part B.2. « The juvenile justice system in Belgium » of this report, p.20.

²⁶ Civil code, art. 388. The age of majority is 18 years since the law of 19 January 1990, *M.B.*, 30 January 1990, p. 1239.

²⁷ Circ. COL n° 8/2011 regarding the right of access to a lawyer, revised version of 24 November 2016, p. 9 ; C.i.cr., art.47bis.

1.4. The welfare procedure

The welfare procedure is the procedure of common law in juvenile justice, as explained in the following section. This procedure determines the measures that will be pronounced depending on the nature of the ADCO. It defines the welfare trial; the organisation rules, the competencies and the functioning of the youth courts, as well as the process of the welfare trial during the different procedure phases: the police investigation, the judicial investigation (rare), the judgement are explained in the law on youth protection of 1965. However, this law refers to the procedural rules included in the Code of criminal procedure (hereinafter « CCP ») and to the sanctions in the Criminal code. Therefore, the distinction between the criminal procedure and the welfare procedure is not always clear.

1.5. The criminal procedure

The criminal procedure is the common law procedure applicable to adults and minors in case of divestiture (*infra*). « *It implements criminal law. Article 12 of the Constitution states that someone can only be prosecuted in the cases stipulated in the law, and in the form it prescribes. The criminal law determines the incriminations and the applicable sanctions. The criminal procedure determines what kind of sanctions will receive a specific infraction is the hyphen between the infraction and the sanction. It specifies the way the criminal trial will go down; it incorporates the organisation rules, the competencies and the functioning of the criminal courts as well as the process of the criminal trial in the different phases: the police investigation, the judicial investigation and the judgement*». ²⁸

1.6. The best interests of the child

The principle of *the best interests of the child* was written down in the Belgian Constitution in 2008. ²⁹ This revision of the Constitution has among other things introduced paragraph 4 in article 22bis, stipulating as follows: « *In every decision concerning him or her, the interests of the child must be taken into account as a primary consideration*». The goal was to integrate the central idea of the UNCRC in the Constitution and to make it a general principle. ³⁰

However, neither the UNCRC nor the Belgian legislation define the principle of the interest of the child. On the other hand, the CRC dedicated his general comment n°14 to the matter: « *the right of the child to have his or her best interests taken as a primary consideration (art. 3, par. 1)* ». ³¹ If it does not provide a clear definition, it enunciates that the principle is a flexible concept that has to be defined for each individual case ³² and they underline the fact that the concept of superior interests of the child consists of three dimensions.

It is a **basic right**. When several interests are considered in order to make a decision, the interests of the child must be taken as a primary consideration. These rights have to be guaranteed in every decision related to him. It is also a fundamental **principle of interpretation**. If a provision can be interpreted in several ways, the option which respects the most the interests of the child has to be pursued. Finally, it is a **procedural rule**. When a decision involving a child has to be made, the authority has to evaluate the concrete impact on the child and has to implement adequate

²⁸ M. FRANCHIMONT, A. JACOBS, A. MASSET « Manuel de procédure pénale », *Collection de la Faculté de Droit de l'ULg*, 2009, Larcier, 3^e édition, p.17.

²⁹ Revision of the Constitution of 22 December 2008, *M.B.*, 29 December 2008, p. 68648.

³⁰ Proposition to revise article 22bis of the Constitution in order to add a paragraph concerning the protection of supplementary rights of the child, *Développements, Doc. parl., Sén., sess. ord. 2003-2004, n° 3/265-1*, p. 3.

³¹ CRC, General comment n°14 (2013) on the right of the child to have his or her best interests taken as a primary, adopted in Geneva on the 69th session of the CRC, 29 May 2013.

³² *Ibid.*, p. 9.

procedural guarantees. It also has to indicate the criteria on which it bases its decision and the other considerations in balance with the best interests of the child.³³

In Belgium, taking the best interests of the child into account is a constitutional demand, which can be found in the legislation³⁴ and in the case-law.³⁵

2. The juvenile justice system in Belgium

2.1. The welfare dimension of the Belgian juvenile justice system

The common Belgian juvenile justice system is called “welfare”. No matter what the minors have done, they cannot be assimilated with adults and have to benefit from a distinctly different system based on **educational measures** and not repressive sanctions. Following this logic, the welfare procedure is a procedure adjusted to the status of minors who committed an ADCO.³⁶

The Belgian juvenile justice system is based on **the law of 8 April 1965 regarding the protection of the youth, the way minors having committed an ADCO must be treated and the reparation that the victims are entitled to when the act has caused them damage (hereinafter « the law of 1965 »)**. The law was substantially revised in 2006. The philosophy of the law is to be before everything else « protective »: as explained *supra*, it is meant in theory to protect the child instead of punishing him.

The expression « act deemed to constitute an offence» is meant to clarify that minors do not fall under the scope of application of criminal law. The law presumes irrefutably that the minor does not have the necessary discernment, meaning the possibility to understand the criminal dimension of his actions. Therefore, he cannot be the object of a classic criminal sanction (imprisonment, fine³⁷, etc.) but only custodial measures, measures of conservation and education which have above all an educational and preventive goal.³⁸ For any of these measures to be taken, the ADCO has to be proven, both its material element as its moral element.

There is no minimum age for a minor who committed an ADCO to be tried by the youth court. The measures that can be imposed by the judge depend on the age of the child (no removal from the family before the age of 12, children should in principle not be placed in closed facilities before the age of 14,...). Moreover, every criminal act committed by someone under 18, falls under the competence of the youth court, even if the person involved has turned 18 at the time of the trial.

³³ *Ibid.*, p. 4.

³⁴ See for example the law of 8 April 1965 regarding the youth protection, *M.B.*, 15 avril 1965, p. 4014; the law of 15 December 1980 on the access to the territory, the stay, the establishment and removal of foreigners, *M.B.*, 31 December 1980, p. 14584; the law of 30 July 2013 on the establishment of the family and youth court *M.B.*, 27 September 2013, p. 68429.

³⁵ See. For example C. const., n° 107/2009 du 9 July 2009 ; C. const. n° 30/2013 of 7 Mars 2013 ; C. const. n° 101/2015 du 2 July 2015 ; C. const. n° 45/2015 du 23 April 2015 ; C. const. n° 29/2016 of 25 February 2016.

³⁶ Despite this educational will, we point out that the welfare procedure still shares numerous characteristics with the common criminal procedure. (cf. *infra*).

³⁷ With the exception that minors can be condemned by the police court for an offence from the age of 16 in accordance with Article 36*bis* of the law of 1965 and minors having been the object of a measure of divestiture in accordance with article 57*bis* of the law of 1965.

³⁸ The welfare procedure when a minor has committed an ADCO is however similar to the criminal procedure (of which the definition has been given in point 1.5 of this section) as the minor meets the same professionals (police, prosecutor, judge) and risks the measure of being deprived of his liberty.

2.2. The specifics linked to federalism in Belgium

Belgium is a federal State divided in three communities (the Flemish community, the Wallonia-Brussels Federation and the German speaking community)³⁹ and three regions (the Flemish region (governed by the institutions of the Flemish community), the Walloon region and the Brussels capital region). The legislative power is therefore not centralised but allocated between the federal State, the communities and the regions. These three autonomous political levels have their own distinct competencies and are responsible for the international collaboration, including the conclusion of treaties and the application of the European directives, in the matters for which they are competent.

The minors who are suspected or accused of having committed an ADCO fall under both the competence of the federal State and the communities.

➤ The competencies of the federal State are the following:

- The organisation of the youth courts (*law of 1965*) ;
- The territorial competencies of the youth courts (*law of 1965*);
- The procedures before the youth courts (*law of 1965, Code of Criminal Procedure*);
- The deprivation of liberty and the rules on the interrogation of minors (*law of 20 July 1990⁴⁰ on pre-trial detention and Code of Criminal Procedure*).

There are however two cases in which a minor can be tried in accordance with the rules of common criminal law: (1) in the case of a divestiture by the youth court in accordance with article 57*bis* of the law of 1965, and (2) in a road traffic case as foreseen in article 36*bis* of the same law (see *infra* for more details).

➤ Since 1 July 2014, following the sixth State reform, the matter of youth protection (law of 1965) mainly falls under the competence of the three communities and the Community Joint Commission (COCOM) in Brussels:

- The determination of measures that can be taken for minors who have committed an ADCO;
- Their nature and object, the criteria and conditions, the duration, the prolongation, the revision;
- The hierarchy of measures, the particular motivation, the organisation of private and public services to run the investigations and the implementation of measures ;
- The determination and organisation of the conditions and the effects of a divestiture by the youth court when the measures are inadequate ;
- The functioning of the IPPJ, GI and closed facilities.

The legal texts of reference are:

- the Wallonia-Brussels Federation : **the 4 March 1991 decree regarding youth support ;**
- the Flemish community : **the 7 March 2008 decree regarding the special assistance to youth ;**
- the Brussels capital region : **the 29 April 2004 ordinance regarding youth support ;**
- the German speaking community: **the 19 May 2008 decree regarding youth support and the implementation of youth welfare measures.**

These texts, which are first and foremost focusing on helping children “in difficulty” or “in danger” contain nonetheless various provisions applicable to juveniles suspected or accused of having committed an ADCO and in particular the rights of these minors when they are in IPPJs and GIs.

³⁹ As well as the Community Joint Commission (COCOM) in Brussels.

⁴⁰ L. of 20 juillet 1990 on pre-trial detention, *M.B.*, 01 décembre 1990.

They are, since the sixth State reform, being revised and we pay a close attention to the development of the future Community decrees on the aid and protection of youth and on the way the case minors having committed or suspected of an ADCO will have to be dealt with. At the moment of writing, the draft Decrees have been submitted to an advisory group of stakeholders active in the relevant fields.⁴¹

The philosophy of the reform of 2014 was to supplement the protective dimension of the system, notably by putting the accent on the accountability of the child and his parents. The objective is that the child, no matter how old he is, can become aware of his actions and can understand what responsibility it implies. The system is no longer exclusively protective because it involves parents and victims in the process.⁴²

The transfer of competencies from the federal level to the communities has had an inevitable effect of splitting up the Belgian legal territory and making different distinct procedures coexist.

Several reforms are being elaborated in every community to revise the law of 1965. If these reforms can go in a positive direction for the juvenile justice system, they pose an important risk of legal uncertainty. Therefore we emphasize the difficulty the minors will face to understand the procedures they will be confronted with, this difficulty will only be made greater with the increasing number of texts coexisting. This concern, shared by several interviewed professionals, reminds us of the importance to respect the common minimum standards regarding procedural rights.⁴³

2.3. The professionals involved at the different stages of the procedure

a) The interrogation by the police

The minor who is suspected of having committed an ADCO is interrogated by the **police** (which has in most cases but not systematically a youth section) after having received written summons or following his arrest. Before every interrogation, the minor is informed of his rights through a document entitled « declaration of rights »⁴⁴ (**Appendix 3**) which is given to the minor by the police officer conducting the interrogation. The rights enumerated in the declaration are not the same if the child is deprived of his liberty or not.

b) The youth office of the public prosecutor

Once the first interrogation is complete, the police informs **the youth office of the public prosecutor** through a police report that a minor is suspected of having committed an ADCO. The prosecutor needs to deem what the acts constitute and then decides how the procedure will evolve from that point (referral to the youth court or dismissal of the case⁴⁵).

If the **public prosecutor** can always seize the **youth tribunal** for a minor offender, he can also take certain measures within his competency:

⁴¹ From the French speaking side, the text of the draft Decree has been sent for advice to the State Council.

⁴² J. PUT, M. ROM, S. SMETS, "Jeugdsbeschermingsrecht in geval van jeugd delinquentie: de federale Jeugdwet en doorgelicht", in *Bijzondere Opleiding Jeugdrecht, 2015-2016*, Kluwer, p. 111.

⁴³ We will come back to this issue at the moment of evaluation of the applicability of the European directives in the Belgian welfare system.

⁴⁴ Appendix of the Royal Decree of 23 November 2016 on the execution of Art. 47bis, §5, of the Code of criminal procedure, *M.B.*, 25 November 2016.

⁴⁵ « Before a dismissal, and when the facts are very serious, the public prosecutor sometimes writes a warning letter to the minor or he invites him with his parents to remind them of the law », website of the Federal justice department:

http://justice.belgium.be/fr/themes_et_dossiers/enfants_et_jeunes/delinquance_juvenile/que_peut_decider_le_parquet_de_la_jeunesse.

- He can propose a parenting course; this measure is often not applied because of a lack of resources ;
- He can address a warning letter to the minor who allegedly committed an ADCO to inform him that he has taken note of the facts and that he considers the facts to be well-founded but that he decided to dismiss the case;
- He can invite the minor who allegedly committed an ADCO and his legal representatives and remind them of the law and what he risks because of his action ;
- If the victim is identified, he can propose mediation.⁴⁶

We take note that every public prosecutor's office is, since 1 September 2006, supported by a criminologist who has three important missions:

1. He meets the minor and his parents and informs them of the possibility to start a mediation;
2. He collaborates with schools and the centres for student counselling in order to combat school absenteeism;
3. He collaborates with other professionals in order to strengthen the fight against child maltreatment.

c) The investigative judge

The investigative judge is seized in exceptional circumstances and when it is absolutely necessary. He has the possibility to impose provisional custody measures. In general, the investigative judge has a very limited role in welfare cases.⁴⁷

d) The youth court and youth chambers of the court of appeal

The office of the public prosecutor, through requisition orders, has the monopoly to seize the youth court in a case. This means that the youth judge cannot seize himself nor can he be seized by a civil party claiming damages in front of the investigative judge, nor by a direct subpoena. The investigative judge can however seize the youth judge through an order of referral.⁴⁸

Regarding people referred to him, **the youth judge**, can take custody, preservation and educational measures.⁴⁹ A distinction is made between provisional measures taken during a hearing in the office of the judge which does not treat the merits of the case⁵⁰, and the measure taken at the moment of the judgement by the youth court.⁵¹

⁴⁶ For more details on measures, see. The Ministerial Circular n° 1/2007 of 7 March 2007 regarding the laws of 15 May 2006 and 13 June 2006 modifying the legislation regarding the youth, *M.B.*, 8 mars 2007, spéc. pp. 11488 à 11500.

⁴⁷ L of 1965, art. 49.

⁴⁸ L. of 1965, art. 49.

⁴⁹ L. of 1965, art. 37§1^{er}.

⁵⁰ **The provisional measures** have in principle a maximum duration of 6 months (after this term, the youth judge can only extend them on a monthly basis and with an exceptional motivation. Every month, the minor can ask that the provisional measures are reviewed. The minor can also get a series of measures right away, but provisionally, even when the judge has not ruled if the minor is guilty or not and has not decided which measure has to be imposed in this regard. The provisional measure cannot be meant to punish the minor. It can only be meant to protect the minor against himself and the society, or to help the investigation. The judge can decide that the minor has to stay with his family but impose several conditions that he has to respect, such as not visiting certain people or not leaving the house. The provisional measure can also imply the placement of the minor with a trustworthy person (for example a grand parent), in a suited establishment (such as a host family), in a hospital, in an IPPJ or a child psychiatric section.

⁵¹ **The measures on the merits** have their duration fixed by judgment (annual review). They usually stop at eighteen. If the young person adopts a behavior that is truly dangerous to himself or to others, the youth court may decide to extend the measures beyond the age of majority up to the age of twenty. If the young person committed an offence after the age of seventeen, the juvenile judge may, from the time of the judgment, impose certain measures until the young person reaches the age of twenty. Any decision is subject to appeal. It should be noted that as soon as an ADCO is committed, the court must inform the persons exercising parental authority of the minor and, where applicable, the people who have custody of him. The summons to appear must be addressed to them. The juvenile court may, at any time before it is seized, summon the minor, his parents, guardians, custodians or any other person he thinks to be relevant to hear.

In addition to the distinction between provisional measures and measures on the merits, there are three types of measures: those who keep the minor in his family⁵², those who remove the minor from his family⁵³ and the divestiture, which is an exceptional measure. It should be remembered that these measures are not punishments and must always be taken in the interests of the child.

The decision from the judge to opt for one measure or another must be made after having considered a series of elements:

- The personality and the degree of maturity of the minor;
- His living environment;
- The gravity of his acts and the circumstances in which they were committed;
- The damages and consequences for the victim;
- The previous measures that the minor might have faced previously and his conduct during the execution of the measures;
- The safety of the minor and the public safety;
- The availability of the means of treatment;
- The education programs or any other resources and the benefits that the minor may have from them.

In theory, the judge must always seek to favour measures allowing the minor to remain in his family. The placement measures can therefore only be used as an exceptional measure, as the ultimate remedy, when no other solution can be found. This is the application of the rule of subsidiarity: it imposes to favour the least radical measure, such as a restorative measure (mediation or restorative group consultation), before considering a placement. Note that the judge can also cumulate several measures. The youth court may also review the measures taken against the minor at any time⁵⁴ (in addition to the fact that any measure must be reviewed annually).

If the minor has committed an ADCO **below the age of 12**, he may only be the subject to measures that keep him in the environment where he lives⁵⁵: a reprimand, an intensive educational therapy, individualized supervision or supervision by the competent social services. This service depends on the communities and is attached to each youth court. Children under the age of 12 who have committed an ADCO are presumed to be at risk and must therefore be protected.

As regards minors **over the age of 12**, the court may order a placement measure in IPPJ in the open educational system only if they:

- committed a ADCO which, if committed by a person of full age, would have resulted in a sentence of imprisonment of three years or higher;
- or committed an act qualified as assault and battery;
- or repeated their offences after a IPPJ or GI placement;
- or failed to comply with another measure imposed on them;
- or are or have been the subject to a revision and placed in a closed educational regime at the time of the revision.

⁵² Reprimand, supervision accompanied by conditions (attending school, community service, paid work, educational or mental health centre, training modules, sports or cultural activities, not attending certain places or visiting persons, ...), intensive educational support, written or oral apologies, compensation for damages, restorative offer (mediation - work of general interest), reintegration program, apprenticeship and training project or a written project.

⁵³ Placement with a trustworthy individual; placement in a private institution; placement in an open or closed section of a IPPJ or GI, or placement in hospitals in a therapeutic, psychiatric (open or closed) section with conditions.

⁵⁴ L. of 1965, art. 60.

⁵⁵ L. of 1965, art. 37, §2, al. 2.

The court may order an IPPJ or a GI placement in a closed educational system only for minors **aged 14 or more** who committed acts of a certain nature and seriousness or who are repeated offenders.

The court may also order an IPPJ or a GI placement in a closed educational system for a minor **between the age of 12 and the age of 14** who seriously injured the health or endangered the life of a person and when the behaviour is particularly dangerous. Note that confinement is accompanied by educational measures specially adapted to minors. They also aim to prepare their reintegration into society under the best possible conditions.⁵⁶

The youth court may prohibit the minor from communicating for three days with persons he designates (except with his lawyer); he can also authorize him to leave the IPPJ or GI.

The minor can appeal each decision of the youth judge; the appeal must be treated within fifteen days and, if admissible, the case will be dealt with by the **youth judge of appeal**, who will decide whether or not to review the measures taken by the court of first instance.

When a judge has issued a measure as regards a minor, the competent youth welfare department will supervise the implementation of the measure(s).⁵⁷

Finally, the youth court remains competent for an ADCO committed by a minor who has not reached the age of 18, even if he is prosecuted when he is over the age of 18. The youth court may also order or maintain provisional measures until the minor reaches the age of 20.⁵⁸

e) The exceptional procedure of « divestiture »

In accordance with article 57*bis* of the law of 1965, a minor who is 16 years of age or older who is suspected of having committed a serious offence or who has been the subject of preliminary measures which the judge considers inadequate, can be referred to a specific chamber (composed of two youth and one correctional judge) in the youth court, where he will be tried as an adult under the common criminal law and the law of criminal procedure. These minors who have been "divested" may, following their trial, be placed in a closed centre in Saint-Hubert or Tongres where they will be separated from the adults.

The National institute of criminalistics and criminology (INCC) recently released the preliminary results of a study regarding 210 young offenders whose trajectory after divestment was studied up to the ages between 29 and 39 years old. This analysis revealed that most of the examined people are still in contact with the criminal justice system. Over the last three years, more than half of the persons concerned have been convicted and nearly one-third are in custody.⁵⁹ Belgium has regularly been condemned for this divestiture procedure deemed to be contrary to the UNCRC and other international conventions. Indeed, the message of the UNCRC is clear: a child, even in conflict with the law, remains a child, which implies that he must be judged according to a specific system, different from the one dedicated to adults.⁶⁰

⁵⁶ However, these special measures are not provided for minors detained after divestiture.

⁵⁷ L. of 1965, art. 42.

⁵⁸ L. of 1965, art. 52.

⁵⁹ A. NUYTIENS, Y. JASPERS and J. CHIRSTIAENS, « Sending the young offenders to a justice for adults and then what? », *Justice and Security*, December 2015, available on: <https://incc.fgov.be/christiaens-jenneke>.

⁶⁰ B. VAN DER MEERCHEN, « Le dessaisissement est contraire aux obligations internationales de la Belgique », 13 February 2007, <http://www.avoixautre.be/spip.php?article1190>.

2.4. Derogatory regimes for certain categories of minors

a) Minors with mental illness

The special provisions for minors with a mental illness are to be found in the **law of 1965**⁶¹ and the **law of 26 June 1990 regarding the protection of the mentally ill**.⁶² The youth court has exclusive jurisdiction over minors with a mental illness suspected of having committed an ADCO.⁶³

A young mentally ill person who committed an ADCO can thus be subject to welfare measures as stipulated in the law of 26 June 1990. Three conditions must be met: the minor must suffer from a mental illness, he must be a danger to himself or to others and finally, there must not be another appropriate treatment possible.⁶⁴

If the youth judge is also seized under article 36 (4) of the law of 1965 by the public prosecutor, the proceedings are suspended during the application of the law of 26 June 1990.⁶⁵ When a procedure is initiated on the basis of the law on the protection of the mentally ill⁶⁶, a lawyer must be appointed to represent the young person without delay. The latter is then informed of the name and address of the designated lawyer and of his right to choose another lawyer, if he so wishes.⁶⁷

In Belgium, the "For K" pilot project of the Public Health Department has made it possible, since 2003, to develop a care program for young people under judicial measures with a psychiatric problem. These programmes, set up in specific units in specialized hospitals, aim to improve the quality of life of the young people concerned, promote social reintegration, stimulate collaboration with ambulatory support structures, the justice system, the IPPJs and to limit the risk of recidivism. Today, the units are referred to as "Residential Intensive Treatment Units" (UTI-FQI) and are closed facilities for young offenders with severe psychological disorders.⁶⁸

The 2006 reform of the law of 1965⁶⁹ introduced a range of new measures that the youth judge could take regarding young people who committed an ADCO and suffered from various disorders. These include, for example, the obligation to attend an ambulatory treatment with psychological or psychiatric services, sex education or a competent service in the field of alcohol or drugs addiction.⁷⁰ However, more than 10 years after this reform, these provisions have still not been enforced. Besides the hypotheses provided by the law on the protection of the mentally ill, the youth court currently only has the possibility to invoke article 37, §2, 7° of the law of 1965 regarding a placement in an individual or in an appropriate institution for the purposes of "accommodation, treatment, education, or (professional) training".⁷¹

⁶¹ L. of 1965, art. 37, §2, 5°, 7°, 9° and 11° (not in force) and 43.

⁶² L. of 26 juin 1990 regarding the protection of the mentally ill, *M.B.*, 27 July 1990, p. 14806.

⁶³ L. of 26 juin 1990, précited, art. 1, §2, al. 2.

⁶⁴ *Ibid.*, art. 2.

⁶⁵ I. DOGNÉ, «Prise en charge et accompagnement des mineurs souffrant de troubles divers » (pp. 8-53), in *Réforme du droit de la jeunesse. Questions spéciales*, under the supervision of S. BERBUTO and T. MOREAU, p. 26.

⁶⁶ That is to say that when the judge is seized for a request for observation in a psychiatric service. The law of 26 June 1990 also provides for family care measures following the same steps (observation and maintenance). In practice, however, these measures appear to be relatively useless with regard to minors since this care can be ensured for young people who committed an ADCO by placing them with a trustworthy person (Article 37 (2), 7°, of the law of 1965):: I. DOGNÉ, «Prise en charge et accompagnement des mineurs souffrant de troubles divers », *oc. cit.*, p. 33.

⁶⁷ L. of 26 June 1990, précited, art. 7 à 9; The same rules apply in the case of a procedure for the continued stay in an hospital, see. Art. 13 to 15 of the law.

⁶⁸ Research report « Children Rights Behind Bars », 2014, http://www.childrensrightrightsbehindbars.eu/images/national-reports-2014/Rapport_BE_FR.pdf, p. 32.

⁶⁹ L. of 13 June 2006 amending the legislation on the protection of young persons and the care of juveniles who committed an offence, *M.B.*, 19 July 2006, p. 36088.

⁷⁰ L. of 1965, art. 37, § 2, 5°.

⁷¹ I. DOGNÉ, «Prise en charge et accompagnement des mineurs souffrant de troubles divers », *oc. cit.*, p. 35.

b) Foreign minors

While minors are particularly vulnerable due to their age and maturity and their physical, psychological, material differences as well as their lack of experience which distinguishes them from adults, this vulnerability is often reinforced for a foreign minor due to their lack of connections, anchoring, support and referrals in Belgium. They may not share the same culture and language as the professionals involved in the judicial system.

Consequently, as the Belgian legislation does not provide for a separate procedure if the minor who committed an ADCO is a foreigner, particular attention should be given to questions relating to the right to information, translation and interpretation.⁷²

In the Legal Aid Office (hereinafter "LAO") of the French-speaking bar in Brussels, a section "unaccompanied foreign minors" (hereinafter "UFM") was set up several years ago, in collaboration with the Youth law service of Brussels. It includes voluntary lawyers trained and specialized in assisting and defending UFM's, which are organised on a permanent basis per week and whose objective is to provide these minors with a quality defence to enable them to exercise their rights. The lawyers on call can be contacted directly by minors, guardians⁷³ or social workers.⁷⁴

3. The scope of application of the European directives in Belgium

We have seen that the European Union has devoted a wide range of procedural safeguards to persons suspected or accused in criminal proceedings in its directives on the right to interpretation and translation, the right to information, access to a lawyer, procedural safeguards for children and legal aid (see section 2, p.15).

We have also seen that the common law procedure in Belgian juvenile justice is called "welfare" and partly differed from the criminal procedure as regards its objective, its legal basis and some of its stakeholders and measures. It is therefore necessary to examine the applicability of these directives to the various criminal and welfare procedures likely to involve minors in Belgium.

The scope of each of the directives cited is based on the definition of the terms "criminal offence" and "criminal procedure".⁷⁵ Recital 17 of directive 2016/800 provides in this regard an important clarification: *"(17) This directive should apply only to criminal proceedings. It should not apply to other types of proceedings, in particular procedures specifically designed for children which could result in the imposition of protective measures, corrective measures or educational measures"*⁷⁶.

A quick reading (from the text adopted by the Belgian State) tends to exclude the Belgian welfare system as set up by the law of 1965 from the application of the directives in criminal matters.

However, European law calls for a more nuanced reading.

⁷² Read the Belgian report "Procedural rights of foreign children suspected or accused in criminal / welfare procedures in the European Union", prepared in the context of the "PRO-JUS" project, 2016, available [on http://www.dei-belgique.be/IMG/pdf/be-fr-pro-jus-online.pdf](http://www.dei-belgique.be/IMG/pdf/be-fr-pro-jus-online.pdf).

⁷³ Programme-law of 24 December 2002 on guardianship of unaccompanied foreign minors, as amended by article 385 of the programme-law of 22 December 2003, and its R.D. execution of 22 December 2003, Art. 5 of Title XIII, chapter 6. On the mission and role of the guardian, see more specifically art. 9 and following of the law.

⁷⁴ <http://www.mineursenexil.be/fr/dossiers-thematiques/mena/aide-juridique>.

⁷⁵ The scope of application of each of the directives cited is defined in Article 2 (except for directive 2010/64/EU, the scope of which is defined in Article 1). Article 2 of directive 2016/800 laying down specific rights for minors provides that '1. This directive applies to children who are suspects or accused in criminal proceedings ...'.

⁷⁶ It is what the Belgian legislator has based draft law on regarding the transposition of the directive 2010/64 to refuse the system of interpretation required by the directive to minors engaged in a welfare procedure.

In the absence of any clarification by the European legislator to precise the scope of recital 17⁷⁷, several tools must be cumulated to interpret the scope of directive 2016/800 (and, a fortiori, that of the previous directives).

3.1 In European Union law

The term 'criminal offence', as used in several European directives (in particular directives 2010/64/EU, 2012/13/EU and 2013/48/EU), calls for an autonomous interpretation in European law, irreducible to national qualifications.

Indeed, this requirement for an autonomous interpretation was explicitly requested for the 2016/800 directive by the European economic and social committee, which was asked to vote on the Commission proposal.⁷⁸

The ECJ has already carried out this exercise in order to determine whether a sanction could be described as criminal, in particular on the basis of the criteria laid down by the ECtHR in this regard.⁷⁹

In order to determine the applicability of these directives, it is necessary to observe the national procedures set up by the States in the light of the international conventions ratified by all the Member States of the European Union with regard to the nature and consequences of their implementation and not only with regard to their internal qualifications.⁸⁰

3.2 In international law

At least two international legal instruments are regularly used by the ECJ to interpret European Union law and must be taken into account in analysing the scope of directive 2016/800.

a) The European convention on human rights (ECHR)

The case law of the ECtHR has a very privileged status in the interpretation of the law of the Union. Since all the Member States of the Union are parties to the Convention, they are also bound by its judgments.

In its judgement *Engel and Others v. Netherlands*⁸¹, the court outlined three cumulative criteria for determining the criminal nature of an offence: (1) the classification in domestic law, (2) the nature of

⁷⁷ The appearance of recital 17 of directive 2016/800/EU has only occurred at an advanced stage of parliamentary procedure and has not been explained by the European legislative bodies. While it is not to be found in the Commission's original proposal (available on <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2013:0822:FIN>), nor in any of the amendments subsequently proposed by parliamentarians and published on the Commission's website (available on <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+AMD+A8-2015-0020+001-077+DOC+PDF+V0//EN> (amendments 1 to 48) and <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-544.335+01+DOC+PDF+V0//EN&language=EN> (amendments 48 to 178)), Recital 17 makes a sudden and non-motivated appearance in the final proposal of the directive sent by the Parliament (available on <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TC+P8-TC1-COD-2013-0408+0+DOC+PDF+V0//EN>). A member of the European parliament told us in an interview of 27 January 2017 that this recital was the result of a compromise. One of the objectives was not to define as "criminal" certain acts committed by a minor who, in certain national systems, did not follow criminal proceedings and to prevent certain States from transforming their national juvenile procedure in criminal procedures sensu stricto (which would result in the minor being brought into a traumatic process). This largely inadequate explanation does not say anything about the exact scope to be given to recital 17.

⁷⁸ Opinion of the European economic and social committee on the proposal for a directive of the European Parliament and the Council on strengthening certain aspects of the presumption of innocence and the right to be present during criminal proceedings, OJ C226, 16/07/2014, point 1.5., p. 64, <http://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:52014AE0347&from=FR>.

⁷⁹ ECJ, C-489/10, *Łukasz Marcin Bonda*, 6 June 2012, point 37 and concl., C-489/10, 15 December 2011; ECJ, C-617/10, *Akerberg Fransson*, 26 February 2013, 35.

⁸⁰ *Ibid.*, p. 67: 'It is therefore appropriate to leave the Court of justice the necessary latitude to provide an interpretation of the concept criminal procedure independently from the qualifications in national law' (3.4.5).

⁸¹ ECtHR, judgement *Engel and others v. the Netherlands*, 8 June 1976, case n°5100/71.

the offence and (3) the severity of the penalty that the concerned person risks incurring.⁸² The same criteria were applied by the ECJ in its own case law.⁸³ Finally, in its abovementioned comment on directive 2016/800, the European economic and social committee makes a direct reference to these criteria (known as 'Engel') in order to assess the criminal character of a national procedure.

In its judgment in *Blokhin v. Russia*⁸⁴, the ECtHR recently set out an important principle regarding procedural safeguards for minors (the right to assistance by a lawyer): "*A child may in no case be deprived of procedural safeguards for the sole reason that under domestic law the procedure, which could lead to deprivation of liberty, is intended to protect the interests of the minor rather than to punish*".⁸⁵

These two judgments of the Court are essential for Belgium and its welfare system. They object to denying the minor of the procedural safeguards of a fair trial as understood by ECtHR on the basis of this "protective" qualification alone. The same interpretation may be applied, *mutatis mutandis*, to the safeguards enshrined in directives 2010/64, 2012/13, 2013/48, 2016/800 and 2016/1919 within the framework of Union law under the control of the ECJ.⁸⁶

b) The United Nations convention on the rights of the child

The UNCRC also has an important status in the case law of the ECJ.

On the one hand, the ECJ can refer to it in order to draw up general principles of law.⁸⁷

On the other hand, the UNCRC has served as an instrument for the ECJ as regards interpreting the law of the Union.⁸⁸ The provisions of the UNCRC can therefore be used as indicators for interpreting the scope of application of the European Directives. In this sense, there is no doubt that there is a need for a broad interpretation of recital 17 and to give the terms 'criminal procedure' and 'criminal offence' an interpretation as consistent as possible with the provisions of the UNCRC, in particular article 40 which enshrines several guarantees also contained in directive 2016/800.⁸⁹

3.3 In Belgian law

We remember that under Belgian law, a minor suspected or accused of an ADCO is likely to be confronted with two distinct judicial systems.

⁸² *Ibid.*, §82.

⁸³ ECJ, C-617/10, *Akerberg Fransson*, 26 February 2013, point 35.

⁸⁴ ECtHR, judgement *Blokhin v. Russia*, 23 March 2016, req. n°47152/06.

⁸⁵ *Ibid.*, §196, p. 64. It should be noted that this is precisely what happened in the aforementioned draft law transposing directive 2010/64.

⁸⁶ This is all the more true in view of the fact that, in its third recital, the directive states that 'although the Member States are parties to the European convention on human rights and fundamental freedoms (ECtHR), the International covenant on civil and political rights and the United Nations convention on the rights of the child, experience has shown that such accession does not in itself always ensure a sufficient degree of confidence in criminal justice systems of other Member States'. An examination, all the more stringent, of the compliance by Member States of the procedural safeguards contained in these various instruments is therefore necessary to interpret the directive.

⁸⁷ ECJ, C-491/10 PPU, *Joseba Andoni Aguirre Zarraga v. Simone Pelz*, 22 December 2010.

⁸⁸ ECJ, C-244/06, *Dynamic Medien Vertriebs GmbH v. Avides Media AG*, 14 February 2008, points 42 and 52.

⁸⁹ The article reads as follows: "1. States Parties shall accord to every child suspected, accused or convicted of an offence under the criminal law the right to treatment which is of such a nature as to ...". The scope of the article is not limited to "criminal procedures" or "criminal offences" as such. Wider terminology is used, including all cases where a child is "suspected, accused or convicted of a criminal offence" (in the official text in English: "as having infringed the penal law" regardless what consequences the law attaches to this act, its legal qualification and the judicial system it is likely to be applied to).

a) The common criminal law system

As mentioned above, in case of a divestiture or in the case of road traffic cases, the minor will be subject to the common criminal law. In both cases, there is no doubt as to the full applicability of the studied directives. Tried according to the common laws applicable to adults, the minor enjoys the same rights, as conferred by the European directives. This is not disputed by the Belgian authorities.

b) The welfare system of the law of 8 April 1965

The welfare procedure is more problematic because of the differences and similarities it has with the common criminal procedure.

The official position of Belgium was expressed by the Federal justice department (hereinafter "FJD"),⁹⁰ according to which the system of the law of 1965 is of a protective and non-criminal nature, and in no case does it apply to criminal cases. The FJD bases its reasoning on article 82 (2) of the Treaty on the functioning of the European Union (hereinafter "TFEU") determining the competence of the Union in criminal matters.⁹¹ This article stipulates that the Union is competent to legislate only in the field of criminal law. According to the FJD, that competence can therefore not be extended to welfare law - which is why the Belgian State interprets the directive restrictively, thus restricting the applicability of the directives to cases of divestiture by the youth court. The FJD completes this reasoning by saying that in any case this question of the scope of application should not arise for Belgium, since the Belgian legislation concerning the procedural guarantees of suspected or accused persons goes further than the minimum standards laid down in directive 2016/800.⁹²

None of these arguments (neither the nominalistic approach nor the consideration that Belgium currently provides adequate guarantees to minors in conflict with the law) is satisfactory in the eyes of European law and the case law of the ECtHR. On the contrary, in view of the autonomous interpretation of the European terms "criminal procedure" and "criminal offence", it is necessary to study the specific nature of the Belgian welfare system.⁹³

We have already mentioned the "Engel" criteria used by the ECtHR and the ECJ and the opinion of the Economic and social committee on this subject. They were, in the following order and cumulatively, (1) the classification in domestic law, (2) the nature of the offence and (3) the nature and severity of the penalty.

- (1) As regards the qualification of the procedure by the national legislator, the position of the Belgian legislator is clear and supported by the FJD. The following criteria must therefore be verified.

⁹⁰ Official title of the Belgian Ministry of Justice.

⁹¹ Article 82.2 TFEU "To the extent necessary to facilitate the mutual recognition of judgments and judicial decisions, as well as police and judicial cooperation in cross-border criminal matters, the European Parliament and the Council, acting by means of Directives in accordance with the common legislative procedure, may lay down minimum standards. These minimum standards take account of the differences between the traditions and legal systems of the Member States. They concern: (a) the mutual admissibility of evidence between Member States; (B) the rights of people in criminal procedures; (C) the rights of victims of crime; (D) other specific elements of the criminal procedure, which the Council has previously identified by a decision; for the adoption of this Decision, the Council shall act unanimously after approval by the European Parliament. The adoption of the minimum standards referred to in this paragraph shall not prevent Member States from maintaining or introducing a higher level of protection for people".

⁹² Interview of 5 December 2016 with two representatives of the FJD of Belgium.

⁹³ In this respect, the Belgian legislator spoke in the preparatory parliamentary work for the federalisation of the State in 1980, expressing in connection with the law of 1965 that "this matter may be considered as a sui generis from criminal law, given that it lays down certain constraints which are described as measures but constitute sanctions which have been introduced in order to repair violations of the social order "(parliamentary work of the law of 8 August 1980 on institutional reforms and more precisely Doc. Parl., Chamber, 1979-1980, Report, No. 627/10, p.66).

- (2) As to the nature of the offence, young people are liable (as an ADCO - cf. *supra*) of all acts recognized under common criminal law as criminal offences.⁹⁴
- (3) As to the nature and severity of the penalty, the similarities between the "penal" and the "welfare" response to an offence (or ADCO) have already been mentioned. Thus, both can lead to deprivation of liberty, which the ECtHR considers decisive in its *Engel* judgment⁹⁵ as in its *Blokhin* judgement.⁹⁶⁻⁹⁷

In addition, several particularities are to be noted as regards the Belgian system set up by the law of 8 April 1965 in its relation with the common criminal law.

- 1) The relationship between the Code of Criminal Procedure and the law of 1965.

The law of 8 April 1965 is the *lex specialis* of which the *lex generalis* is the common law of the criminal investigation procedure. The common law is consequently applicable to the welfare system, which enjoys very limited autonomy in relation to the common criminal system.

Article 62 of the law of 1965 enshrines this principle, stating that "Unless otherwise provided, ... the legal provisions concerning prosecution in correctional matters (*lex generalis*) shall apply to the procedures referred to in Chapter II and III and Article 63b (1) (a) and (c) (*lex specialis*)".

- 2) The Law of 21 November 2016 on certain rights of persons interrogated (Salduz bis Law⁹⁸) and the advice of the Council of State.

This supplementary character has recently shown its limits in the face of European law. In Article 2 of the law of 21 November 2016 on certain rights of persons subjected to interrogation, the legislation announces the transposition of directives 2010/64 (partially) and 2013/48 (integrally). The provisions of this law make several amendments to the Code of criminal procedure, thus bringing Belgian law – tardily - into conformity with the two directives. They recognize a series of rights for adults and children when they are subjected to interrogation. In this case, the minor is granted full access to the same procedural safeguards as adults, in the name of the transposition of the European directives and the supplementary character of the common criminal procedure in welfare cases.

While the content of the directives is applied to minors in the early stages of prosecution (interrogation, police investigation and judicial investigation organised by the Code of Criminal Procedure), the legislation is no longer applied once the procedure falls under the law of 1965.⁹⁹ If one follows the reasoning of the FJD, European law is effectively applied only as a supplementary element in the early stages of the procedure until the moment the law of 1965 takes over.¹⁰⁰

By choosing this solution, the Belgian legislator places the Belgian system in an unsustainable position vis-à-vis the European law.

⁹⁴ Again, the only difference in terminology ("Fact qualified as a Crime" instead of «crime») is insufficient to justify a difference in protection.

⁹⁵ ECtHR, precited judgement *Engel and others v. the Netherlands* § 82.

⁹⁶ ECtHR, precited judgement *Blokhin v. Russie*, § 196.

⁹⁷ It should be noted that the provisional measures taken by the youth judge may exceed the statutory period of pre-trial detention applicable to adults without the deprivation of liberty being subject to reevaluation by the judge.

⁹⁸ http://www.ejustice.just.fgov.be/cgi/loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2016112102.

⁹⁹ The Council of State addresses this issue in its opinion on the first draft law (of 13 September 2016), worrying about possible problems of legal certainty. Read more. Opinion No. 59.547 / 3 of the Legislative Section of the Council of State, dated 11 July 2016 on the Draft Law on Certain Rights of Persons Questioned, Doc. Parl., House of Representatives, 2015-2016, Doc. 54-2030 / 001, p. 138.

¹⁰⁰ The Council of State, in its opinion, endorsed, in particular, this observation made in the Senate Committee: "The law on the protection of minors does not mention the arrestation of a minor. This means that the general rules on arrestation... apply also to the minor "(Report on behalf of the Senate Committee, cited in Opinion No. 59.547 / 3, page 136)

It is not sufficient for a procedure to be exempt from the application of the European directives to establish that there is a special procedure for young people. Affirming the contrary comes down to giving European law itself a supplementary character in relation to the Belgian legislative power, which could in this way avoid its application by simply extending its derogatory national system. In addition to being fundamentally contrary to the *Blokhin* case-law of the ECtHR, this interpretation is visibly incompatible with the principle of primacy of European law.¹⁰¹

The only way to reconcile Belgian law with European law is therefore to harmonize the penal and welfare systems in cases governed by European law. In this case: **to recognize all the procedural safeguards enshrined in the European directives for the minors, regardless in what judicial system they are applied.**

3) The problem of the legality of the procedure.

Another consequence of this overlapping of welfare and criminal procedures is to be found at a later stage in the procedure.

The possibility of divestiture provided for by Article 57*bis* of the law of 1965 has already been mentioned. In such cases, the procedure, which is at first welfare, falls under criminal law at a later stage. The directives are therefore (a) applicable during the first interrogation, then (b) suspended during the welfare phase, and (c) applicable again at the time of the return to the criminal procedure.

This possibility raises important questions of legality of the procedure.

Indeed, the legality of the procedure, including its compliance with the fundamental guarantees enshrined in the European directives, must be checked at an early stage. To be considered as legal, these fundamental guarantees must have been respected from the first interrogation until the outcome of the procedure.

However, if the minor has benefited from lower guarantees in the welfare phase, the procedure is at risk to become illegal retroactively when it becomes criminal. Since this return to common criminal law is possible, only the equivalence of guarantees between criminal procedures and the welfare procedures can ensure that the procedural rights of the minor are respected.

4) Conclusion

As opposed to the formal approach defended by the legislator and the FJD, we therefore urge Belgium to recognise **the general application of the European criminal directives for minors suspected or accused in the Belgian welfare system.**

This is the only way for Belgium to respect (1) its international commitments in the field of juvenile justice, in particular with regard to the "Engel" criteria widely adopted by international bodies, (2) the primacy of European law, with regard to the *lex specialis* character of the right to protection of minors, always subjected suppletively to the common criminal law, and (3) its own rules of validity, with regard to the risk of divestiture.

¹⁰¹ Under Belgian law, Cass., 27 May 1971 (Le Ski), Pas., 1971, I, 886; In European law, ECJ, 9 March 1978 (Simmenthal), Aff. 106/77, Rec. 1978, 629.

We also remember the concern about the communitarisation of the protection of minors and the need to recognize procedural safeguards common to all minors, regardless of the judicial system they are confronted with.

In a few words,

European directives: The European Union enshrines a wide range of procedural safeguards for people suspected or accused of criminal offences in its directives regarding the right to interpretation and translation, the right to information, the right of access to a lawyer, the procedural safeguards for children and the legal aid.

The Belgian juvenile justice system: A minor suspected or accused of committing an ADCO is likely to be confronted to two distinct legal systems: the welfare system of the law of 1965 and/or the common criminal law system (in the case of divestiture, the minor will be tried as an adult).

The position of the Belgian State: According to the FJD, the guarantees enshrined in the studied directives are not applicable to minors suspected or accused in the context of the welfare procedure of the law of 1965. They are applicable to minors who have been the subject of a divestiture in the course of a criminal procedure under common law.

The position of DCI-Belgium: DCI-Belgium maintains that all the procedural safeguards contained in these directives must be applicable to all minors, whether involved in a welfare and/or criminal procedure. The fact that the law of 1965 is qualified as “welfare” does not allow the Belgian State to derogate from these procedural guarantees and thus to render the European directives inapplicable. The arguments set out above reinforce this position.

C. THE YOUTH LAWYER: FROM THEORY TO PRACTICE

1. The role and mission of the youth lawyer

1.1. The different theoretical concepts

In Belgium, many draft laws on the role, mission and training of the youth lawyer have been submitted without ever being adopted. However, they have allowed some reflection and could be a source of inspiration for future initiatives. To date, there is no legal basis at the federal level for the function, role and mission of the youth lawyer.

Apart from the parliamentary debates, the question of the role of the youth lawyer has been controversial among practitioners for a long time.¹⁰²

During these discussions between practitioners, three theoretical basic models regarding the role of the lawyer of a minor were identified.

- The first is the "guardian ad litem". He is a kind of lawyer-tutor. He ensures compliance with the procedure and pleads what he thinks is the best solution for the child. His intervention comes from the strictly legal framework and enters the psychosocial sphere.
- The second model is the "amicus curiae". Here, the lawyer also enjoys great autonomy of action and has an investigative mission and acts as a protractor. He works with the court to find a solution that best meets the interests of the child.
- Finally, the third model is the "defence lawyer" who plays a classical role comparable to his role when he defends an adult. The specific nature of his mandate will depend more on the means used to fulfil it, taking into account the age and situation of the minor. He presents the point of view of the minor and not his own and guarantees the respect for the rights of his young client.¹⁰³

This conception of the role of the defence lawyer is the one chosen by the **ECtHR**. According to the Court, every accused - including a minor - has the right to participate effectively in his trial, including the right to attend, but also to hear and understand the procedure.¹⁰⁴ The minor has the right to actual participation, which is respected only if he "understands the nature of the trial and the stakes involved for him, in particular the scope of the sanctions that can be imposed. This means that the person concerned, if necessary with the assistance of an interpreter, a lawyer, a social worker or a friend, must be able to understand in broad terms what is being said in court. He must be able to follow the testimonies of the witnesses who testify against him and, if he is represented, to explain to his lawyers his version of the facts, to point out any testimony he disagrees with and to inform them of any fact relevant to be brought up in his defence".¹⁰⁵ The Court emphasizes that it is for the minor to conduct the trial and not his lawyer and thus excludes the models of "guardian ad litem" and "amicus curiae".¹⁰⁶

¹⁰² C. DELBROUCK, « L'avocat du mineur », *J.D.J.*, 2005, n° 250, p. 20.

¹⁰³ T. MOREAU, « Le rôle de l'avocat face à l'enfermement du mineur », *J.D.J.*, 2008, n° 275, pp. 6-7; J. VANDORPE, « De rol van de jeugdadvocaat : een pedagogische benadering », *T.J.K.*, 2004, n° 3, p. 156; A. DE TERWANGNE, "Le mandat de l'avocat du mineur: Porte-parole, défenseur, tuteur ou gadget de bon aloi? Eléments de réflexion", www.droitdelajeunesse.be, February 2008, p. 6.

¹⁰⁴ ECtHR., 16 December 1999, *V. vs. UK*, <http://www.echr.coe.int/>, §§85-90; ECtHR., 15 June 2004, *S.C. vs. UK* <http://www.echr.coe.int/>, §§28-29.

¹⁰⁵ ECtHR., 15 June 2004, *S.C. vs. UK*, <http://www.echr.coe.int/>, §29.

¹⁰⁶ T. MOREAU, *op. cit.*, p. 7.

1.2. Definition of role and mission

Today, the concept of the defence lawyer has become the dominant model for youth lawyers in Belgium.

On the French speaking side, AVOCATS.BE adopted a binding regulation concerning the lawyer who intervenes in the defence of a minor¹⁰⁷ based on the case-law of the ECtHR (**Appendix 5**). The regulation defines the defence mission of the lawyer who has to be a spokesman for the minor which means that the controversies that may have existed in this regard are no longer necessary.¹⁰⁸ In Flanders, there is no binding regulation defining the role of the youth lawyer. However, the role of the lawyer as taught and defended during the training in youth law of the OVB is the same as the one adopted by the regulation of AVOCATS.BE.¹⁰⁹

The rules of AVOCATS.BE stipulate that "the lawyer assists, advises, represents and defends a minor the same way he would if he was defending an adult".¹¹⁰ Thus, the minor's counsel is above all his lawyer. As such, he is bound by an oath¹¹¹, a code of ethics, legislation, and must respect the fundamental principles of the profession which are independence, integrity, dignity and professional secrecy.¹¹² However, "if the content and purpose of the mission are identical to that of a lawyer who defends an adult, the modalities for carrying out this task must take into account the factual differences which may, depending on his age and maturity, differ between the minor and the adult".¹¹³

Thus, in the event that the child does not perceive his situation and can't express a reasoned opinion on his situation, the lawyer has to guarantee the respect for his rights and the rules of procedure. He will also ensure the correct composition of the case so that the judge has all the necessary elements to make his decision, in respect of the interests and rights of the child. Even in this case, the lawyer can't plead what he believes in his soul and conscience to be in the best interests of the child.¹¹⁴ It should be noted, however, that this assumption is rarer in the case of a minor in conflict with the law who is generally in a position to express his opinion.¹¹⁵

The regulation further states that "the lawyer shall defend the minor in a manner that takes into account his age, maturity and intellectual and emotional capacities and promotes his understanding of and participation in the proceedings".¹¹⁶ Thus, when the minor is able to express himself consciously, the lawyer, in addition to being the guarantor of the procedure and his rights, will also have the task of being his spokesperson at all levels of the procedure, and to do so as accurately as possible. Thus, the main mission of the lawyer is to help the minor to formulate his opinion and to bring it forward.¹¹⁷

¹⁰⁷ Regulation of AVOCATS.BE 14 March 2011 on the intervention of the lawyer in the defence of a minor, *M.B.*, 28 April 2011.

¹⁰⁸ A. DE TERWANGNE and T. MOREAU, « Pourquoi un règlement sur l'avocat du mineur ? », *R.A.J.e.*, 2011, n°5, p. 3.

¹⁰⁹ If this theoretical concept is now more or less generalised in Belgium, it is necessary to understand from the testimonies of the children and the judges that the practice often deviates from it. The feeling that the lawyer is "on the side of the judge" and "against" the minor is frequently present among the minors questioned in this study, with very bad consequences as to the way the minor experiences the procedure.

¹¹⁰ AVOCATS.BE, Code of conduct of the lawyer, art. 2.20.

¹¹¹ " I swear fidelity to the King, obedience to the Constitution and the laws of the Belgian people, not to derive from the respect due to the courts and public authorities, to advise or defend any cause which I shall not believe to be right in my soul and my conscience ": C. Jud., art. 429, al. 3.

¹¹² [www.AVOCATS.BE](http://www.avocats.be)

¹¹³ A. DE TERWANGNE and T. MOREAU, « Pourquoi un règlement sur l'avocat du mineur ? », *R.A.J.e.*, 2011, n°5, p. 3.

¹¹⁴ C. DELBROUCK, « L'avocat du mineur », *J.D.J.*, 2005, n° 250, p. 20.

¹¹⁵ Read more. In this respect, Appendix 4, Table 2, showing the amount of FQC cases transmitted to the public prosecutor's office according to the age of minors, <http://www.om-mp.be/stat/jeu/f/index.html>.

¹¹⁶ AVOCATS.BE, Code of conduct of the lawyer, art. 2.20.

¹¹⁷ A. DE TERWANGNE., *Aide et protection de la jeunesse : textes, commentaires et jurisprudence*, Liège, Jeunesse et droit, 2001, p. 294; J. VANDORPE, « De rol van de jeugdadvocaat : een pedagogische benadering », *T.J.K.*, 2004, n° 3, p. 156.

This is also what a girl placed in IPPJ said about her relationship with her lawyer:

"I liked her because she talks to me, she tells me things and at the same time she asks me questions and she listens to me. For example, in court, my lawyer told the judge that I wanted to go back to my family and she asked me, 'Is that it?' I said 'yes', the judge then asked me 'why' and I explained".¹¹⁸

In order to fulfil his mission, the lawyer must make his legal terminology understandable. He has to make the law accessible to the minor who is not presumed to know the law. He informs his client and explains the procedure, his rights, the different measures that can be taken by the judge, the various judicial stakeholders the young person will meet and what their respective role is. The lawyer is also responsible for explaining to the minor the offence he allegedly committed and the situation in which he finds himself in relation to his case. The informative role of the lawyer also means explaining what happened during the hearing once it has taken place and the judgment once it is rendered. He also explains the possibility of appealing the decision of the judge if it does not correspond to what the minor would have liked. This should enable the young person to understand his situation and the related issues, to express his opinion but also it should also convince the minor of the importance of his defence and encourage him to participate in its elaboration.¹¹⁹

The minor is generally not very interested in his defence. Since the lawyer of the minor in conflict with the law is very often assigned, the fact that the minor does not choose the lawyer himself, the fact that he is paid through legal aid and the obligatory nature of the meeting favours the disengagement of the minor regarding his defence. The relationship may be constrained and the confidence of the minor will be even more difficult to obtain, as will be the cooperation necessary to build his defence. As a result, the preparation of the defence with the minor may prove to be complicated, despite the efforts of the lawyer.¹²⁰

Then, in order to gain the confidence of the minor and in order to make sure he feels taken seriously, the lawyer must be able to put himself at his level. In this sense, he must be aware that the approach of the child's speech does not come from the same angle as an adult. If it is true that both the speech of the child and that of the adult are subject to the rules of language and emotions, there might be a discrepancy between what is said and what is meant, and children do not have the same view of things as adults. Their reality may be different, what seems coherent to them may seem confusing in the eyes of adults. Their culture is also distinct from that of adults. Therefore, the lawyer must seek to understand the rationality of the minor, his opinion, his truth.¹²¹

This different approach to reality explains why children sometimes seem to come up with unrealistic or unreasonable requests in the the eyes of judges or lawyers. The latter then plays a role of "educational assistance": while being the spokesperson of the young person, he is also there to advise him.

A lawyer we met said:

"We have to do the necessary upstream work to make sure the young person understands that what he proposes, we consider that it is not in his best interests. We need to discuss it together. But once

¹¹⁸ Interview 2 of January 18, 2017 with a minor from Saint-Servais IPPJ.

¹¹⁹ J.-C VAN DEN STEEN, « Le droit de la jeunesse, précurseur des droits de la défense ? », in *Le rôle de l'avocat dans la phase préliminaire du procès pénal : à la lumière de la réforme Salduz* (under the supervision of C. GUILLAIN and A. WUSTEFELD), Limal, Anthemis, 2012, pp. 23-24; P. BENECH-LELOUX, "A quoi sert l'avocat du mineur délinquant?", *J.D.J.*, 2005, n° 241, p. 5; L. TILMANS, « Difficultés rencontrées », *J.D.J.*, 2005, n° 250, pp. 23.

¹²⁰ P. BENECH-LELOUX, "A quoi sert l'avocat du mineur délinquant?", *J.D.J.*, 2005, n° 241, p. 5.

¹²¹ P. KINOO, « Une parole d'enfant ne vaut pas une parole d'adulte », *J.D.J.*, 2006, n° 257, pp. 48-49; T. MOREAU, « Le rôle de l'avocat face à l'enfermement du mineur », *J.D.J.*, 2008, n° 275, p. 7.

the hearing comes, we have to defend his point of view. And all that, it requires a preliminary work and it is true that some lawyers sometimes do not bother to do it."¹²²

Counselling the minor can also imply reasoning with him when he refuses to tell the truth before the judge when the facts are clearly stated in the record:

*"Trust is very important in juvenile justice; this is less true for criminal cases. The minor will be much more credible if he develops a relationship of trust with the judge. If he lies boldly, the judge will no longer listen to him. And it is very important that there is a climate of trust between the minor and the judge throughout the proceedings. This is why it is fundamental to advise him off the record and before to go in front of the judge"*¹²³

Ultimately, if the minor sticks to his view and makes whimsical requests to his lawyer, the latter, while defending his young client, may show a certain distance in his pleadings.

*"I think the lawyer should keep a distance. I cannot say things that will go against the interests of the minor despite his opinion, but that does not mean that I have to start saying whatever the child wants me to say with conviction (...) I am going to tell him: 'Look, I'm going to take some distance, I'm not going to tell the judge that you did it, but I'm not going to pretend that you did not do anything. I'm going to say to him, 'He tells you that ... he thinks that ... and therefore, Madam the Judge, you will have to show him that ... ' "*¹²⁴

To conclude, let us add that the youth lawyer does not only serve the defence of his young client. *"It contributes to the regulation of professional powers; by activating a process of collective control of the work of each of the professionals involved ... It forces them to be more severe in the respect of the law, to more professionalism. It encourages them to reconsider their prerogatives their competence, their role and their place in the criminal justice system for minors. Thus, through its control of the judicial work, the lawyer also serves the overall functioning of the organisation that represents a court for children"*.¹²⁵

1.3. Obstacles

The lawyer who respects his role as a spokesperson and makes every effort to offer a quality defence to the minor will encounter, in practice, a number of obstacles.

- Firstly, awareness about the role of the youth lawyer and the specificities associated with the profession should be raised among minors and other professionals of the juvenile justice system as well as in the bar associations themselves.

From the point of view of minors, as explained above, the lawyer is not always perceived as an ally but sometimes as a constraint. Some minors struggle to identify the different professionals they meet when in conflict with the law and tend to confuse the lawyers, the judges, the prosecutors: they are all pictured as "adults" and the minor does not recognise the lawyer as his "personal coach", who is there to defend him and to enable him to play an active role in the making of the relevant decisions.¹²⁶ This does not only concern judicial proceedings before the youth court. The

¹²² Interview 1 of 15 December 2016 with a lawyer.

¹²³ Interview 2 of 15 December 2016 with a lawyer.

¹²⁴ Interview 1 of 15 December 2016 with a lawyer.

¹²⁵ P. BENECH-H-LELOUX, "A quoi sert l'avocat du mineur délinquant?", *J.D.J.*, 2005, n° 241, p. 7.

¹²⁶ As mentioned, this impression is sometimes justified, as the practice of defence lawyer is often abandoned in favor of the old conceptions of the role of the youth lawyer, making him an ally of the judge. Numerous interviews with minors and youth judges have confirmed this point, which is still a major issue.

minor is often not aware that he can ask the lawyer about other matters: if he is in conflict with his school¹²⁷ or when he is subject to disciplinary proceedings when he is placed in a closed centre¹²⁸, to name a few.

The vision of social workers, such as staff members' in IPPJs and Glss, can also be biased. The lawyer is sometimes considered as an adversary, the person who is going to make things worst. It is urgent to raise awareness about the role of the youth lawyer among the staff members of those institutions and it should be part of their courses as students. On the other hand, lawyers must also be aware and respectful of the role and limits of the role of everyone. The educator who sees the minor every day benefits from certain proximity and might have an easier contact with the child. The minor will be more at ease to go to him if he wishes to speak. On the other hand, for questions of qualification of the facts, concerning the judicial process, the opportunity to appeal, etc., it is necessary to be able to consult a lawyer. Ensuring that every person involved is aware of the role of everyone and respect their position is the best way to promote a good articulation, even collaboration, between the various professionals who work with minors.

Moreover, within the bar associations, youth law is often regarded as a "sub-branch" of the law. *"One of the obstacles for us is the absence of recognition by our peers. For the other lawyers, we are misfits who have decided to lead a lousy life. They say that youth law is not law ..."*.¹²⁹ Therefore, many lawyers do not feel the need to receive a specific training to defend minors. This may constitute an obstacle to initiatives by lawyers for children in Orders and bar associations. Let us take, for example, the regulation of AVOCATS.BE concerning the defence for minors. It was a long-drawn-out effort that had to face lack of understanding – and even blunt hostility - of some.¹³⁰ The idea that "youth law is not law", that "it is easy", result in the assumption by some lawyers mainly practicing criminal law or family law that youth law is only a related subject, and they will accept youth cases without having any knowledge of the specificities of youth law or without being trained to work with minors.

Secondly, if the image of the youth lawyer is not always positive, it is also because it is also a consequence of the attitude of some lawyers who practice youth law regularly or punctually. One of the main issues is that they do not conceive their role as that of a defence lawyer and a spokesperson, despite the regulation of AVOCATS.BE and the OVB trainings.

Some, while wishing to do well and defend the minor in a proper fashion, also give their own opinion after presenting that of the minor. Others, by their way of addressing the judge or the prosecutor, give the impression to be colluding with the judge, and is on the adult's side and is not actually defending his client. *"There are bad lawyers who will give their opinion on the measure to be taken in front of their client. This makes them lose credibility and they break the trust that was being created between them; it is sometimes quite involuntary. The worst thing is that some lawyers do not know what the best course of action is, which is not a problem in itself, but rather than saying nothing, they say to the judge: 'I refer to your wisdom, I let you decide'. It is hard to hear for a young person, the lawyer would better refrain from commenting in those cases"*.¹³¹

Others do not take the time to meet the minor before the hearings and do not fulfil their information duty, or they do not visit the minor placed in an institution, or they do not ask for his opinion, or they

¹²⁷ Interview of 8 December 2016 with a youth judge.

¹²⁸ Interview of 11 January 2017 with the Director of the De Wijngaard Detention Centre in Tongeren.

¹²⁹ Interview of December 19, 2016 with a lawyer.

¹³⁰ J. VOISIN, « Le 4 avril 2011 restera, pour les membres de la Commission jeunesse, un jour à marquer d'une 'pierre blanche' », *R.A.J.e.*, 2011, n°5, p. 1. In Flandres they still have no binding regulation.

¹³¹ Interview of 8 December 2016 with a youth judge.

do not reply to the minor when he tries to contact them, etc.¹³² Even it tends to happen less than before, the work of these lawyers undermines the image of trained, motivated and voluntary youth lawyers.

- Secondly, some difficulties might arise from the **communication between lawyers and their underage clients**

Young people do not use the same **methods of communication** as adults, so the lawyer must adapt. Some lawyers pay a special attention to using communication media minors are the most accustomed to such as e-mails, Facebook, SMS or WhatsApp¹³³ to contact their client or to remind them of audience hearing, etc. If this method is more effective than the sending of a letter, it can result in the minor contacting the lawyer at any hour and expecting an immediate answer any time of the day and any day of the week. In addition, minors tend to regularly change their phone number and often do not keep their lawyers informed of the change. Those elements must be part of the lawyer's mission to inform his client of his working methods and to convince the child of the importance of his intervention.

When placed in IPPJs, GIs or in closed facilities, minors have the right to contact their lawyer by phone. Their conversation, however, is not always private. Sometimes the phones are placed in a corridor, next to the educators' office, etc., which does not allow the minor to speak confidentially. With one exception, all the minors we met within the scope of this research were placed in closed facilities, IPPJs or GIs.

Out of 12 placed minors, only one stated that he had been visited by his lawyer at the institution. Lawyers evidently have busy schedules and due to limited means (see section on legal aid *below*) they cannot easily visit their placed client. However, the meeting is unanimously desired by minors and considered necessary by many professionals and some lawyers in the preparation of the case. An interactive videoconference system within the institution (e.g. Skype or equivalent) could be an alternative, if the confidentiality of the interviews between the lawyer and the minor is respected.

Sometimes lawyers do not have the minor's telephone number when they are appointed by the legal aid office (hereinafter "LAO"). The only way for them to contact him (if he is not placed) will be to send him an e-mail, in the hope that he will read it and contact him, which will not always be the case. The lawyers we met explained that this is part of their work with minors, it is always necessary to "chase them", much more than when working with adults. It is important to manage to contact them without being too pushy and without forcing the relationship. We must succeed in finding them without imposing ourselves and without forcing the relationship.

In addition to the methods of communication, **the communication between minors and their lawyer in itself** can be the source of difficulties. Some minors simply refuse to talk to their lawyer; others do not share much with him because they do not trust him. However, the relationship can evolve over time, as the minor sees that his lawyer is actually defending him and understands that he is on his side, he can learn to trust him. A quality relationship can be established.

"It is hard to connect with a child, even with your own. It takes some time; you need some relational skills, things you do not learn at university. These are stressful situations for children and it does not make the communication any easier. Children with a difficult background generally have difficulties opening up to adults. Whether it is their father, their mother, an educator or a lawyer, the challenge

¹³² Despite some very positive findings, the amount of these more negative findings is still too high. The practice for lawyers to arrive just before the hearing and to speak with their client in the corridor, although unanimously recognised as an aberration, has been recurrently reported by minors, and by youth judges and lawyers.

¹³³ A mobile application that incorporates an instant messaging system via the Internet.

is the same. It is not because he is facing a lawyer that suddenly the minor will know how to open up, especially when these minors have often been disappointed by adults and sometimes perceive them as malicious. Over time, it is still possible to create a relationship of trust between the minor and his lawyer. But sometimes it can take months."¹³⁴

In short, there is no magic formula to establish trust with minors. It is impossible to determine one method to communicate with children it will always have to be adapted depending on the situation. Nevertheless, it is essential to provide adequate trainings to lawyers since communicating with minors requires specific skills that have to be learned.

- Finally, **the relationship with the parents** is not always easy.

Many parents do not understand that the lawyer is there for their child and that he is not supposed to follow their advice or recommendations. This can be a source of tension between the lawyer and the parents. According to some minors, lawyers sometimes give different versions for their clients and the parents. This can affect the already complicated relationship between the minor and his parents, and must be brought to the attention of lawyers.¹³⁵ Sometimes, dissatisfied with the independence of the lawyer or the measures taken against the minor, parents put pressure on their child to change lawyer. Many people still picture lawyers for children as unprofessional and untrained and are reluctant to have their child defended by a lawyer who works through legal aid.

As regards the relationship between lawyers and parents, it should be kept in mind that the pro bono nature of the assistance of minors is essential to guarantee the independence of the lawyer, especially towards the parents. In fact, many minors seem to have a pro bono lawyer and a lawyer paid by their parents.¹³⁶ If it is difficult to forbid this altogether, it is important to stay vigilant and try to prevent any kind of abuse.

2. The access to and assistance by a lawyer at every stage of the procedure

It is provided in the Belgian legislation that a minor suspected or accused of committing an ADCO can be defended by a lawyer within the welfare procedure. The right to be defended by a lawyer includes the right to consult a lawyer and to be assisted by him.

2.1. Police interrogation

In Belgium, the term "right of access to a lawyer" includes the right to a confidential consultation with a lawyer and the right to legal assistance during the interrogations. Since the interrogation provisions have been substantially amended following the *Salduz* judgement¹³⁷ of the ECtHR, the terminology used in this report refers to this case-law by using the terms "Salduz law" "Salduz bis law" "Salduz Web application" and "Salduz service".

When the minor is suspected of having committed an ADCO, he is interviewed as a suspect by a police officer under article 47bis of the CCP. The right of access to a lawyer and the right to be assisted by a lawyer will vary depending on the sanctions that may be imposed to punish the alleged offences.

¹³⁴ Interview of 8 December 2016 with a youth judge.

¹³⁵ There was some evidence that the difference in versions was based on the intentions of the lawyer (to spare one or the other party) but had been very badly experienced by the minor, who generally retained an intense resentment for his lawyer.

¹³⁶ Situation reported by the youth and confirmed by a youth judge.

¹³⁷ ECtHR, *Salduz v. Turkey*, 27 November 2008, req. No 36391/02.

a) Interrogation of child-witness

In principle, a minor who has to be interrogated as a witness will not be assisted by a lawyer during the interrogation by the police officer. However, the law does not prohibit the presence of a lawyer at the interrogation. The presence of the lawyer will of course depend on the proactive approach of the minor, or his parents, who would have consulted him beforehand.

Article 47bis (3) (5) of the CCP. *"If, during the interrogation of a person who was not initially interviewed as a suspect, it appears that there are certain elements which presuppose **that facts may be attributed to him**, that person shall be informed of his rights ... "* including the right to have access to a lawyer and to be assisted by him during his interrogation (under the conditions set out in point **2.1 b and c**).

b) Interrogation of a suspect who is not deprived of his liberty, interrogated about facts punishable with deprivation of liberty (interrogation model III)

i. Informing the minor of his rights ¹³⁸

If the minor who is not deprived of his liberty is invited to be interrogated through the sending of a **written invitation** ¹³⁹, it shall contain a concise statement of the facts in respect of which he is to be heard and the rights which he enjoys at that stage. For the first time, the minor will be **informed** of his right to have a confidential consultation with a lawyer of his choice and his right to be assisted by him during the interrogation.

It does not seem that a unique template for written convocation to be used in every police zone has been drafted to this day. . However, each police zone is free to adapt the written notice intended for minors. This is what the police of the Ottignies-Louvain-La-Neuve area did by adding a box at the end of the written invitation entitled "Important notice lawyer" stating that *"You need to be accompanied by a lawyer for the interrogation. Being a minor, you are entitled to a free lawyer, who can be solicited through the Legal Aid Office of Nivelles (+ contact details). Send a copy of this notice by e-mail to secretariat@bajnivelles.be in order to request that a lawyer shall be present on the day of the interrogation. You have the possibility to solicit another lawyer of your choice. Your usual lawyer can of course be solicited "*.

If the minor does not receive a written invitation or receives an incomplete invitation¹⁴⁰, he will be informed for the first time of his right to a lawyer by means of a written declaration of rights¹⁴¹ (**Appendix 3**) which shall be delivered to him without undue delay before the first interrogation by the police officer responsible for the interrogation.¹⁴²

Article 1 of that declaration provides that the person who is to be heard as a suspect has the *"right to a confidential consultation with a lawyer before the interrogation and to assistance by a lawyer during the interrogation"*.

¹³⁸ For further information, we refer to the report Twelve <http://www.dei-belgique.be/fr/documentation/documents-rapports/article/projet-twelve-promotion-de-l-application-de-l-article-12-de-la-convention> and *Pro-Jus* <http://www.dei-belgique.be/IMG/pdf/be-fr-pro-jus-online.pdf> drafted in the framework of European projects carried out by DCI-Belgium.

¹³⁹ CCP, art. 47bis, §3.

¹⁴⁰ CCP., art. 47bis, §3 al. 4.

¹⁴¹ R.D. 16 December 2011, M.B., 23 December 2011, which lays down the form and content of the declaration of rights pursuant to Article 47bis §4 of the CCP. Inserted by the law of 13 August 2011, M.B., 5 September 2011.

¹⁴² CCP art. 47bis, §5.

In order to guarantee these rights, the lawyer will also be briefly informed regarding the facts about which his client will be heard.¹⁴³ This information will be given before the confidential consultation and it will be noted in the police report (hereinafter "PR") of the interrogation.¹⁴⁴

In practice, lawyers on call emphasize **the lack of information** before the interrogation by the police; a brief summary of the facts (without access to the file or background information) is not sufficient to form an overall picture of the situation the minor is in. Nor is it possible to properly prepare the minor to his interrogation.

We note that this declaration of rights has not been written in a **language** adapted to children, meaning the language used is not appropriate for a person of his age, his vulnerability and is not written in simple terms. Yet the new Salduz *bis* law provides that "*the formulation of the communication of rights ... is adapted to the age of the person or to his possible vulnerability which affects his capacity to understand these rights*".¹⁴⁵ On this point, the FJD informed us that they are planning to draft a **letter of rights adapted to children**.¹⁴⁶ Although it would be a real improvement to have a declaration of rights adapted to minors, it should be emphasized that a minor or an adult who has been informed of his rights does not necessarily imply that he understood them.

In addition, no reference to the minor is made in the current declaration of rights. Only Article 1.E allows us to differentiate the minor from the adult as it stipulates that "*You are not obligated to ask for a consultation or the assistance of a lawyer. You can renounce voluntarily and after consideration if you are **an adult**; ...*", which implies that the minor has no right to waive his right to be assisted by a lawyer. We will discuss this in the following sections.

The results obtained during the research in the field did not indicate a clear trend. Some minors told us that they had received a "piece of paper" before being auditioned. However, they did not all read it, and did not all realise that the declaration enumerated their rights, many minors were not aware that they also have rights. Others, on the other hand, reported that they had been informed of their rights by the police and some of them understood them. References have also been made to educational tools developed by the voluntary sector (for example, 'tZitemzo', which we will refer to below).

ii. *The right to a confidential consultation with a lawyer before the interrogation (art. 47bis, § 2, 1) CCP.*

An interrogation¹⁴⁷ can only start after a confidential consultation between the minor and his lawyer. The law distinguishes two situations here.

Firstly, if the minor has been invited to his interrogation by a **written invitation** (brief communication of the facts and rights), he will have been informed of his right to be assisted by a lawyer and may have made arrangements to consult the lawyer before the hearing. However, in practice, minors rarely make the effort to contact a lawyer before attending the hearing. Thus, if the minor presents himself without a lawyer at the interrogation, "*the interrogation can only take place **after a confidential consultation** between the minor and a lawyer, either on the police premises or by telephone. In order to contact the lawyer of his choice or another lawyer, and to be assisted by him during the hearing, contact is made with someone working at the on-call service organised by the*

¹⁴³ CCP., art. 47bis, §6 al. 6.

¹⁴⁴ COL-8-2011 of 24 November 2016, Circular of the College of Attorneys General of the Court of Appeal on the right of access to a lawyer, p. 87.

¹⁴⁵ CCP 47bis, §6 2).

¹⁴⁶ Presentation of the FJD "The procedural rights of minors in Belgium" organised by DCI-Belgium in the Senate on 6 February 2017.

¹⁴⁷ The first interrogation and all following interrogations concerning the same offence(s).

*French-speaking and German-speaking Bar association and the Order of the Flemish bar or, if that fails, by the president of the Order or his delegate".*¹⁴⁸

Secondly, if the minor received an invitation which does not list his rights and he shows up without a lawyer at the hearing, the rule which has just been explained is also applicable. Moreover, in order to guarantee his consultation, the lawyer - in agreement with the minor - can ask the police officer to "**postpone the interrogation once so that the minor can consult and be assisted by (another) lawyer**".¹⁴⁹

The law does not indicate how long this confidential consultation should last. By analogy with the rules applicable to people suspected and interrogated following their arrest (see below 2.1.c. *Model IV* interrogation), it cannot last less than 30 minutes¹⁵⁰ and must be confidential. The persons interviewed in this research report that they have always been given the necessary time to prepare.

Unlike adults, minors **do not have the possibility to waive** their right of access to a lawyer (see *above*). The vast majority of professionals we met in the course of this research supports the prohibition of this waiver.

In practice, several situations are possible.

Firstly, if the minor already has a lawyer and contacts him beforehand, they will come together to the interrogation, or the lawyer will ask to postpone the interrogation (the latter seems to be frequent and rarely welcomed by the minor).

Secondly, the minor often ends up going to the police station without a lawyer. The police officer will send him home indicating that he will have to come back with a lawyer and will be interrogated at a later date. In the best case, the police officer will provide the legal aid office contact information so that the minor can choose a lawyer registered on the "list of volunteering youth lawyers for children".¹⁵¹

The police officer we met, a member of the youth section of his police zone, regrets not having the list of lawyers for children of his district. This would enable him to give the list himself to minors who are not represented by a lawyer and to facilitate their effort to find one. An automation of the files would allow him to always contact the lawyer of the minor first if he has one, rather than assign him a new *ad hoc* lawyer for the interrogation.

The police officer may also decide to find him a lawyer registered at the "Salduz service" via the Salduz web application. This is a website¹⁵² set up and managed by AVOCATS.BE and the OVB, on which lawyers who wish to take shifts can register. We will discuss the functioning of this on-call service more in detail in the following section.

It should be noted that the law on the interrogation of minors requires enormous availability of the lawyers, as these interrogations can take place every day of the week (including the weekend). Unfortunately, in most of the districts, too few lawyers are enrolled in the "Salduz service", which has the effect of overburdening only motivated lawyers and hence making them less available. In order to mitigate this and ensure that the minor is always able to find a lawyer, some bars (notably Leuven) found a solution. They made an arrangement with the police zones of their district and planned that

¹⁴⁸ CCP art. 47bis, §3, al. 2.

¹⁴⁹ CCP art. 47bis, §3, al. 5.

¹⁵⁰ L. of 20 July on pre-trial detention, *M.B.*, 18 August 1990, art. 2bis, §2, para. 2.

¹⁵¹ For further details, see the Legal Aid section of this report, p.54.

¹⁵² <https://www.salduzweb.be/>.

the *Model III* interrogations would only take place on a few scheduled days each week to ensure that a lawyer is always available. This method encouraged lawyers to register with "Salduz youth permanencies", knowing that they will take place at specific times. In addition, very few bars provide "Salduz" assistance exclusively by lawyers specializing in youth law. Very wide organisational disparities exist, which raises questions of equality of minors when in conflict with the justice.

iii. *The right to be assisted by a lawyer during the interrogation (art. 47bis, § 2, 1) CCP.*

Since the entry into force of the *Salduz bis* law on 27 November 2016, which provides for the first time that people interrogated in a *Model III* hearing can be assisted by a lawyer, the latter is given an active and participative role during the hearing of his client. This role seems to be different from what it was before the law changed. The lawyer can now sit next to his client. He can also:

"... **assist during the interrogation**, which may, however, have already begun.

The purpose of the assistance of the lawyer during the interrogation is for him to be able to monitor:

(A) the respect of the interrogated person's right not to incriminate himself, as well as his right to choose to make a statement, to answer questions or to remain silent;

(B) the treatment of the person interviewed during his hearing, in particular the manifest exercise of unlawful pressures or constraints;

(C) the notification of the rights of the defence referred to in § 2 and, where appropriate, § 4, and the legality of the interrogation.

The lawyer can then report on the interrogation sheet the violations of the rights referred to in (a), (b) and (c) which he thinks to have observed. The lawyer can request that certain information is given or that certain questions are asked. He can ask for clarification on questions that are being asked. He can make observations about the investigation and the hearing. However, he is not authorised to respond to the questions instead of his client or to hinder the hearing. All these elements are written down precisely in the police report "¹⁵³

It would seem that it is not so much the legislative text¹⁵⁴ but rather the guidelines¹⁵⁵ issued to the interrogating officers that shape the relationship between the lawyer and the police. However, since the reform has only been in place for a short time, it is not yet possible to measure the impact of this new provision in practice.

iv. *Exceptions to the right of access to a lawyer*

The assistance by a lawyer will not be possible when an immediate interrogation is not necessary or impossible, or when it is an interrogation about minor facts.¹⁵⁶

¹⁵³ Art. 47bis, §6, 7) CCP.

¹⁵⁴ The former article 2bis §2 of the Law on pre-trial detention was supplemented by the possibility for the lawyer to request a briefing, inquiry or clarification or to make observations. This article was also added to article 47bis, § 6, of the CCP.

¹⁵⁵ COL-8-2011 of 24 November 2016, Circular of the College of Attorneys General of the Court of Appeal on the right of access to a lawyer, pp. 43 and s. and the Protocol of 8 June 2016 signed by the Attorney general of Antwerp, the first President of Antwerp, the prosecutors of Antwerp and Limburg, the Presidents of the courts of Antwerp and Limburg, and the president of the Order of the Flemish bar.

¹⁵⁶ COL-8-2011 of 24 November 2016, cited above, pp. 77 and s.

v. Sanctions in case of violations of the rules regarding the interrogation and the access to a lawyer (Article 47bis, § 6, 9) CCP).

Article 47bis, § 6, 9) CCP provides that "No conviction can be pronounced against a person on the basis of statements made by him in violation of paragraphs 2, 3, 4 and 5), excluding paragraph 5 as regards the prior confidential consultation or assistance by a lawyer during the hearing or in violation of articles 2a, 15bis, 20, §1 and 24bis / 1 of the Law of 20 July 1990 on the pre-trial detention as regards the prior confidential consultation or assistance by a lawyer during the interrogation".

The mere fact of not being able to use the statements of the interrogated person as evidence in court does not appear to be a sufficient sanction to guarantee the litigant's respect for his procedural rights. At the trial stage, the judge will not systematically mention the violation. The person whose right of access to a lawyer has not been respected will have no real power of action except if he raises the issue before the national authorities and then before the ECtHR, for violation of the right to a fair trial under article 6 of the ECHR. Moreover, it would appear that in certain cases such statements may still be used as evidence before the judge, which is clearly contradictory to article 6 of the ECHR and to the case-law of the ECtHR on this issue. A lawyer we met suggested that decisions based on statements made in the absence of a lawyer should be declared null and void.¹⁵⁷

c) Interrogation of a suspect deprived of his liberty (interrogation model IV)

i. Informing the minor of his rights

In some cases, a minor suspected of having committed an ADCO will be arrested by the police and taken to the police station for interrogation. There, a **written declaration of rights (Appendix 3)** will be given to him and his rights will be communicated to him by the police officer. He will be informed for the first time of his right of access to and assistance by a lawyer. The model of this declaration differs from that set out above as the minor deprived of his liberty is granted additional rights.¹⁵⁸

He is also entitled to a confidential consultation prior to his hearing and to the assistance of his lawyer during this hearing.¹⁵⁹ Moreover, it is worth remembering that the **minor cannot waive** these rights.¹⁶⁰

ii. Contacting a lawyer

The minor can contact the lawyer of his choice **without undue delay** prior to his first interrogation. Either the minor knows a lawyer or already has one, he can then call him to invite him to join him at the police station, or the minor does not have a lawyer or his lawyer is not available. In this case, the police officer will contact the on-call service via the Salduz web application or, if that fails, he will contact the president of the bar association or his delegate.¹⁶¹

The "Salduz service" has been put in place right after the implementation of the Salduz law in 2012. Initially, it was set up only for *Model IV* hearings, i.e. in cases of deprivation of liberty. However, since 27 November 2016, the *Salduz bis* Law has extended the possibility of using the "Salduz service" to allow respondents in *Model III* hearings to have access to a lawyer.

¹⁵⁷ Interview 2 of 7 December 2016 with a lawyer.

¹⁵⁸ L. of 2 July 1990 on pre-trial detention, cited above, Art. 2bis, §§ 7 and 8.

¹⁵⁹ L. of 2 July 1990 on pre-trial detention, cited above, Art. 2bis, §2.

¹⁶⁰ L. of 2 July 1990 on pre-trial detention, cited above, Art. 2bis, §6.

¹⁶¹ L. of 2 July 1990 on pre-trial detention, cited above, Art. 2bis, §2, para. 1.

This on-call service is therefore effective and the lawyers registered can be contacted directly, night and day via the system of the web application. The aim is to allow the police officer to contact a lawyer quickly and easily.¹⁶² To do this, he has access to this application through the "Portal" intranet. It opens a Salduz file by filling in and then sending a standardised web form. The web application sends the police a contact confirmation mentioning the date, time and the unique Salduz number of the file. **The two-hour period** within which a confidential consultation must be held with a lawyer begins from that moment.

The web application will then automatically notify the lawyer (first the *dominus litis* and then possibly a lawyer on the on-call list) who will receive a call and, if he confirms his assistance, and then in a text the name of the minor and the address of the police station where he has to go.¹⁶³ If no on-call lawyer is available, the LAO emergency number is automatically contacted. Another telephone number, that of the on-call service, can be contacted if the web application does not work, if a (police) service does not have access to the web application, yet in case of a replacing confidential consultation over the phone if the lawyer has not arrived on the premises within two hours or in case of an incident.¹⁶⁴

All the steps that will be undertaken in the search for a lawyer for the minor will have to be noted in the police report. If, after two hours, it seems impossible to find a lawyer and it is not possible to postpone the hearing (e.g. due to the expiry of the time-limit for arrest) a confidentially consultation by telephone with the on-call service still takes place, after which the hearing can begin. In the event of force majeure, the hearing may begin after the rights referred to in article 47*bis* (2) and (3) of the Code of Criminal Procedure (right to remain silent) have been enounced to the person concerned.¹⁶⁵

The minor can then be heard without a lawyer. This seems contradictory to the fact that he enjoys the guarantee of never being able to waive his right to a lawyer. The delay of the lawyer thus has a decisive influence on the rights of the minor he assists.

These problems tend to often occur in districts where small bars have too few lawyers who are enrolled in the on-call service. Solutions must then be sought and found with the president of the bar or his delegate.

The primary purpose of the **web application** (i.e. facilitating the search for lawyers available when an interrogation will take place) based on an obvious will to better the situation but it is the source of great **practical difficulties**. It seems that the web application suffers from several malfunctions. The web application allows lawyers to register as volunteers. On the website, they have the possibility to mention that they would like to take part of the "Salduz-youth service". However, for technical reasons, a lawyer we met did not manage to register by ticking the "youth law" box of the application and was therefore not able to participate in the on-call service. It also seems that the system sometimes sends the request to only 4 or 5 lawyers. If they are not available, the system stops looking for other lawyers. Finally, lawyers often judge this web system too impersonal and cold. It would therefore be necessary to redesign the Salduz web system so that it can be fully effective.

¹⁶² DOC 53 1279/012, Parliamentary work of the law of 13 August 2011, Report drawn up on behalf of the Committee Justice by C. BROTCORNE and R. LANDUYT, Statement by the Minister of Justice, 15 July 2011, p. 9.

¹⁶³ Interview 1 of December 07, 2016 with a lawyer.

¹⁶⁴ COL-8-2011 of 24 November 2016, cited above, p. 119.

¹⁶⁵ L. of 2 July 1990 on pre-trial detention, cited above, Art. 2*bis*, §2, para. 3.

iii. Confidential consultation

Article 2bis, §2 para. 2 of the law on pre-trial detention says that "*From the moment contact is made with the chosen lawyer or on-call lawyer, the confidential consultation with the lawyer must take place **within two hours**. Confidential consultation can take place **over the phone** at the request of the lawyer in agreement with the person concerned. Confidential consultation **may last for thirty minutes** and may, in exceptional cases, be **prolonged** to a limited extent on the decision of the person conducting the interrogation. After the confidential consultation, the interrogation can begin*".¹⁶⁶

It should be emphasised that, in contradiction with the *Model III* hearing, the law provides for only one consultation prior to the first hearing (even if there are subsequent hearings) during the 24-hour arrest period (with the exception of the extension of the 24-hour period).

The rules governing the organisation of consultation are flexible in order to allow the meetings to be held.

This flexibility can be perceived in a positive manner. Nevertheless, it regularly occurs that the lawyer takes **more than two hours** before arriving at the police station or finally ends up not coming. This delay or absence is very frustrating for the young person. Let us not forget that when he waits for his lawyer, the minor is locked up in a cell.¹⁶⁷ This waiting, often too long, makes him nervous and fragile. This destabilising situation for the minor therefore risks to weaken his defence. This point also deserves to be remembered by the lawyers.

One lawyer told us that she generally preferred telephone consultations and did not go to the police station afterwards. This consultation can last 30 minutes. However, our research has made us realise that this time is too short, since most minors meet their lawyer for the first time. In order to allow a relationship of trust between the minor and his lawyer, a longer consultation should be provided for by law.

When a lawyer arrives at the police station, the consultation in person can begin. Ideally, it should be organised in a special room so that the confidentiality is respected. In the past, some rooms of the police station in the region of Antwerp were separated from the police officers' room by plaster boards or very thin glass, which did not allow a confidential consultation.¹⁶⁸ Unfortunately, the law does not mention anything about this issue.

iv. Assistance during the interrogation

After the confidential consultation has taken place, the interrogation may begin. Article 2bis, §5 the law on pre-trial detention provides that "*The person who is to be heard **has the right to be assisted by his lawyer at hearings** which take place within the time limits referred to in paragraph 1. The hearing **shall be interrupted for a maximum of fifteen minutes for further confidential consultation**, either once at the request of the person to be heard or at the request of his lawyer, or in the event of the disclosure of new crimes which are not related to the facts which were brought to his knowledge in accordance with Article 47bis § 2 of the Code of Criminal Procedure*".¹⁶⁹ This provision therefore applies not only to the 24-hour period but also to the extension of that period for another 24-hour period and the period of deprivation of liberty covered by a warrant.

¹⁶⁶ L. of 2 July 1990 on pre-trial detention, cited above, art. 2bis, §2, para. 2.

¹⁶⁷ Interview 2 of January 11, 2017 with a minor.

¹⁶⁸ Interview 2 of December 07, 2016 with a lawyer.

¹⁶⁹ L. of 2 July 1990 on pre-trial detention, cited above, art. 2bis, §5.

Since the entry into force of the *Salduz bis* law, the lawyer who assists the minor during his interrogation has to adopt the active and participatory role described in 2.1 above. (B) iii. (p. 44).

The Flemish lawyers we interviewed told us that they were either acting as "Salduz" lawyer or as the *dominus litis* of a minor who had consulted them. The relationship between these lawyers and police officers is generally good¹⁷⁰ with a few exceptions concerning the aforementioned practical arrangements. As they have not yet attended a hearing (*model III* or *IV*) since the entry into force of the *Salduz bis* law, they have not been able to describe the changes concerning their more active role. They insisted, however, on the adaptations that would be necessary to satisfy this new role without a negative effect as regards the quality of their defence.

Finally, as soon as the person is released, the provisions of the Code of criminal procedure¹⁷¹ apply, which has the consequence that the person concerned must take the necessary steps himself in order to be assisted by a lawyer during the next interrogations if they take place (see *model III* hearings).

v. *Derogations to the right of access to a lawyer*

The right to a lawyer can be definitively or temporarily waived in exceptional circumstances provided for in article 2*bis*, §9 and §10 of the law on pre-trial detention.

Article 2*bis* (9) of the law provides that this derogation is possible "(a) where there is an urgent need to prevent a serious harm for the life, liberty or physical integrity of a person. Interrogations (...) are conducted solely for the purpose of obtaining information essential to prevent this and to the extent necessary to prevent serious harm to the life, liberty or physical integrity of a person; (B) where it is imperative that the investigating authorities act immediately to avoid seriously compromising criminal proceedings. Interrogations ... shall be conducted for the sole purpose of obtaining information essential to avoid seriously compromising criminal proceedings and to the extent necessary for that purpose".

Article 2*bis* (10) of the law permits a provisional derogation "where it is impossible, because of the geographical distance of the suspect, to ensure the right of access to a lawyer within that period and that these rights can be exercised by telephone or videoconference. (...)".

2.2. In front of the prosecutor and/or the investigative judge

A minor suspected of having committed an ADCO can, in exceptional cases, be heard directly by the public prosecutor¹⁷² or the investigative judge.¹⁷³ He will have the same rights he enjoys during police interrogations. He therefore has **the right to consult confidentially with a lawyer** of his choice before the hearing and **be assisted** during all hearings and appearances, regardless of his deprivation of liberty, under the same conditions as those set out in the points described here above. **The lawyer**¹⁷⁴ will adopt a **role** and an attitude similar to what he would at police hearings to ensure that all guarantees concerning the minor are respected. As in other circumstances, the minor can never waive his right to a lawyer.

¹⁷⁰ Interview 2 of 7 December 2016 with a lawyer, interview 4 of 19 December 2016 with lawyers

¹⁷¹ CCP., art. 47*bis* and s.

¹⁷² CCP., art. 47*bis*, §6, 6).

¹⁷³ L. of 1965, art. 49 and 54.

¹⁷⁴ CCP art. 47*bis*, §6, 7), and L. of 2 July 1990 on pre-trial detention, cited above, art. 2a.

In addition, minors also have the right to be assisted by a lawyer when the investigative judge orders a visit of the crime scene, a confrontational hearing or a line-up of the suspects¹⁷⁵ During the visit of the crime scene and the confrontation hearing, the lawyer has the same role as he has during the hearing. Upon completion of the line-up of suspects, the lawyer may request that his observations on the conduct of the session are recorded in the minutes.

If the minor does not know a lawyer when he is about to be heard, magistrates (prosecutor or investigative judge) will have to go through the Salduz web application which he has access to by means of a user name and a password. The procedure for the appointment of a lawyer will then proceed as it would for an interrogation overseen by the police.

Finally, the law does not provide for the minor to be assisted by a lawyer when a mediation is proposed by the public prosecutor. He may nevertheless consult a lawyer beforehand and be assisted when an agreement has been reached. However, there is no legal provision prohibiting the minor's lawyer to be present during the implementation of this proposal (see below).

2.3. At the stage of the youth court judge or the youth court chamber of the court of appeal

When the minor is brought before the youth court judge, he will appear for the first time before the judge at the cabinet hearing during which the judge will assess the necessity of provisional measures. The preparatory phase of the procedure can last only 6 months in principle. As this time limitation is not enforced, it often takes longer in practice. During this period, the minor may have to appear several times for a cabinet hearing. Once the investigation is completed, the prosecutor has 2 months period to summon the minor to appear before the same judge¹⁷⁶, who will then make a definitive decision. For more details on the procedure and the measures that can be taken, you can refer to the second part of this report: "The juvenile justice system in Belgium", p. 20-27.

In any case, "*§ 1. Where a person who is less than 18 years of age is a party in the procedure and **has no lawyer, he will be assigned one. When the youth court is seized under section 45.2 (a) or (b) or section 63ter (a) or (c), the public prosecutor shall immediately notify the president of the bar association. Such notice shall be sent at the same time, depending on the nature of the case, as requisitions, summons or substantiated warnings. The President of the Bar association or the consulting and defence office shall make the appointment no later than two working days after the date of such notice. § 2. The public prosecutor shall send a copy of the notice informing the President of the Bar association of the seizure to the youth court. § 3. The President of the Bar association or the consulting and defence office shall, if there is a conflict of interests, ensure that the person concerned is assisted by a lawyer other than the one of his father, mother, guardian, or person who has custody of him or who are vested with a right of action***".¹⁷⁷

In practice, a lawyer voluntarily registered on the youth section list will be appointed by the LAO.¹⁷⁸ If he has not been able to meet with his client in his office - which appears to happen frequently - the lawyer will then go to court on the day of the hearing and will then speak for the first time with his client at that time. In principle, the lawyer always receives the necessary time to talk to his client.¹⁷⁹ However, some lawyers only dedicate a few minutes to it¹⁸⁰ and the first interview often takes place in the corridors of the tribunal. This short encounter under such circumstances does not contribute in the creation of a bond of trust and a defence appropriate to the needs of the minor. The lawyers

¹⁷⁵ CCP, art. 62.

¹⁷⁶ L. of 1965, art. 52*bis*.

¹⁷⁷ L. of 1965, art. 54*bis*.

¹⁷⁸ For more details see. The section on legal aid *infra*. p.52.

¹⁷⁹ Interview of 8 December 2016 with a youth judge.

¹⁸⁰ Interview 4 of January 12, 2017 with four young people and interview of December 8, 2016 with a youth judge.

from the Ghent bar who we met said they had enough time to meet the minor (in a separate room).¹⁸¹In case a lawyer can not be present, most law societies provide that a lawyer from the youth section is on-call in court or can be contacted by telephone in order to be able to go there quickly and to represent and defend all minors who have to appear before the judge that day. This lawyer will meet each minor in a room provided for this purpose in order to guarantee the confidentiality of their meeting as much as possible.

a) Information on his rights, confidential consultation and assistance during the interrogation

In practice, when minors appear before the judge, they generally feel that they are sufficiently informed of their rights. The judge does remind them of the rights they enjoy if necessary. In addition, the minor will always be represented by a lawyer at the hearing. If there is no lawyer present, the hearing cannot take place. The role and the mandate of the lawyer have been described above (part "role and mission of the lawyer", p. 35). Although he is officially represented, the minor will sometimes not know his lawyer, as it will be either a lawyer he meets for the first time, or a substitute for the *dominus litis*, or an on-call lawyer which will not always guarantee the continuity of the case.¹⁸² This often accentuates the impression already expressed that the lawyer is on the side of the judge or that "he does nothing"¹⁸³ (*see above*). On the other side, many children think they have an experienced lawyer who, in addition, uses language that is adapted to them.

In general, and according to the opinion of the professionals we met, there is a good understanding between judges and lawyers. However, the judges interviewed told us that the lawyers' motivation and the quality of their work can be identified immediately.¹⁸⁴ There can be some worrying signs raising doubts about the quality of the defence that the minor will receive. In order to guarantee the quality of the defence, a judge we interviewed was wondering if judges could be entrusted with the task of assessing the quality of youth lawyer's work and, if necessary, with reporting it to the President of the Bar or to the LAO. It would certainly be worth discussing and clarifying this matter among the competent professionals.

Finally, when the judge proposes a mediation or a restorative group session¹⁸⁵, he has an obligation to inform the minor that he can consult a lawyer beforehand and be assisted by that lawyer as soon as an agreement has been reached.¹⁸⁶ The Constitutional court considers that assistance by a lawyer may take place during the procedure of the implementation of these proposals.¹⁸⁷

2.4. Implementation of the measures (provisional or final) pronounced by the youth court

When the minor is placed, the lawyer must make sure he maintains his active and participative role throughout this phase of the procedure. In order to do so, he must continue to inform his client of his rights, to be accessible and reachable when the minor is placed in IPPJs, in GIs or in closed facilities, and should visit him and accompany him as effectively as he can during the implementation of the measures.¹⁸⁸ The lawyer should also inform the minor of his right to request the review of his measures and his right to appeal.¹⁸⁹

¹⁸¹ Interview 2 of December 19, 2016 with two lawyers.

¹⁸² In Brussels, for example, the on-call lawyer can not be designated as the person in charge of the case.

¹⁸³ Interviews 1 and 4 of 12 January 2017 with young people.

¹⁸⁴ Interviews of 8 December 2016 and 30 January 2017 with youth judges.

¹⁸⁵ L. of 1965, art. 37bis to 37quinquies and 52quinquies.

¹⁸⁶ L. of 1965, art. 37bis, §4.

¹⁸⁷ C. Const., Judgment of 13 March 2008, no. 50/800, recital B.29.

¹⁸⁸ We already stressed the importance of these visits on the basis of the unanimous opinion of the young people and the majority opinion of the lawyers we met.

¹⁸⁹ L. of 1965, art. 58 to 60.

The consequence of the deprivation of liberty is that the minor becomes even more vulnerable as in front of the enforcement agents responsible for the implementation of their placement measures. While this state of increased vulnerability should coincide with a reinforced role of the lawyer (to ensure even more vigilance regarding the respect for the rights of the placed minor), the opposite often occurs. The contacts between the minor and his lawyer tend to be complicated and the preparation of the hearings is hardly ever done beforehand due to the very low frequency of visits of the lawyers in the institutions and closed facilities. This harmful trend seems difficult to reverse, but we will pay particular attention to it in our recommendations.

Almost deprived of means of communication, access to the internet and other sources of information, the minor depends all the more on the availability and the good disposition of his designated lawyer. If the present lawyer can play an extremely healthy and positive role at this time, the defective lawyer heavily undermines the respect of the minor's rights, his experience and opinion regarding the justice system.

It seems necessary, now even more than before, to give the minor the means to be partially autonomous in relation to his designated lawyer (by giving him the means to evaluate his efforts and availability, helping to identify anomalies, informing him of the possibility of changing his lawyer in case of a lack of trust, allowing him to call the appropriate services at all times, ...). One option could be to involve social workers even more in the process. During our study in the field, many of them told us that they were totally ignorant of the legal aid system, and some of them said they didn't want to get involved in ethical conflicts. These statements deserve special pedagogical work (see *below*).

2.5. Right to an interpreter

In the context of a hearing, article 47*bis* (6) (4) of the CCP provides that if a person questioned as a victim or a suspect does not understand or speak the language of the procedure or suffers from hearing or speech impairment, a sworn interpreter shall be called upon during the hearing. If no sworn interpreter is available, the interrogated person is asked to write down his own statement. Where there is an interpretation, the minutes shall mention the assistance of a sworn interpreter, as well as his name and capacity.

At the hearing, article 184*bis* CCP stipulates that if the suspect does not speak any of the national languages he must be assisted by a lawyer who speaks his language or another language that the suspect understands. If this is not possible, an interpreter will be appointed by the legal aid office to assist the lawyer in preparing the defence of the accused.

The accused who does not understand the language of the proceedings is entitled to request a translation of the relevant extracts from the warrant into a language which he understands in order to enable him to understand the alleged facts they hold against him and to defend themselves effectively unless an oral translation has been provided to the accused.

Interpretation and translation costs are to be borne by the State.

Even though the right to interpretation is recognised in the law and both the police and the prosecutor have official lists at their disposal, real gaps remain.

Firstly, there is no formal procedure to ensure that a minor needs an interpreter. No guarantee exists in this respect. It often happens that the minor manages to say/understand a few words or phrases in French while not perceiving that he misses many subtleties and that this may jeopardize respect for his rights of defence.

Another issue is that the independence and impartiality of interpreters is not guaranteed and there is no quality control process for the translation. We can also mention the difficulties linked to cultural or religious matters in the relationship between the minor and the interpreter of his community.

Those deficiencies can undermine respect for the right of the minor to a fair trial and have potentially dramatic consequences for the children concerned. In order to overcome these shortcomings, it seems necessary to re-evaluate and re-finance the function combined with better training of interpreters in youth law.

There should also be a system of accreditation with annual evaluation and the creation of a professional ethics committee.

For further details, we refer to the report prepared as part of the PRO-JUS project carried out by DCI-Belgium in 2016.¹⁹⁰

3. The legal aid system

3.1. Functioning

In Belgium, the right to legal aid is written down in the Constitution: "*Everyone has the right to lead a life with human dignity. To this end, the law, decree or rule referred to in article 134 shall ensure, taking into account the corresponding obligations, economic, social and cultural rights and determine the conditions for their exercise. These rights include, in particular: (2) the right to social security, health protection and social, medical and legal assistance ...*".¹⁹¹

The law of 23 November 1998¹⁹² implements this right for those with insufficient resources. The system of legal aid organised by the Judicial code is the same for the whole country, but this assistance is organised in practice by each Bar association. It should be noted that most minors in conflict with the law will be assisted by a lawyer working in legal aid.¹⁹³

The legal aid is organised on two levels:

- **The first line aid (provided by lawyers)**¹⁹⁴ is "*given in the form of practical information, legal information, a first legal opinion or a referral to a specialised body or organization*".¹⁹⁵

The first line is a filter for the second line because it is intended to prevent disputes and especially trials. The first line legal aid is provided in the form of a 10 to 15 minutes consultation with a lawyer. Consultations are held in on-call services, usually organised in the courts of justice, Public Centres for Social Action (hereinafter "CPAS") or in the *Justice de paix* establishments. The **Commission for legal aid** (hereinafter "CLA") is responsible for the organisation of these departments. There is a CLA within each judicial district and it determines the procedures for compensating lawyers participating

¹⁹⁰ Available on <http://www.dei-belgique.be/IMG/pdf/be-en-pro-jus-online.pdf>.

¹⁹¹ Const., art. 23, al. 3, 2°.

¹⁹² L. 23 March 1998 on legal aid, M.B., 22 December 1998, p. 40568.

¹⁹³ NCIC and Centre for Research and Sociological Interventions of the University of Liège, "Research on the system of remuneration of second-line legal aid", Research Report No. 30, September 2012, p. 95; E. LEMMENS, "The application of the regulation in Liege and Namur. Letter from the Bâtonnier E. LEMMENS of Liège", R.A.J.e., 2011, n° 5, p. 4.

¹⁹⁴ Legal aid on the first line may also be organised by organisations other than the Legal aid commission and provided by professionals other than lawyers. This is the case of open-ended legal aid services that specialise in legal aid as their main instrument and which use the law as a working tool (Decree of the Government of the French Community of 15 March 1999 on special conditions for approval And Grants for Open Aid Services, Chapter VIII*bis*). The Youth law service is one example. This report only concerns legal aid provided by lawyers.

¹⁹⁵ C. Jud., art. 508/1, 1°.

in the first line offices.¹⁹⁶ In some juridical districts, specific youth law offices are organised once or several times a month. Some of these services are even organised within the IPPJs.¹⁹⁷

Each bar association establishes once a year a list of voluntary lawyers who wish to participate in first line legal aid and forward it to the CLA. The lawyer must provide a brief report to the LAO after each consultation and an annual report to the CLA.¹⁹⁸ It is up to the lawyers of each bar to monitor the quality of services provided in the context of first line legal aid. A lawyer can even, by reasoned decision of the council of the order, be removed from the list if he fails to fulfil his duty.¹⁹⁹

- **Second line legal aid** is "*granted to a natural person in the form of a detailed legal opinion or legal assistance in the context of proceedings or assistance in proceedings including legal representation (...)*".²⁰⁰

This assistance may be requested regardless of the nature of the proceedings (civil, criminal or administrative) or its form (advice, mediation, representation). It is the LAO which organizes the second line aid and who appoints the lawyers.

The Bar association establishes, on the terms and conditions it determines, a list of voluntary lawyers for the purpose of performing primary or secondary legal aid and keeps the list up to date.²⁰¹

The Bar monitors the quality and effectiveness of the services. This control is performed on two levels²⁰² :

- A priori: the lawyer has to justify the orientations he declares or commit to follow a specific training so that he can register on the list of voluntary lawyers to practice second line legal aid;
- A posteriori: the Bar controls the quality of the services performed and can impose sanctions when they fail. This review is carried out by a team of lawyers, within each bar, which verify the reality of the declared services, their consistency with the nomenclature and their quality. These controls are not implemented equally in every department: some bars only control a few files per subject and it is therefore more of a formal control. Others, on the other hand, control every file and have put in place a true quality policy. In our view, this second option should be strongly encouraged.

In addition to these internal controls, AVOCATS.BE and the OVB carry out mutual cross controls. Once this control is completed, the bars issue a report to the Minister, recording the number of files checked, the subjects and possible point reductions and their justification.²⁰³

During the internal controls, a lawyer who failed to perform his duties can be punished by his order.²⁰⁴ The reform of legal aid, which came into force on 1 September 2016, made it possible to extend the sanctions that can be imposed on a lawyer in the event of non-compliance. Previously, the only possible sanctions were the reduction of points or, in case of repeated significant shortcomings, the removal from the list of voluntary lawyers. This sanction was not always

¹⁹⁶ AVOCATS.BE, *Legal Aid in the everyday - Legal Aid Memorandum*, September 2015, pp. 10-12.

¹⁹⁷ For example, the Liège Bar is organizing a youth office at the Fraipont PICP once a month :

<http://www.barreaudeliege.be/FR/permanences.aspx>.

¹⁹⁸ Jud. C., art. 508/6.

¹⁹⁹ Jud. C., art. 508/5.

²⁰⁰ Jud. C., art. 508/1, 2°.

²⁰¹ In some bars, inclusion on the list constitutes an obligation of the probationary period: AVOCATS.BE, *Lawyer's Vademecum*, 2016, chap. 3, p. 3.

²⁰² AVOCATS.BE and OVB, *Compendium – aide juridique de deuxième ligne*, 1st September 2016, pp. 51-52.

²⁰³ INCC, *op. cit.*, pp. 103-109.

²⁰⁴ Jud.C., art. 508/8

proportionate to the lawyer's shortcomings and could result in a "professional death" for lawyers specialising in legal aid.²⁰⁵ The wider range of sanctions will therefore allow more appropriate sanctions. For example, the possibility of imposing additional conditions to remain on the list. This could result in the need for specific training or monitoring by an older lawyer, etc.²⁰⁶

3.2. Training

Directive 2016/800 states in recital 63 and article 20.3 that the State should take the appropriate measures to promote the provision of specific training to lawyers for children in criminal proceedings. The authorities of the Bar association are thus responsible for the training of the lawyers.

During law studies, no youth law course is compulsory. These are only optional courses.

During the training followed by graduate lawyers in order to become a lawyer²⁰⁷, youth is once again an optional course.²⁰⁸ Moreover, the content, the amount of hours and the evaluation of this course can vary greatly from one bar to the other.²⁰⁹ Then, the lawyer freely establishes the programme of his continued education.²¹⁰ Thus, there is no obligation to train lawyers in youth law.

However, as part of the legal aid, lawyers who register on the list of voluntary lawyers for a specific subject must follow a training approved or organised by the council of the order or by a bar.²¹¹

a) Within AVOCATS.BE

In French-speaking Belgium, the order adopted a **binding regulation** in 2011 concerning the lawyer who intervenes to defend a minor.²¹² One of the reasons for this regulation is "*the need to provide quality assistance to minors, which implies the need for specific training for lawyers*".²¹³ This was not easy and it took the Youth Committee of AVOCATS.BE three years to adopt this regulation as it was the first time that AVOCATS.BE regulated a specific category of lawyers.²¹⁴

This regulation provides, *inter alia*, that each bar establishes a **youth section** and organises the training of lawyers who are members of the section, making sure to extend the training to areas other than law, such as knowledge of the social network, a child-centred approach based on human, psychological and medical sciences, communication and listening to the minors. The youth section also ensures the continued education of its members.²¹⁵ On the French-speaking side, the training requirements of lawyers will differ from one bar to the other as each bar determines the conditions for joining and maintaining the list of voluntary youth lawyers for itself.

²⁰⁵ NICC op. cit., p. 105.

²⁰⁶ A. DE TERWANGNE, « The Impact of Legal Aid Reform on Youth Law Procedures », *J.D.J.*, 2016, n° 360, p. 35; Interview 2 of 7 December 2016 with a lawyer.

²⁰⁷ Called CAPA training for "certificate of aptitude for the profession of lawyer" within AVOCATS.BE and BUBA for "Certificate of competence for the profession of lawyer" within the OVB.

²⁰⁸ AVOCATS.BE, Code of conduct of the lawyer, 1 July 2016, art. 3.14. and OVB, Code of conduct of the lawyer, 31 May 2016, art. II. 2. 4. 1.

²⁰⁹ For example, in Namur, a few years ago, there were no optional courses on youth law for two years. Today, there is an optional 6 hour course.

²¹⁰ AVOCATS.BE, Code of conduct of the lawyer, precited, art. 3.27.

²¹¹ Jud. C, art. 508/5, al. 3 and 508/7, al. 4.

²¹² Regulation of AVOCATS.BE of 14 March 2011 relating to the lawyer who intervenes to ensure the defence of a minor, *supra*. This regulation is taken up by the code of conduct of the lawyer under the section "defence of a minor". (Appendix 5)

²¹³ J. VOISIN, « Le 4 avril 2011 restera, pour les membres de la Commission jeunesse, un jour à marquer d'une 'pierre blanche' », *R.A.J.e.*, 2011, n° 5, p. 1.

²¹⁴ Interview 1 of 15 December 2016 with a lawyer.

²¹⁵ AVOCATS.BE, Code of conduct of the lawyer, precited, art. 2.24.

At the **Liège bar**, for example, the council of the order made a regulation to organise the youth section and access to the list of volunteer lawyers.²¹⁶ The lawyer must demonstrate knowledge and expertise in youth law by: (a) recognition of the title of specialist in youth law as defined in the lawyer's code of conduct²¹⁷; or (b) participation in youth law training (15 points in the previous 3 years); or (c) successful completion of at least 14/20 of the CAPA Youth Law course in the previous 3 years.

At the **Brussels Bar**, you get on the youth list through a 10-hour basic training (8 hours of pure training with practical examples and 2 hours of role-playing in a courtroom) culminating in an examination where you need a score higher than 14/20. A sponsorship system has also been set up and each new lawyer who enters the section will be guided by a more experienced youth lawyer for 2 months.²¹⁸

The **Bar of Nivelles** also organises a compulsory basic training to be registered on the list of volunteer lawyers in youth law²¹⁹, as well as a tutoring system.²²⁰

To remain on the list of volunteer youth lawyers, the requirements for **continued education** also vary from one bar to the other. These courses are organised by AVOCATS.BE, the bars, or also by other organisations if they receive the accreditation of AVOCATS.BE.²²¹

Note that a **new regulation of AVOCATS.BE dating from 14 November 2016**²²² clarifies the conditions that must be met by a lawyer who wishes to register and remain on the list of the youth section of his bar.

The enrolment conditions are similar to those of the youth section of the Bar of Liège and stipulate that the lawyer must: (a) have been granted the title of specialist in youth law as defined in the code of conduct of the lawyer; or (b) have passed the CAPA Youth Law Course (s) within 3 years prior to the application; or (c) have undergone continuous training in youth law (15 points in the previous 3 years, including at least 8 legal training points). On a transitional basis²²³, the lawyer who justifies a customary practice of youth law by means of a certificate from his president may also join the section. Of course, the bars are free to establish stricter access criteria.

As regards the continued education, the new regulation stipulates that lawyers who wish to remain registered in the section must have at least 18 training points in youth law every three years. Half of these points may be non-legal training if it is useful for the practice of youth law. A training day is usually equivalent to 5 or 6 training points. Youth lawyers will therefore have to participate in the equivalent of one day of training per year.

It should also be noted that this regulation sets out the sanctions that may be imposed by the council of the Order on a lawyer who does not respect the rules specific to the youth section he is a member of.

²¹⁶ Bar of Liège, Regulation on the admission conditions on the list of voluntary lawyers practicing youth law, 1 July 2013.

²¹⁷ AVOCATS.BE, Code of conduct of the lawyer, pre-cited, title 4, chapter 7. The specialist, within the meaning of this Code, means a lawyer who has a thorough knowledge, experience and practice of a specific matter of law. The title of specialist shall be assessed on the basis of all the evidence demonstrating the existence of theoretical knowledge and a specific practice, such as academic or scientific qualifications, training received, participation in Seminars or congresses, internships with a specialist or within a company or institution in the field of specialisation, publications, courses, cases handled, testimonies of competences, etc.

²¹⁸ Interviews 1 and 2 of 15 December 2016 with a lawyer.

²¹⁹ Bar of Nivelles, Internal regulation, 2010, art. 14.

²²⁰ V. LUISE, « Le statut de l'avocat du mineur », *R.A.J.e.*, 2011, n° 5, p. 5.

²²¹ This is the case, for example, with training organised by Youth & Law: <http://www.idj.be/>.

²²² AVOCATS.BE, Regulation of 14 novembre 2016 amending article 2.24 of the Code of conduct of the lawyer, *M.B.*, 12 janvier 2017, p. 1677.

²²³ For a period of two years from the entry into force of the Regulation.

The new regulation amending the code of conduct of AVOCATS.BE enters into force on 1 May 2017 and should help to ensure a **quality defence** for minors as well as a **better uniformity** between the different youth sections within AVOCATS.BE.

Despite the regulation on the defence of a minor and the colossal work done by the youth lawyers for many years, it is clear that it can be difficult for the smaller bars, with a reduced number of youth cases, to organise comprehensive trainings. Confronted with this observation, two lawyers from Brussels created the website www.droitdelajeunesse.be. This site covers several themes related to youth law in the form of theoretical presentations and video capsules. The aim of this initiative is to provide access to training tools for all bars, including the smallest ones, and thus to improve the dissemination of youth law towards all lawyers.²²⁴ The central training organised in the Flemish Community (see below) offers an excellent response to this problem regarding of the lack of resources of some bars.

Finally, it should be noted that a lawyer who is not on the list of voluntary youth lawyers could, if he agrees to be remunerated through legal aid or if the minor has his own resources to pay the fees, defend a minor without meeting the conditions of training or specialisation in youth law. This possibility is provided in respect for the principle of **free choice of the lawyer** which wants the minor to be able to choose any lawyer, whatever subjects he practices.²²⁵

b) Within the OVB

On the Flemish-speaking side, the OVB has not adopted any binding regulation for lawyers who intervene for minors. However, the OVB voted a **recommendation** in 2005 **on the appointment of youth lawyers**.²²⁶ This recommendation states that, among other things, to be included in the voluntary youth list, lawyers must have followed (or committed to)²²⁷ **the specific training in youth law** organised by the OVB. If two bars have not followed this recommendation²²⁸, the initial training to be able to register on the list of voluntary youth lawyers is the same for all Flemish lawyers of the other 11 bars, contrary to the more disparate French practice.

Since then, the OVB, in partnership with universities, organises every two years an 80-hour training course in youth law. The training is organised during the day or evening and is provided either in Ghent and Antwerp or in Brussels and Bruges. The next session will start in September 2017 and will take place in Brussels and Bruges. At each edition, 120 lawyers can participate in this multidisciplinary training which includes both theoretical legal, psychological and social aspects. The lawyer who follows this training also has to solve a complex problem and follow 20 hours of training with a lawyer specialised in youth law. Finally, **a day of practice is devoted to communication with young people** and is done in the form of role play.²²⁹ The lawyer who passes this training will hold the certificate "Special Training in Youth Law". If training professionals believe that a lawyer can not work with children, they may deny him the accreditation of the training.²³⁰ The opinions gathered on the usefulness of this training are unanimously positive (in particular on the practical exercises and role plays).

It should be noted that it is up to each bar to decide whether lawyers must take this specific training to register on the list of voluntary youth lawyers and whether they are the only ones able to defend

²²⁴ Interview 1 of 15 December 2016 with a lawyer.

²²⁵ Focus group of December 21, 2016 with lawyers.

²²⁶ OVB, Recommendation on the appointment of youth lawyers, 7 December 2005. (**Appendix 6**)

²²⁷ Jud.C., art. 508/7, al. 4.

²²⁸ Bruges and Oudenaarde.

²²⁹ <http://www.ordeexpress.be/artikel/91/1090/ovb-organiseert-bijzondere-opleiding-jeugdrecht-2015-2016>.

²³⁰ Interview 2 of 7 December 2016 with a lawyer.

minors in court, even if the lawyer is chosen by the minor and not designated by the LAO. For example, at the bar in Bruges, an untrained lawyer may register for the youth on-call service or a lawyer who does not intervene in legal aid can take a youth case. At the Bar of Oudenaarde, there is no youth office and no training is provided to lawyers regarding this matter. In both Bruges and Oudenaarde, trainees who haven't taken part in the training can also be entrusted youth cases. Everywhere else (11 other Flemish bars), lawyers who wish to register on the list of voluntary youth lawyers will have to follow the OVB training mentioned above.

In order to further strengthen and standardise the practice among the Flemish Bars, the "Union of Youth Lawyers" initiative was launched in 2009 in Antwerp. This association²³¹ consists of youth lawyers recognised by the OVB as a result of the success of the 80-hour training. The association pleads for the recognition of the status of "youth lawyer". To this end, it contributes to the elaboration of the specific training and advocates legal recognition of it as a *sine qua non* condition for obtaining the official status of "youth lawyer". The association also wants to strengthen youth work by working with the Flemish Bars and the OVB.²³²

c) Field knowledge

Although this can not be taught and depends on the motivation of lawyers, it seems essential that the lawyer who works for the defence of minors knows the realities of the youth aid and protection field. By this we mean a knowledge of the institutions and associations present in the environment of the minor as well as the projects that are carried out by them. This ideally takes place through a joint meeting between the professionals who carry out these projects. This knowledge of the possibilities and projects that exist allows the lawyer to - after having discussed it with the minor - make alternative proposals to the judge, to try and set up a more creative and adapted framework. Field knowledge is an important pillar of the defence of a minor, as well as knowledge of the law and minor's psychology.

3.3. Access to legal aid

Most young people are not aware of their right to free legal representation before they are brought to court.

Belgian legislation contains some provisions on legal aid information.

Firstly, the CLA's mission is, *inter alia*, "to ensure that information about the existence and conditions of access to legal aid is disseminated, especially to the most vulnerable social groups. This dissemination takes place where legal aid is provided, as well as, in particular, in court registries, prosecutors' offices, bailiffs, municipal administrations and public welfare centres in the judicial district".²³³ The law does not provide further details on how to disseminate information. For example, the CLA of the Bar of Arlon financed a brochure on the theme "the minor and his lawyer", distributed to young people via youth welfare services, the CPASs, the courts of justice, to every minor to whom a lawyer is assigned. This brochure provides information on how a minor can benefit from the intervention of a lawyer.²³⁴

Secondly, as stated above, prior to his first hearing by the police about the alleged offences, the minor receives a **statement of his rights** in writing. This statement mentions the possibility of using legal aid: "*under certain legal conditions, you can call on a lawyer through the legal aid system, which*

²³¹ <http://www.jeugdadvocaat.be>.

²³² Statutes of the association "Unie van Jeugdadvocaten", art. 3. 1° to 7°.

²³³ Jud.C., art. 508/3, 3°.

²³⁴ http://www.jeunesseetdroit.be/jdj/documents/docs/fiche_Avocat_du_Mineur_ok.pdf.

is totally or partially free. You can request the form with these conditions. You then ask for the appointment of a lawyer to the legal aid office of the bar ".²³⁵ This information is included in the declaration of rights given to the suspects whether they are deprived of their liberty or not.

Thirdly, a lawyer who is consulted by a young person outside the legal aid system has the obligation to inform the minor of his right to legal aid, even if he does not practice legal aid.²³⁶

a) What are the conditions to benefit from legal aid?

First-line legal aid is open to all, without any conditions of nationality, regularity of stay or income and it is totally free.²³⁷ In order to benefit from first-line assistance, the minor must go to a competent office. To do this, he must inquire about the places and schedules of the offices in his judicial district. The minor can obtain information from CPAS' social workers, open environment support services (AMO), on the internet, etc. Some services can also be held within an IPPJ.²³⁸

Second-line legal aid is also available to any natural person, regardless of nationality or regularity of stay. Some categories of litigants can benefit from free legal aid.²³⁹ This is the case for minors who can still benefit from the help entirely free of charge on presentation of their identity card or any other document establishing their status.²⁴⁰ A minor who becomes an adult and has to appear under the Law of 1965 for acts committed during his minority continues to be regarded as a minor and benefits from the irrefutable presumption of indigence.²⁴¹

3.4. The appointment of a lawyer

There are two ways in which a minor can benefit from second-line assistance: through appointment or by automatic assignment.²⁴²

Concerning the appointment, several scenarios are possible:

- the minor first contacted the first-line legal aid office and was referred to the LAO who can appoint a lawyer²⁴³ ;
- the minor can also turn directly to a lawyer whose name appears on the list of voluntary lawyers for second-line legal aid;
- in the event of an emergency, the lawyer may be designated by the LAO as part of the childcare service (Salduz staff, for example);
- a social service can also apply on behalf of the minor (the CPAS for example)²⁴⁴.

Lawyer assignment is the process of appointing a lawyer for the minor who did not choose any, whereas the law stipulates that the assistance of a lawyer is compulsory. In this case, the Bar or the LAO will assign a lawyer whose name appears on the list of voluntary lawyers. This is the procedure provided for by article 54*bis* of the Law of 1965.²⁴⁵

²³⁵ R.D. of November 23, executing article 47*bis*, § 5, of the Code of Criminal Procedure, *M.B.*, November 25, 2016, p. 78336, annex.

²³⁶ AVOCATS.BE, Code of conduct of the lawyer, 1^{er} juillet 2016, art. 5.10.

²³⁷ Jud.C., art. 508/5, §2.

²³⁸ This is the case at the PICP of Fraipont, see note 7.

²³⁹ Jud.C., art. 508/13.

²⁴⁰ R.D. of 18 December 2003 determining the conditions of the entirely or partly free benefice of second-line legal aid and judicial assistance, *M.B.*, 24 December 2003, p. 60559, art. 1^{er}, §4.

²⁴¹ A. DE TERWANGNE, « The Impact of Legal Aid Reform on Youth Law Procedures », *J.D.J.*, 2016, n° 360, p. 29.

²⁴² AVOCATS.BE., *Legal Aid in the Everyday - Legal Aid Memorandum*, *op. cit.*, pp. 23-24 ; Jud. C., art. 508/9; 508/12; 508/21 and 508/23.

²⁴³ The lawyer who intervened for the minor in the context of the first line cannot be designated for the second line, except in an emergency or with the express consent of the LAO, Jud. C., art. 508/12.

²⁴⁴ AVOCATS.BE and OVB, *Compendium – second-line legal aid*, 1st September 2016, p. 27.

²⁴⁵ L. of 8 April 1965, cited above, art. 54*bis*.

A minor who is in conflict with the law will, in the vast majority of cases, be assisted by a court-appointed lawyer or a lawyer appointed by the LAO and who was therefore not chosen by the minor himself. . These two methods of assigning a lawyer are thus provided by the LAO (or the president of the Bar in certain cases), and have the particularity of " *not complying with the traditional laws of the market. Contrary to what happens in the context of a private clientele, the lawyer is not chosen by the minor, for example, when recommended by other people. Most of the time, the minor is given a lawyer on the basis of criteria he does not understand* ".²⁴⁶

Finally, it should be emphasised that **the lawyer** who is appointed or assigned within the legal aid system **is the minor's lawyer and is in no way the parents' lawyer**. He does not receive instructions from the minors' parents.²⁴⁷ At the French speaking bar in Brussels, for example, it is absolutely forbidden for the lawyer's fees to be paid by the parents in order to avoid any conflict of interest. This rule is not applied in all bars. The lawyer works *ex officio* as part of legal aid and is considered indispensable.²⁴⁸

3.5. Changing lawyer

Minors receiving legal aid can request the replacement of the lawyer who was assigned to them at the LAO. However, this request can only be formulated in the event of a breach of trust or because of a serious reason. This rule is the result of the combination of the principles of the free choice of lawyer and the obvious justification of the demand, both principles are guaranteed by law.²⁴⁹

*"There is the principle of assignment, but there is also the principle of the free choice of lawyer. A minor who is assigned a lawyer has the possibility to change lawyer but he has to motivate his decision. If the minor experiences difficulties to communicate with his lawyer or if the minor considers that his lawyer does not take good care of him, he can go to the competent sections at the LAO and explain his situation. Minors often tell us that it does not work with their lawyer, that they feel they are not defended properly. When the complaint seems to be grounded, we accept it because we know the lawyers, we know how everyone works, we know that some are more dedicated than others. We often accept the first request for a lawyer replacement In some situations, we allow minors to change lawyer twice but we try to prevent it from becoming a form of shopping."*²⁵⁰

The procedure that allows the minor to change lawyer is not complicated in itself, it is the process that can be source of difficulties. The minor does not usually know who he has to contact to appoint another lawyer or which procedure he has to follow.²⁵¹

As for **the designated lawyer**, he can also ask the president of the LAO to be replaced. The president judges the advisability of such a measure. Reasons for replacement could be, for example, a breach of trust with the client or fear for the physical integrity of the designated lawyer.

The lawyer remains in charge of the case until the president of the LAO has made his decision. If he allows the replacement, the president informs the minor and the lawyer. His decision is not open for

²⁴⁶ DE TERWANGNE A., « Aide juridique en droit de la jeunesse : vers un service public au rabais ? », *J.D.J.*, 2013, n° 323, pp. 16-17.

²⁴⁷ AVOCATS.BE, Code of conduct of the lawyer, 1st July 2016, art. 2.21. No article on this subject appears in the Code of conduct for youth lawyer of the OVB, 31 May 2016.

²⁴⁸ Interview 2 of 15 December 2016 with a lawyer.

²⁴⁹ AVOCATS.BE, *Legal Aid in the everyday - Legal Aid Memorandum, op. cit.*, pp. 26-27 ; AVOCATS.BE and OVB, *Compendium – second-line legal aid*, 1st September 2016, p. 57 ; OVB, Code of conduct of youth lawyers, 31 mai 2016, art. 122 and 123.

²⁵⁰ Interview 2 of 15 December 2016 with a lawyer.

²⁵¹ Focus group of 21 December 2016 with lawyers.

appeal.²⁵² It is thus a discretionary power of the LAO president and the succession of the lawyer is made easier or more difficult from one to another LAO involved.²⁵³

*"Sometimes the minor is not responsible for the change. When lawyers leave the section, are no longer designated or are no longer following the trainings, for example. But we try to avoid that, because in order for the minor to have confidence in his defence, it is very important for him that his lawyer is not replaced. We also insist on the lawyer taking care of the situation himself. He may have to be replaced, but the responsibility cannot be left to an organisation that delegates systematically"*²⁵⁴

Finally, some bars provide for a prohibition of the succession right in some situations. For example, at the **Brussels bar**, it has been decided that a lawyer assisting the minor at a Salduz interrogation cannot be appointed as the lawyer in charge of his all case. This rule applies whether it is a "salduz" hearing by a police officer, judge or prosecutor. The rule was implemented after it was found out that some lawyers volunteered for a number of offices to collect more cases, but were unable to ensure a proper follow-up.²⁵⁵ On the other hand, the **Antwerp bar** has provided that the succession right is the main rule. The lawyer who will assist the minor from the first moment in the frame of the Salduz service will become the minor's lawyer for the whole case.²⁵⁶

3.6. The funding of legal aid and the remuneration of lawyers

a) Functioning

The first-line legal aid is financed by the State and the budget devoted to it has only increased through indexation since 2001. It is divided among the CLAs on the basis of so-called "objective" criteria, such as the number of inhabitants (40%), the number of social integration income beneficiaries (15%), the number of beneficiaries of the income for elderly people (15%), the number of unemployed people receiving allowances (10%) the number of youth court judgments (10%), and the number of charged detainees (10%). At least 90% of the budget allocated to the CLA should be used for the organisation of the first-line legal aid.²⁵⁷

As a general rule, lawyers who provide first-line services are paid at an hourly rate. Thus, the distribution of the budget among the various CLAs has for consequence that lawyers participating in the system will be paid differently according to the judicial district their action takes place in.²⁵⁸

Regarding **the second-line legal aid**, lawyers are paid through a "point" system, with a number of points allocated per service defined by the legislator.²⁵⁹ When he has completed all the tasks of the procedure for which he was appointed, the lawyer draws up a "closing report". For youth law proceedings (for welfare ones only), the lawyer can exceptionally report annually.²⁶⁰ Whereas for other matters a lawyer has to be appointed for each procedure, for the welfare procedures the

²⁵² AVOCATS.BE, *Legal Aid in the everyday - Legal Aid Memorandum, op. cit.*, pp. 26-27 ; AVOCATS.BE and VFB, *Compendium – second-line legal aid*, 1st September 2016, p. 57 ; OVB, Code of conduct of youth lawyers, 31 mai 2016, art. 122 and 123.

²⁵³ Focus group of 21 December 2016 with lawyers.

²⁵⁴ Interview 2 of 15 December 2016 with a lawyer.

²⁵⁵ *Ibid.*

²⁵⁶ Interviews 1 and 2 of 7 December 2016.

²⁵⁷ AVOCATS.BE, *Legal Aid in the everyday - Legal Aid Memorandum, op. cit.*, pp. 10-12.

²⁵⁸ S. BOONEN, *Legal Aid*, Louvain-la-Neuve, *Anthemis*, 2009, pp. 74-75.

²⁵⁹ Jud. C., art. 508/19.

²⁶⁰ He must then apply for a new designation for the following year: AVOCATS.BE and OVB, *Compendium - second-line legal aid*, September 1, 2016, p. 45.

lawyer has a permanent assignment.²⁶¹ This report shall be accompanied by any document attesting the services performed by the lawyer.

Then, points are awarded to the lawyer, for each service ²⁶², on the basis of the ministerial decree fixing the nomenclature for services provided by lawyers (a point corresponding to one hour of service).²⁶³ For example, a youth court for an ADCO is worth 6 points, a court appearance (in front of the youth judge) is worth 3 points, a prior confidential consultation (during the first hearing by the police) with a minor not deprived of his liberty is worth 0.5 point in the lawyer's office and 1.5 points outside his office.

b) Problems raised

The **nomenclature of the points** to be awarded per service presents a **first difficulty** with regard to the remuneration of lawyers: certain services, although costly in time and investment, are only slightly compensated or even not compensated at all. This is the case, for example for IPPJ visits for which only the journeys are reimbursed. For example, a Brussels lawyer will need at least 5 hours to visit his young client at the IPPJ of Saint-Hubert and will only be able to receive a flat rate to cover his travel expenses.

Assistance during the hearing by the police is remunerated by 2 points, which should correspond, in the mind of the legislator, to 2 hours of service. However, the lawyer who would be contacted by the on-call service to assist a minor in the police station does not know prior to the hearing how many hours it will take and he will be paid the same way for a 2 or a 6 hour hearing.²⁶⁴

The **second difficulty** related to the system of lawyers' remuneration in legal aid is the **point value**. This is determined each year, mainly on the basis of the amount allocated to legal aid payments provided in the State's annual budget. The issue is that the amount allocated to legal aid comes in the form of a closed envelope, it is a fixed budget established at the beginning of the year. As a result, the more cases dealt within a given year, the higher the number of points awarded, the smaller the amount of the allowance per point. Thus, the value of the point - which is not high to begin with – does not increase, and even decline with time, and does not adjust with the inflation.²⁶⁵ No other profession is subject to these kind of decreases in income.²⁶⁶

In addition, the way the second-line legal aid works has led to a flaw in the system. Some lawyers do quality work that requires time and energy, which is only paid for with a low pay. Others, on the contrary, provide the minimum and are awarded the same number of points as their colleagues. This tends to encourage more "quantity" than "quality". Coupled with the closed envelope system, lawyers find themselves in a vicious circle where, by promoting quantity, they decrease the point value. It should be noted, however, that some bar associations have a true quality policy.²⁶⁷

Regarding the point value, it is important to clarify that the new nomenclature of legal aid was drawn up on the basis of a proposal from the OVB that 1 hour would be equal to 1 point and the gross

²⁶¹ "A single designation for the summary and substantive proceedings. In the event of a change in circumstances or new facts, no new designation shall be made; The maintenance of the conditions for the provision of free legal aid will be verified by the designated lawyer ": AVOCATS.BE, *Legal Aid in the everyday - Legal Aid Memorandum, op. cit.*, p. 25.

²⁶² The President of the LAO may reduce the number of points requested depending on the quality of the services performed.

²⁶³ Ministerial Order of July 19, 2016 establishing the points nomenclature for services rendered by lawyers responsible for second-line legal aid, partially or completely free of charge, art. 1, para. 2. The nomenclature was completely amended in 2016, see. p. 54 for more details.

²⁶⁴ Interview 2 of 15 December 2016 with a lawyer.

²⁶⁵ NICC, p. 16. The report from 2012, the statistics are available until the year 2010-2011.

²⁶⁶ Note from Maître J-M PICARD, administrator of AVOCATS.BE, "the value of the point decreased by 4%", February 2015 <http://open.barreaudeliege.be/wp-content/uploads/2015/03/note-JM-PICARD-la-valeur-du-points-2015.pdf>.

²⁶⁷ NICC, *op. cit.*, p. 101.

hourly rate would be of 75 EUR.²⁶⁸ However, the legislator kept this new grid of points - which drastically reduces the number of points allocated per task²⁶⁹ - but did not provide for any minimum point valuation.²⁷⁰ The system should be refinanced through the introduction of two flat-rate contributions to the second-line legal aid paid by the recipient. Certain categories of beneficiaries are exempt from those contributions, including minors for whom second-line legal aid remains entirely free. Both contributions are to be paid to the lawyer- the first of 20 euros for the appointment of a lawyer and the second of 30 euros per instance²⁷¹ - and a "legal aid fund" has been created and is financed, *inter alia*, by an increase of the criminal fines. According to the Minister of Justice, these measures should make it possible to reach, step by step, the amount of 75 EUR for the remuneration to be paid per point.²⁷²

However, the positive effects that can be expected from this "refinancing" of legal aid should be nuanced. Since the government has decided to keep the closed envelope system, it remains impossible to guarantee that the point will be worth 75 EUR. Moreover, the reception crisis taking place in Belgium as well as the new provisions concerning the assistance by a lawyer during an interrogation, which extend this right to a greater number of situations (legislation *Salduz bis*)²⁷³, will certainly have an impact on the number of cases that are dealt with in legal aid. The new provisions will also result in a heavier workload for lawyers (collection of flat-rate contributions and examination of incomes among other things). (*Salduz bis* legislation).²⁷⁴ Finally, it should be noted that the Legal aid fund has not yet been established and that enforcement of criminal fines is still an issue in Belgium.²⁷⁵ Currently, the new point value is estimated to be around 50 EUR, which makes it possible to evaluate the impact of the reform to a reduction of 15 to 30% of the allowances of youth lawyers, depending on the type of case.²⁷⁶

A third problem with the current legal aid system is the **delay in the payment of the LAO allowances to lawyers**. Indeed, lawyers are compensated with a significant delay that can go up to two years after having filed their closing report²⁷⁷, to which has to be added the uncertainty regarding the point value. This has the effect of placing pro bono lawyers in a precarious situation, not knowing exactly how or when they will be paid. What worker would accept to be paid with a delay of almost two years, on the basis of a salary regarding which he has no guarantee?²⁷⁸

In order to fight the difficulties raised by the reform of legal aid, 20 Belgian non-profits associations and an individual have brought an application for annulment of the Law of 6 July 2016 amending the Judicial Code as regards legal aid before the Constitutional court²⁷⁹. DCI-Belgium is a plaintiff in the case and has a clear interest in bringing an action against this law which, while maintaining free legal aid for minors, restricts access to legal aid for the poorest families. And minors in conflict with the law often come from precarious families and environments. They will often be referred to as "minors in danger" before they are labelled "delinquents." Throughout all the procedures they are involved

²⁶⁸ The Orders consider that the minimum remuneration for the exercise of the profession to be viable is 75 euros per hour.

²⁶⁹ For example, the assistance for the youth court for an ADCO, which is worth 6 points, was worth 20 points before the reform.

²⁷⁰ A. DE TERWANGNE, « The Impact of Legal Aid Reform on Youth Law Procedures», *J.D.J.*, 2016, n° 360, p. 36.

²⁷¹ R.D., 3 August 2016 amending the R.D. of 18 December 2003 determining the conditions of the entirely or partially free benefice of second-line legal aid and legal assistance, art. 3.

²⁷² Law proposal to amend the Judicial code on legal aid, report on behalf of the Commission of Justice, by S. BECQ et O. OZEM, *Doc. parl.*, ch. repr., sess. ord. 2015-2016, n° 54-1819/003, p. 32 and 43.

²⁷³ Law proposal on rights for individuals subject to interrogation, text adopted in the plenary meeting, *Doc. parl.*, ch. repr., sess. ord. 2015-2016, n° 54-2030/09.

²⁷⁴ Law proposal to amend the Judicial code on legal aid, report on behalf of the Commission of Justice, *op.cit.* p.59.

²⁷⁵ The Court of Auditors points out the lack of enforcement of criminal fines in its audit report of 2014: Court of Auditors, Enforcement of criminal fines - follow-up audit, Brussels, January 2014.

²⁷⁶ A. DE TERWANGNE, « The Impact of Legal Aid Reform on Youth Law Procedures», *J.D.J.*, 2016, n° 360, p. 37.

²⁷⁷ NICC, *op. cit.*, p. 100.

²⁷⁸ This question raised by the former President of the Liège Bar is unfortunately still relevant: Press release from the President of the Liège Bar on 1 August 2013, <http://www.barreaudeliège.be>, p. 2. See. Also: A. DE TERWANGNE, "The Impact of Legal Aid Reform on Youth Law Procedures", *J.D.J.*, 2016, No. 360, p. 37.

²⁷⁹ Filed at the registry of the Constitutional Court on 16 January 2017.

in, it is essential that their parents and their families, can also be assisted by a lawyer and have access to justice.

It seems that a last difficulty has recently been added to the previous ones. The LAO of each bar is responsible for drawing up the form that the litigant must complete in order to obtain legal aid. Since the reform of the Law on Legal Aid came into force in September 2016, this form seems to have become a real headache for both lawyers and litigants. The LAO in Tongeren, for example, provides that a four-page form should be completed by the minor seeking second-line legal aid.²⁸⁰ This **form is long, tedious to fill and totally unsuited to the capacities of most of the minors** it is addressed to. This type of administrative restraint is a considerable obstacle to the exercise of the rights of minors from vulnerable backgrounds.²⁸¹ These procedures, supposedly set up to detect cases of fraud, represent counterproductive measures which hinder the effectiveness of the legal aid system.

c) Interpretation costs

Finally, **interpretation costs** are also borne by the State.²⁸² When the legal aid applicant does not speak the language of the proceedings and no "appointable" lawyer speaks his language or any other language that he understands, an interpreter may be appointed by the LAO.²⁸³ The latter will be paid up to a maximum of 3 hours of work, according to a rate of fees decided by the LAO.²⁸⁴

However, it has been found that in practice the interpreters are paid with considerable delay and that their remuneration is insufficient. Thus, many interpreters do not bother to travel anymore.²⁸⁵

Note that for translators, on the other hand, the law does not foresee any specific intervention by the State.²⁸⁶

3.7. Judicial assistance²⁸⁷

Judicial assistance is a financial aid which covers the costs of the proceedings, that is to say, the fees for registrations, transcripts, the costs of bailiffs, etc. If the potential beneficiary is a minor, his lawyer will solicit support from the LAO.

In the field of youth law, the main difficulty with judicial assistance is that it does not allow the minor's lawyer to carry out cross-examinations. However, as the justice aims to get more and more "scientific" and uses numerous experts, it is essential that the minor is also able to benefit from the analyses realised by the specialists he has chosen, in order to be able to put into perspective the reports of the psychiatrists and other specialists, which tend to bear an important weight in the decisions made by the judge

It is therefore necessary, for the sake of the right to a fair trial, for judicial assistance to enable youth lawyers to resort to the expertise of specialists in order to "balance the reports" before the judge.

²⁸⁰ This point was brought to our attention by an association and a staff member of an institution.

²⁸¹ A case of refusal by a lawyer to assist a minor would have already been recorded by the association on this basis.

²⁸² Jud. C., art. 508/10.

²⁸³ AVOCATS.BE and OVB, *Compendium – second-line legal aid*, 1st September 2016, p. 40.

²⁸⁴ CCP art. 184bis, al. 4.

²⁸⁵ DCI-Belgium, « Procedural rights of foreign juveniles suspected or accused in criminal proceedings in the European Union (Pro-Jus) » Belgian national report, 2016, p. 28.

²⁸⁶ AVOCATS.BE and OVB, *Compendium – second-line legal aid*, 1st September 2016, p. 40.

²⁸⁷ R.D., 3 August 2016 amending the R.D. of 18 December 2003 determining the conditions of the entirely or partially free benefice of second-line legal aid and legal assistance, *M.B.*, 10 August 2016.

4. Socio-legal defence centres

The work of the Socio-legal defence centres (hereinafter "the Centres") consists of providing direct access to justice and good legal and social assistance to children. To do this, the centres provide information, refer minors to other services when necessary, provide legal advice and can also represent the minor or his family in court in certain specific procedures. A Socio-legal defence centre is a place where children and/or adults can go and have access to a welcoming environment to report violations of or threats to children's rights while guaranteeing professional help focused on the child.²⁸⁸

The aim of these centres is to enable young people to play an active role in various aspects of their lives and not to be the passive subjects of decisions affecting them. Their participation must be voluntary.

The Socio-legal defence centres carry out individual actions as well as collective actions.

In Belgium, we have identified two organizations whose work corresponds to the definition of a socio-legal defence centre: the French-speaking *Service droits des jeunes* (Juvenile rights service) and the *Kinderrechtswinkels* (Children's rights shops) on the Dutch-speaking side.

4.1. Juvenile rights services²⁸⁹

Juvenile rights services (*Services droits des Jeunes* hereinafter "SDJ") were established in 1978 in Brussels, then in Liège, Namur, Mons, Charleroi and Arlon. They are approved and subsidised by the Ministry of Aid for youth of the Wallonia-Brussels Federation as open environment support services (hereinafter "AMO") and specialised mainly in legal aid services.²⁹⁰

The SDJs are therefore social services that provide social and legal assistance and aim to fight social exclusion and promote the autonomy of young people and families. They want to allow them to know their rights in order to make informed choices. They have a founding charter and a common pedagogical project. The SDJs work without a mandate and provide free and non-binding assistance to young people, families and professionals who request their assistance.

These services include social workers and lawyers who base their action on using the law in order to help their beneficiaries and offer secrecy to the latter. They have developed expertise in all areas of law relevant to young people and their families, namely school law, parental authority, social assistance, family law, foreigners' rights, youth protection, etc. They also organise training courses for professionals.

The work of the SDJs has two main focuses: individual assistance and community action. The individual mission is accomplished through the organisation of both physical meetings and on-call services. SDJs also receive e-mail requests. When asked to do so, the SDJs staff members will work with a consultant to find answers to the problems they encounter.

As for community actions, they are based on the experience of the professionals in their individual assistance work which will sometimes underline certain dysfunctions of the system. The SDJs will then

²⁸⁸ For this project, we used on the definition of centres of social and legal defence as conceived by Defence for Children International (DCI-International) (Defence for Children International, "Socio-Legal Defence Centres: A model to realise children's rights, pp.1-3).

²⁸⁹ This section is based on information available on the website www.sdj.be.

²⁹⁰ Gov. D. of the Wallonia-Brussels Federation of 15 March 1999 on the specific conditions for the grant approval and procedure for open environment support services, *M.B.*, 1er juin 1999, p. 196663.

aim to offer a global response to those issues. To this end, the SDJs set up specific projects and call on the political, social, administrative or associative bodies.

Parallel to those two main focuses common to all the SDJs as presented above, each SDJ conducts projects linked to certain problems, sometimes specific to its region. For example, the SDJ of Arlon collaborates with the Inmate assistance service to accompany and inform minors who are “divested”²⁹¹ and are detained at the Saint-Hubert closed community centre.

In Namur, the SDJ is part of a working group on the "lawyer of the minor", which aims to review the practices of lawyers and to see the evolutions brought to life by the actions carried out by the group. They developed a "youth lawyer" game - available in all SDJs- and recently launched a major campaign to interview young people as young as 12 years about their lawyer.

In Liège, the SDJ is part of the AMO platform of Liège which set up a space for divorced parents. Similar services are available in Charleroi and Verviers and aim to offer a space for information, meeting, reception, support and listening to divorced parents. In order to ease conflicts and find a balance for their well-being and that of their child.

In Brussels, the SDJ set up a specific project: the platform for minors in exile. This bilingual platform aims to coordinate the actions of professionals working with unaccompanied foreign minors and minors accompanied by their parents in a precarious or irregular situation. Platform activities include training and advocacy.

4.2. Children's Rights Shops²⁹²

Children's rights shops (*Kinderrechtswinkels* hereinafter KRW) were created in 1987 in Bruges, inspired by the Dutch homonymous organisations²⁹³ and the Walloon and Brussels SDJs. Since the original centre in Bruges was closed in 2010, only one centre (in Ghent) is active today.

Initially exclusively working with volunteers, the KRW has benefited since 1997 from various community and provincial subsidies.²⁹⁴ The funding is still clearly inferior to the needs of the association and is the cause of certain dysfunctions (see *below*).

The KRW pursues a fourfold objective:

- a) It provides information services and individual advice during two afternoonservices per week at its offices in Ghent. Young people and adults (including youth workers) can come and ask questions related to children's rights (including the rights of minors in conflict with the law) and receive free information and advice. Questions can also be asked by e-mail and on a forum on the association's website (virtual KRW).²⁹⁵
- b) The KRW also pursues an objective of collective information, which it carries out through training and teaching materials for children and professionals. An important product of this

²⁹¹ See the divestiture procedure (part 2.3, page 25).

²⁹² This section is based on the information available on the website <http://www.kinderrechtswinkel.be>.

²⁹³ Information on <http://kinderrechtswinkel.nl>.

²⁹⁴ Until 2017 inclusive, Community financing of the CRS is provided by a subsidy from the Youth division of the Social cultural work agency (part of the Flemish Government) on the basis of the decree of the Flemish government of 14 September 2012 implementing the decree of 20 January 2012 on a renewed youth and child rights policy, *M.B.*, 24 October 2012, pp. 65334-65337. For a description of the financing conditions and procedures, see. <http://www.sociaalcultureel.be/jeugd/participatie.aspx>.

²⁹⁵ If the forum does not seem to be used that much, emails represent a large part of the files handled by the CRS (several dozens per day). As far as the virtual CRS is concerned, it seems to have been partially replaced by the (very popular) site of the association « Awel » (see *below*), with whom they are now actively cooperating.

work is the magazine "*t Zitemzo*", designed to explain to young people, in an adapted language, the scope of their rights and the functioning of the aid institutions and youth protection.²⁹⁶ A reference to this magazine is also made on the website of the Union of Flemish youth lawyers (*Unie van jeugdadvocaten*, see above).

- c) The KRW also seeks to promote young people's access to legal aid, by directly connecting young people who are confronted with the law with youth lawyers who are willing to advise and defend them.
- d) Finally, the KRW pursues a general objective of social action and accompaniment by cooperating in various working groups aimed at strengthening the position of young people in society and encouraging decision-makers to respect international human rights instruments related to children's rights. In this context, the KRW cooperated in the preparations for the Flemish Decree *Legal position of the minor in the integral youth care*, a comprehensive planned reform of youth aid in Flanders (which mobilised various professionals mainly involved in social fields).

Recently, the KRW invested more in advising and training professionals (lawyers, social workers, etc.), while maintaining its role of individual advice and sensitisation. Its isolated situation in the Flemish community makes certain services difficult for many young people to access (despite their desire to constantly expand being postponed due to a lack of resources).

4.3. Other professionals involved in socio-legal aid

Several other social professionals in Belgium are involved in informing and assisting young people facing the justice system. Without being exclusively devoted to them, they play a decisive role in the exercise of their rights by young people in conflict with the law.

The *Kinderrechtencommissaris (KRC)*, through the *Klachtenlijn*²⁹⁷ (in the Flemish community), *Jongerenwelzijn*, via the *JO-lijn*²⁹⁸ (in the Flemish community), and the **General delegate for the rights of the child**²⁹⁹ (in the Wallonia Brussels federation), are public services responsible for answering questions and complaints concerning children's rights. Their practice includes general and specific information about rights and the resolution of conflicts between young people and institutions or between young people and those involved in the welfare system (including the lawyer).³⁰⁰

The association *Awel*³⁰¹ (financed by the Flemish community) is a very active listening service that answers all the questions and concerns of children, in all matters. It can be reached on a free phone number and a website, with a constantly active forum. The *Your Rights* section of the forum displays more than nine hundred headings (questions and answers on rights). Some articles are also written by the KRW and are referred to the KRW in multiple replies. The **103**³⁰² (financed by the Wallonia Brussels federation) offers a similar telephone service and is also very active, but does not offer an online service. It refers regularly to the SDJs for more technical legal issues.

²⁹⁶ This magazine was quoted in the interviews of children as a source of knowledge of their rights at the beginning of the contacts of the minor with the justice system. See <http://www.tzitemzo.be/>.

²⁹⁷ Information on www.kinderrechten.be.

²⁹⁸ Information on www.jo-lijn.be.

²⁹⁹ Information on www.dgde.cfwb.be.

³⁰⁰ The *JO-lijn* was mentioned several times by the children interviewed as a reference if they encountered a conflict with their lawyer or institution. Several situations of this type are also dealt with annually by the *Kinderrechtencommissariaat*.

³⁰¹ Information on www.awel.be.

³⁰² Information on www.103ecoute.be.

The centres *Infor-jeunes*³⁰³ (in Wallonia and Brussels) and *JAC*³⁰⁴ (in Flanders and Brussels), as general information services for young people, are also called upon to deal with many issues related to the procedural rights of young people and legal assistance. If necessary, they also refer young people to other specialised services (SDJ, KRW, police services, bars, Justice Palace, etc.).

4.4. Youth participation in the legal framework

The organisation *Cachet*³⁰⁵, in Flanders, plays a special role in terms of the legal position of young people facing justice. Founded and managed by former residents of closed facilities³⁰⁶, the organisation intends to engage placed minors, staff of the institutions and decision-makers in conversation, in order to positively influence the legal and institutional framework for youth aid. The association has recently been responsible for getting the voices of the minors concerned heard (collected during weekly meetings and creative camps) and involving young people in decision-making (on study days and General State Youth care) in the context of the preparation of the forthcoming reform of youth aid in Flanders.

Cachet also accompanies young people in their transition to autonomy and carries out general awareness-raising work to combat the prejudices and stigmatisation of young people who live or have lived in institutions.

³⁰³ Information on www.infor-jeunes.be.

³⁰⁴ Information on www.jac.be. The JAC is a youth division of the General Welfare Centre (*Centrum Algemeen Welzijnswerk*) (www.caw.be).

³⁰⁵ Information on www.cachetvzw.be.

³⁰⁶ In Flanders, there is (at present) only one placement system for both minors in danger and minors in conflict with the law. Element criticised in DCI-Belgium's "Children's Behind Bars" project report, available on Research Report "Children Rights Behind Bars", 2014, http://www.childrensrightsbehindbars.eu/images/national-reports-2014/Rapport_BE_EN.pdf. Their legal position is almost entirely identical. Cachet works with both types of youth.

D. CONCLUSION

The question of the application of the European directives guaranteeing European citizens **procedural rights** when **suspected or accused in criminal proceedings apply to minors suspected or accused in welfare proceedings** now arises.

At first glance, Belgian legislation appears to grant such guarantees when it provides, *inter alia*, that a minor, regardless of the category to which he belongs, has the right of access to a lawyer, free of charge and during the entire procedure he is involved in.

In Belgium, **the right of access to a lawyer** includes **the right to legal assistance**. Accordingly, the minor can have free access to a lawyer from his first hearing by the police, the prosecutor or the investigative judge in exceptional cases. He has the right to freely consult his lawyer and to be defended by him whenever he appears before the youth court. Finally, the minor has the right to contact his lawyer and be assisted by him free of charge during the implementation of the measures that have been imposed on him by the youth judge.

While the Belgian laws are good in principle, their actual implementation has not been completed yet. Our field research confirmed this.

Although all the young people we met were assisted by a lawyer, many of them told us they could not define the **role and mission** of their lawyer, did not know him or had several, and some of the children's lawyers were paid by their parents. While it is true that most of the minors met were informed of their rights, some told us they did not understand them or could not remember them. Some minors even told us that they had been interviewed by the police in absence of a lawyer.

Finally, while the majority of these young people are placed, they tended to experience difficulties to reach their lawyer. These difficulties also have a **direct impact on the quality of the lawyer's work**. The latter will therefore not be able to determine clearly his role and mission or who has instructed him. In addition, the lawyer will be faced with problems of funding, access to the file, an overloaded agenda and availability.

In order to ensure a qualitative protection for minors, mechanisms have been put in place at various levels (at the federal level, at the level of the Communities, the Orders (AVOCATS.BE, OVB) the bars and the lawyers themselves).

Since the 1970s, "youth services" have been created and have gradually been implemented within the various bars. They are composed of voluntary lawyers specialised to advise and assist minors, mainly in front of the youth court, but also, if the young people wishes, in front of the SAJ, SPJ, the class council, etc. With the entry into force of the Salduz Law, a "Salduz Service" (and "Salduz Youth Service") has been set up and is composed of voluntary lawyers to assist the minor during each interrogation before the police, prosecutor or judge. However, these voluntary lawyers can only register for these lists when they meet certain conditions (specific training, for example) as defined, on the French-speaking side, in a binding regulation adopted in 2011 by AVOCATS.BE. On the Dutch-speaking side, most bars require lawyers to enrol in the list of voluntary youth lawyers and to have undergone special training organised by the OVB in partnership with universities and high schools. This is the result of a guideline adopted in 2005 by the OVB.

This training allows the lawyer to understand the role he must play when he is the lawyer of a minor. While there is no legal definition of the role, mission and mandate of a youth lawyer at the federal level, the regulation of AVOCATS.BE on the defence of a minor stipulates clearly what is expected of

the youth lawyer. On the Dutch-speaking side, there is no equivalent regulation. However, the majority doctrine and practice confirm that the role of the lawyer is that of defender and spokesperson of the child.

Finally, all the initiatives and inspiring practices that have emerged thanks to the activism and involvement of many professionals in the juvenile justice system should be highlighted and welcomed. Such progress could be made thanks to committed lawyers who wanted to improve the practices of their own profession. The professionals we interviewed in this study have a real desire to continue to fight in order to fully guarantee young people the rights granted to them, despite the working conditions they face.

Efforts are still required to ensure that inspiring practices become the rule and are applicable in order to create change. This report therefore attempts to be a first draft of such improvements and the recommendations, listed hereafter, aim to establish a system for youth lawyers that can function in a uniform, efficient and effective way at the national level.

E. RECOMMENDATIONS

The role and mission of the youth lawyer

To the federal legislator:

- To provide legal definition of the role and mission of the youth lawyer as a defence lawyer and spokesperson for the child;

To the Orders of lawyers:

- To define more accurately the role and the mission of the lawyer in the relevant regulations of AVOCATS.BE so that there is an uniformisation of the services offered by youth lawyers;
- To encourage the OVB to adopt a binding regulation in Flanders defining clearly the role and mission of the youth lawyer, the conditions of basic and continuous training, the conditions of access to the list of voluntary youth lawyers;
- To Give youth lawyers a recognised status (vis-à-vis lawyers practicing other fields than youth law, vis-à-vis professionals involved in the juvenile justice system; vis-à-vis the minors themselves);

To all professionals:

- To launch information and awareness-raising campaigns targeting specific audience, for example, in the training of all lawyers (to the Orders of lawyers) and all professionals in the juvenile justice system (to the Ministry of Justice), but also through the existing social and legal services (public and private) (to the Community authorities and the services themselves), who inform minors on the role of the lawyer (for example via school campaigns, via the work of the school's centre for students' counselling, the dissemination of information in closed facilities, etc.).

The principle of the free choice of lawyer

To the federal legislator:

- To encourage the intervention of the designated *dominus litis* whenever the assistance of a lawyer is required (e.g. any hearing requiring the presence of a lawyer, any appearance before the youth court, any disciplinary hearing in the institution, etc.);

To the Orders of lawyers:

- To guarantee the minor, to the maximum extent possible, the right to have the same lawyer (*dominus litis*) throughout the procedure (welfare and/or criminal)³⁰⁷ ;
- To have only one lawyer for the procedure (welfare and/or criminal) in order to avoid any risk of confusion and to promote the bond of trust. Ensure greater clarity in the succession of lawyers, if it occurs³⁰⁸ ;
- To remind the lawyer who is paid by the minor's parents that he can only defend the minor if there is no conflict of interests and that he guarantees a total independence from the instructions of the parents.

³⁰⁷ The prohibition of the succession right prescribed by certain bars (not Brussels) provides that Salduz lawyer, who assisted the minor at his first hearing, cannot remain the minor's lawyer for the rest of the procedure.

³⁰⁸ For UFM files, there should be collaboration between a youth lawyer and a lawyer specialized in foreigners' law.

Communication between the minor and his lawyer

To the lawyers:

- To Inform the minor that his lawyer is the person he can consult for any question about the procedure, his rights, the possibilities for appeal, etc.;
- To Promote appropriate means of communication (facebook, whatsapp, Skype) and also maintain a regular contact when the minor is placed (e.g. by the use of videoconferencing).

Communication between the professionals involved in the juvenile justice system

To the Community authorities and the Bar associations (in their campaigns):

- To invite other professionals in the juvenile justice system to encourage the young person to contact his lawyer whenever he has questions about his rights or the procedure;

To all professionals:

- To strengthen cooperation between the professionals of the juvenile justice system and to promote mutual knowledge of the roles and tasks of each other;
- To this end, it is encouraged to set up information exchange systems (a platform or an equivalent tool), to exchange contacts (telephone, Skype, etc.) and to provide interdisciplinary training to promote exchanges in the interest of the professionals, the system and the minors.

The guiding role of the youth lawyer

To the Orders of lawyers:

- To reinforce the guiding role of the youth lawyer throughout the entire procedure;
- To ensure that the lawyer is the reference person the minor can rely on throughout the entire procedure;

To the Bar associations and lawyers:

- To encourage the resale right when the lawyer intervenes for the first time at the stage of the first police hearing. If the *dominus litis* is sometimes replaced by another lawyer, ensure that the replacement is clearly explained to the minor and that all information is shared in due form by the substitute of the *dominus litis*;

To lawyers:

- In general, to discourage replacements, which are frequent and hard to take for the minors and weigh on the effective defence of the case.

Informing the child of his rights

To the federal legislator:

- To develop a written declaration of rights in a language appropriate to children (to be communicated to them before all interrogations and court hearings);
- To support the work of the socio-legal services (public and private) and to provide them with adequate funding;

To Bar Associations, lawyers:

- To ensure that the minor has a good understanding of the procedure, his rights and at all stages of the procedure (if necessary, remind them several times);

To socio-legal services:

- To invite socio-legal services to use tools adapted to the minors' needs (both in terms of content and form – e.g., to encourage video and digital applications, etc.) and to disseminate them as widely as possible;

To all professionals:

- To ensure that the minor has a good understanding of the procedure, his rights and at all stages of the procedure (if necessary, remind them several times);
- To promote collaboration and cooperation between the professionals of the juvenile justice system and other professionals involved with youth (schools, psycho-medical services, information services, etc.).

Free legal aid and Salduz (youth) services

To the federal legislator:

- To provide for adequate funding for the services of the legal aid lawyer;
- To provide that confidential consultation can take more than 30 minutes (for *model IV* hearings);
- To provide access to the file for lawyers (or at least information about the minor's background);
- To provide a legal description of the layout of the room for confidential consultation (in articles 47*bis* CCP and 2*bis*, §2 of the law on pre-trial detention);
- To sanction more severely when the right of access to a lawyer of the minor is violated;
- To always inform briefly the lawyer of the facts his client will be heard about and not only of their legal qualification (article 47*bis* CCP);

To the Ministry of Justice:

- To ensure the presence and competence of the interpreters during the hearings (for example, by examining interpreters on their linguistic knowledge, technical and procedural terms);
- To reform and improve the Salduz web application;
- To anticipate any new challenges that may arise following the entry into force of the Salduz *bis* law to avoid the unavailability of lawyers whose presence is required at each hearing;
- To organize the Salduz services within the LAOs of each bar and ensure that they are constituted of a minimum number of lawyers trained in youth law;

To the Orders of lawyers:

- To reform and improve the Salduz web application;
- To anticipate any new challenges that may arise following the entry into force of the Salduz *bis* law to avoid the unavailability of lawyers whose presence is required at each hearing;
- To organize the Salduz services within the LAOs of each bar and ensure that they are constituted of a minimum number of lawyers trained in youth law;
- To strengthen the links between professionals in order to promote the active role of the lawyer during the interrogations and court hearings and in the implementation of the measures pronounced by the youth judge (interdisciplinary training sessions for law enforcement officers or exchange of experience, for example);
- To fight the lawyer's delay in regard of the police interrogations by making the lawyer aware of the consequences this delay can have on the minor;

- To facilitate the presence of the lawyer by avoiding too much traveling by regrouping the "minors" cases, for example by organising the auditions of minors on fixed days at the police station;
- To facilitate the presence of the lawyer of the minor when he already has one, for example by communicating the contact details of the designated lawyer to the police zones, in order to allow the police to contact him or, if that proves to be impossible, to contact another lawyer from the Salduz services, who in turn can join the first lawyer following the hearing;
- To promote the intervention of trained youth lawyers for the minors whose hearing is postponed because they presented themselves without a lawyer (for *Model III* hearings);

To the Community authorities:

- To strengthen the links between professionals in order to promote the active role of the lawyer during the interrogations and court hearings and in the implementation of the measures pronounced by the youth judge (interdisciplinary training sessions for law enforcement officers or exchange of experience, for example);

To the lawyers:

- To fight the lawyer's delay in regard of the police interrogations by making the lawyer aware of the consequences this delay can have on the minor;

To police zones:

- To facilitate the presence of the lawyer by avoiding too much traveling by regrouping the "minors" cases, for example by organising the auditions of minors on fixed days at the police station;
- To facilitate the presence of the lawyer of the minor when he already has one, for example by communicating the contact details of the designated lawyer to the police zones, in order to allow the police to contact him or, if that proves to be impossible, to contact another lawyer from the Salduz services, who in turn can join the first lawyer following the hearing;
- To promote the intervention of trained youth lawyers for the minors whose hearing is postponed because they presented themselves without a lawyer (for *Model III* hearings);
- To ensure absolute confidentiality between the lawyer and his client during the confidential consultation prior to the hearing (in a room adapted for the meeting);
- To standardise the written invitation sent to minors suspected of having committed an ADCO so that they are complete and identical for the whole of Belgium: brief communication of the facts, enumeration of the rights (in particular the obligation to be assisted by a lawyer during the hearing and the right to legal aid that is entirely free of charge). The document should also mention the possibility of appointing a youth lawyer by indicating the contact details of the LAO of the competent bar and the contact details of the social services competent to guide them in their choice. Draft the convocation using a clear and comprehensible language adapted to minors (for *Model III* hearings);
- To limit the deprivation of liberty to the maximum extent possible when the minor is waiting for his lawyer to arrive (*Model IV* hearings);
- To always inform briefly the lawyer of the facts his client will be heard about and not only of their legal qualification (article 47bis CCP).

Intervention of the lawyer

To the Orders of lawyers:

- To impose training (basic and continuous) for youth lawyers;
- To establish a system that allows client to assess their lawyer's work and consider publishing the evaluation reports (the conditions for such a system should be carefully considered, with the dual objective of ensuring its effectiveness and avoiding potential abuses);

- To inform the other professionals involved in the juvenile justice system and the minors themselves of the possibility to communicate violations by the lawyers to the president of the bar;

To the bars:

- To establish a system that allows client to assess their lawyer's work and consider publishing the evaluation reports (the conditions for such a system should be carefully considered, with the dual objective of ensuring its effectiveness and avoiding potential abuses);

To all the professionals:

- To inform the other professionals involved in the juvenile justice system and the minors themselves of the possibility to communicate violations by the lawyers to the president of the bar.

Change of the lawyer

To the Orders of lawyers:

- To respect the principle of the free choice of lawyer by allowing the minor to change his lawyer if the bond of trust is broken (while raising awareness of minors on the inconveniences of frequent changes of lawyers – to avoid lawyer shopping);
- To inform the minor (and anyone who can help him) about the procedures to be followed, the conditions to be respected and the person to contact in order to allow him to change lawyer, using the most efficient means (e.g. specific brochures developed by existing services);

To the lawyers:

- To guarantee the transfer of information during any change of lawyer during the procedure;

To all the professionals:

- To inform the minor (and anyone who can help him) about the procedures to be followed, the conditions to be respected and the person to contact in order to allow him to change lawyer, using the most efficient means (e.g. specific brochures developed by existing services).

The training of the youth lawyer

To the professionals in higher education:

- To raise awareness about the role of the youth lawyer from the beginning of the education (university, high school or other) of professionals who work in the field of youth aid and protection;

To the Orders of lawyers:

- To standardise the training organised at the level of the bar associations and to make it a *sine qua non* condition for exercising the function of youth lawyer;
- To ensure that it is implemented by each bar and/or at a central level (see the model set up by the OVB);
- To monitor the implementation implement the monitoring of youth lawyer the trainings at a the local level by the presidents of each bar and at the community level by AVOCATS.BE and the OVB;
- To advocate for the elaboration of a binding regulation making the OVB training compulsory;
- To include practical cases, role plays, children's testimonies and interactive sessions throughout the course;

- To make lawyers aware of how vulnerable they leave minors when unavailable (e.g. in the training program and/or the development of ethical rules);
- To improve the availability of lawyers and encourage meetings with the minors (s);

To the bar associations:

- To implement the monitoring of youth lawyer trainings at the local level by the presidents of each bar and at the community level by AVOCATS.BE and the OVB.

General recommendation

To the federal legislator:

- To guarantee minors all their procedural rights by applying the European directives in the Belgian welfare procedure.

F. List of appendices

Appendix 1. Guide of procedural and ethical considerations in conducting a research study with children.

Appendix 2. Table with the international, regional and national legal framework of the Belgian juvenile justice system.

Appendix 3. Publication in the Belgian Journal of the Declaration of Rights given to the children before each interrogation (Dutch and French versions).

Appendix 4. Statistics of the youth prosecuting authorities on ADCO committed by minors (Dutch and French versions).

Appendix 5. Regulation of AVOCATS.BE of 14 March 2011 relating to the lawyer who intervenes to ensure the defence of a minor inserted in the Code of conduct of AVOCATS.BE, 1 July 2016 (French version).

Appendix 6. Guidelines of the OVB of 7 December 2005 on the appointment of youth lawyers (Dutch version).

Annexe 1. Guide de procédures et considérations éthiques dans les études de recherche impliquant des enfants (version en Anglais)

Procedure and ethical considerations in conducting a research study with children

This document establishes the procedure and specific ethical considerations to be followed in the framework of the project “MY LAWYER, MY RIGHTS”. This project aims at enhancing the rights of children in criminal proceedings in the EU, by supporting Member States and advocating for the proper application of the EU Directive 2013/48 on the right of access to a lawyer, the EU Directive 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings and other related standards in the specific field of juvenile justice; by defining the role, the mission, the basic training and all the specificities of the function of a youth lawyer and by empowering youth lawyers to become “agents of change” in the better implementation of the right of access to a lawyer for children suspected or accused in criminal proceedings.

The project foresees a number of consultations (individual interviews and focus groups) with children suspected or accused in criminal proceedings in the EU.

Regarding the project’s methodology, partners have adopted semi-structured questionnaires to conduct child-friendly interviews.

PROCEDURE AND ETHICAL CONSIDERATIONS

A. KEY PRINCIPLES FOR CONDUCTING A RESEARCH STUDY WITH CHILDREN SUSPECTED OR ACCUSED IN CRIMINAL PROCEEDINGS

- **Do no harm.** Sharing their experiences may be upsetting or traumatic for children. This is why communication and interviews with children should be done in a sensitive and child-friendly manner. Avoid questions, attitudes or comments that are judgmental or insensitive to cultural values, that put a child at risk or expose a child to humiliation, or that reactivate a child’s pain and grief from traumatic events. Incorrect interviewing techniques can be stressful for the child and poorly planned or prepared interviews can actually do more harm than good. It is thus important to conduct interviews and focus groups in accordance with the following methodology and key principles.
- **Exercise good judgement.** Researchers should have a comprehensive and detailed awareness of the standards, rules and recommendations applicable regarding children’s rights and the right of access to a lawyer and to be assisted by a lawyer in particular. However, whatever their number, relevance and precision, rules cannot substitute for good personal judgement and common sense. Researchers should therefore possess and exercise good judgement in all circumstances.
- **Equality and respect.** The research team must treat all children and youth equally with respect and fairness regardless of age, culture, caste, nationality, creed, ethnicity, health status (e.g. AIDS), physical and psychological ability, family situation, gender, language, racial origin, socio-economic



status, religious belief and / or sexual orientation. Whatever the reason for his/her conflict with the law is, the child must be treated with respect and courtesy. The researcher should introduce him or herself and explain the context and purpose of the interview.

- **Credibility.** Credibility is crucial for a successful research. Researchers should explain clearly to children the objectives and limits of their work. They should not make any promises they cannot keep.
- **Confidentiality.** It is fundamental that any information given to researchers must be treated confidentially. Doing otherwise can have serious consequences for the child and for the researcher's credibility and safety. Special measures should be taken to keep recorded information confidential, by using coded language or reference to a number for instance.
- **Be accurate and precise.** During the interview, it is important to collect sound and precise information in order to be able to draft well documented reports and relevant recommendations. Moreover, do not ask children to tell a story or take an action that is not part of their own history.
- **Sensitivity.** Especially when interviewing juveniles, researchers should pay attention to the situation, mood and needs of the individual and to his or her security.
- **Objectivity.** Researchers should work to record actual facts and should deal with children in a manner that is not coloured by feelings or preconceived opinions.
- **Behave with integrity.** Researcher should act as role models of child-friendly attitudes, behaviours and practices. They should treat all children with decency and respect. They should maintain a strictly professional relationship with the child. They should not be motivated by self-interest and should be fully honest. In all their dealings, they should operate in accordance with the international human rights standards that are leading their work.
- **Visibility.** Researchers should make sure that children and, if so, the authorities and staff members of juvenile detention facilities, are aware of their methodology and objectives for the interview and the research study. Inside a place of detention, researchers should wear a badge or other means of identification. Moreover, the project "MY LAWYER, MY RIGHTS" will be displayed and explained on the website www.mylawyermyrights.eu.

B. INTERVIEW OF A CHILD SUSPECTED OR ACCUSED AND DEPRIVED OF LIBERTY

In order to collect testimonies of children suspected or accused in criminal proceedings on their experience with lawyers, the research team might have to conduct interviews of children who are deprived of liberty. If so, the place (police station, juvenile detention facility, etc.) should be offering the possibility for a friendly and active collaboration of the staff for the participation of children to be involved in interview(s) / focus group(s).

If the research team wants to interview a child in a juvenile detention facility, the Director shall be contacted first by phone and then by official letter for a first exchange of information, with the following objective:

- Providing clear and comprehensive information on the scope and objectives of the project "MY LAWYER, MY RIGHTS" and its methodology (information sheet);



- Requesting the cooperation of the Direction and staff for facilitating the contact with children, obtaining their informed consent, carrying out the interview(s) / focus group(s) and assisting the researchers for the follow-up of interviews;
- Asking the institution to arrange a meeting with children. The first part of the meeting will be held in the presence of one professional from the institution. He/she will be requested to introduce the facilitator of the project and to act as a moderator during the interviews/ focus groups;
- Giving appropriate clarification and information in response to any questions, concerns, suggestions, recommendations or needs expressed.

The **key principles** that must be respected in conducting a research study with children suspected or accused and deprived of liberty are the same as those presented under point A of this document. However, we can add two principles that must be specifically respected in case of deprivation of liberty:

- **Respect the authorities and the staff in charge.** A sufficient level of mutual respect should be established between the staff and the research team. Researchers should always respect the duties of the authorities and try to identify the hierarchic levels and their responsibilities in order to be able to address any problem at the right level. Researchers should keep in mind that many problems stem not from individuals but from an inadequate system of deprivation of liberty which fosters inappropriate behaviour. Researchers should also take into account the fact that staff members working in places of detention are carrying out a demanding job, often socially undervalued and, in many countries, poorly paid.
- **Security.** Researchers must be aware of both their own security, the security of those they come in contact with and the security of the institution as a whole. Researchers should refrain from introducing or removing any object without the prior agreement of the authorities. They should display their identity by wearing a badge or other means of identification. Regarding the security of the children visited, the researchers should consider how to use information in a way that doesn't put individuals at risk.

C. INTERVIEW(S) / FOCUS GROUP(S) WITH CHILDREN

- **Child participation:**

In order to participate in the interview(s) and/or focus group(s), a child must meet the following inclusion criteria:

- Be considered as a child suspected or accused in criminal proceedings;
- Speak and understand the language in which the interview(s) / focus group(s) will be conducted;
- Be informed (in writing and orally) about the research study, its scope and the purpose of the interview(s) / focus group(s), and he must have understood the information (information sheet);
- Express his/her agreement to participate in the research study by signing the consent form;

A child who meets any of the following exclusion criteria must not participate in interview(s) and/or focus group(s):

- The child is not willing to participate;
- The child presents clear cognitive challenges or is traumatized; and/or

- The child psychologist, childcare staff or social worker responsible for him/her share doubts about possible negative impacts that the participation could have on the child.
- **Preparation of interview(s) / focus group(s) with children:**
 - Choose a location where there is all the privacy requested to ethically interview a child, where there are few distractions and where the child feels safe and comfortable.
 - Choose how the interview will be recorded and how the records will be kept confidential: i.e. two interviewers (one taking notes), or one interviewer taking notes, using recording device, etc. Inform the child of the reasons for recording and make sure that s/he understands that his or her right to privacy will not be compromised by the method.
- **Introduction of interview(s) / focus group(s) with children:**

This first stage of the interview with children is aimed at:

- Introducing the facilitator of the project “MY LAWYER, MY RIGHTS” to the children;
- Describing the aims of the research study;
- Trying to familiarize with the children in order to achieve a first level of friendly and trustful interaction (“shooting the breeze”);
- Explaining in a clear and child-sensitive manner the procedure for the interview(s) / focus group(s), including the informed consent form and the type of questions that the researcher would like to discuss with the children;
- Asking if there are any other children who would – to his/her/their knowledge – like to participate in the interview(s) / focus group(s).

During this first stage of the interview(s) with the children the person/s conducting the activity is/are requested to observe the reactions of the children and to take note of it as well as of his/their first impressions of the situation.

- **Informed consent of the children:**

Each child participating in the interview(s) / focus group(s) is asked to give his or her informed consent through a specific form that will be presented and explained to him/ her and that the child will be requested to read and sign.

- **Presence of third persons:**

If needed or if requested by a child, a third person may participate in the interview(s) / focus group(s). In case of another adult is present, the facilitator is asked to make him/her aware of the aims of the study, of the procedure of interview and to try to make him/her maintain a neutral role towards the children and their story. The researcher shall observe the relational dynamics between the children and the adult and report his/her observations in the dedicated section of the research report. If possible, the participation of adults responsible for the child should be avoided in order to allow the child to speak freely.

- **Conducting the interview(s) / focus group(s):**

The interview(s) / focus group(s) shall take place in a child-friendly environment and in an atmosphere that helps the child to feel safe and comfortable, to build trust with the researcher(s), and that guarantees the child's privacy and confidentiality.

Regarding focus groups, the facilitator must insist on the importance and the responsibility for each participant to keep confidential the information shared within the group. It is the facilitator's task to let the children tell their story and share their views without any judgmental signals from him/ her and his/ her team and, if there are any, they should only be reflecting the children's stories. Minimal directions could be given, but only in order to find answers to the questions of the research. During focus group(s), the facilitator should pay attention to involve all children equally, without putting any pressure on the child/children who may not feel comfortable to speak about certain issues.

The child shall feel that the facilitator:

- Trusts him/her;
- Focuses his/her attention on the child;
- Is not judging the child;
- Has a genuine interest in the views and opinions of the child and his or her current situation;
- Is aiming at gathering this information in order to contribute to the development of a better protection of children's rights.

The facilitator and observer shall:

Predictability

- Introduce himself/herself properly before interview(s) / focus group(s);
- Explain the purpose of the interview, what the information they give will be used for and the limits of the things they can change;
- Explain why s/he is taking notes/using a recorder during the interview and how it will be kept confidential;

Safety/Trust

- Start with conversational or non-controversial questions and work towards more sensitive issues;
- Use an informal and relaxed approach to help the child to feel at ease. Understand that it may take some time for the child to feel comfortable enough to talk (especially if the events they are recalling are traumatic ones)
- Understand the child's situation and feelings;
- Observe the child's reactions and, if needed, interrupt or stop the session (example: in case of extra-sensitivity, aggressiveness, etc.);
- Observe the interaction between the children participating in the focus group;
- Clearly distinguish his/her own feelings from the feelings of the child;
- Adopt a non-intrusive approach that will respect the privacy and intimacy of children.

Unbiased information

- Encourage the child to give their information and tell their story with their own words;
 - Explain that they can tell the interviewer that they do not know the answer to a question;
 - Explain that they should correct the interviewer if s/he is mistaken or incorrect;
 - Avoid leading questions or comments that may make the child feel coerced or pressured into giving a certain answer;
 - Avoid repeated questions as it may lead the child to believe his/her previous answer was 'wrong';
 - Use simple, age-appropriate language and make sure that the child understands the correct meaning of the question;
 - To get more detail, use follow-up questions, e.g. "And then what happened?";
 - Plan one or two short breaks during the interview at appropriate points as children have a short attention span.
- **Concluding the interview(s) / focus group(s):**
- Ask the child if they have any questions or anything else they would like to tell you;
 - Explain again the limits of your work and avoid raising false hopes;
 - Complete your notes immediately after the interview to ensure the most accurate representation of the meeting.

D. ISSUES THAT NEED TO BE CONSIDERED DURING A RESEARCH WITH CHILDREN¹

The following list contains issues that need to be considered for an ethical research with minors. It is of fundamental importance to keep in mind and check all these suggestions during the study protocol procedures.

Before the research:

- Will the answer to the research question benefit the young person?
- Does the study compromise the interests of the young person?
- Is a research with children the only way to answer the research question?

While planning the study:

- Are the research methods appropriate?
- Have the young person been involved in the research design?
- Is the information sheet appropriate and adequate for the child?
- Is the language appropriate and are there translations available?
- What distress could the research cause to participants?
- What mechanisms are required to support children who are distressed by the interview?

¹ Modified from: Thomas S, Byford S. Research with unaccompanied children seeking asylum. *BMJ* 2003;327:1400–2.

During the research:

- Has the child given his informed consent?
- Are the researchers aware of child protection issues and procedures²?
- Have child protection issues and procedures been discussed with the young person?
- Has the young person tried to answer questions to which he/she doesn't know the answer?
- Has the young person tried to tell you what he/she believes you want to hear?
- Do you feel that the young person fear that any information he/she discloses will result in reprisals when you will be gone?

After the research:

- Is there a procedure for debriefing after the interview?
- Is there a system for feeding back results?

² If a child discloses bad practice during an interview (such as abuse, criminal activity, etc.), the person carrying out the interview should know the local procedures for reporting it.

Appendix 2. Table with the international, regional and national legal framework of the Belgian juvenile justice system

A. THE INTERNATIONAL FRAMEWORK

1. The ratified conventions

	Signature	Ratification	Accession	Reservations(s)/declaration(s)
ICCPR	10 December 1968	21 April 1983	/	<p>Reservations :</p> <ul style="list-style-type: none"> - The provisions of article 10 § 3, under which juvenile offenders shall be segregated from adults and be accorded treatment appropriate refers exclusively to the judicial measures provided for under the Belgian Act relating to the protection of young persons.¹ <p>Declaration :</p> <ul style="list-style-type: none"> - « The Kingdom of Belgium declares, under article 41 of the International Covenant on Civil and Political Rights, that it recognizes the competence of the Human Rights Committee and consider communications submitted by another State Party»

¹ **Reservations :**

" ...

2. The Belgian Government considers that the provision of article 10, paragraph 2 (a), under which accused persons shall, save in exceptional circumstances, be segregated from convicted persons is to be interpreted in conformity with the principle, already embodied in the standard minimum rules for the treatment of prisoners [resolution (73) 5 of the Committee of Ministers of the Council of Europe of 19 January 1973], that untried prisoners shall not be put in contact with convicted prisoners against their will [rules 7 (b) and 85 (1)]. If they so request, accused persons may be allowed to take part with convicted persons in certain communal activities.

3. The Belgian Government considers that the provisions of article 10, paragraph 3, under which juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status refers exclusively to the judicial measures provided for under the *régime* for the protection of minors established by the Belgian Act relating to the protection of young persons. As regards other juvenile ordinary-law offenders, the Belgian Government intends to reserve the option to adopt measures that may be more flexible and be designed precisely in the interest of the persons concerned.

4. With respect to article 14, the Belgian Government considers that the last part of paragraph 1 of the article appears to give States the option of providing or not providing for certain derogations from the principle that judgements shall be made public. Accordingly, the Belgian constitutional principle that there shall be no exceptions to the public pronouncements of judgements is in conformity with that provision. Paragraph 5 of the article shall not apply to persons who, under Belgian law, are convicted and sentenced at second instance following an appeal against their acquittal of first instance or who, under Belgian law, are brought directly before a higher tribunal such as the Court of Cassation, the Appeals Court or the Assize Court.

5. Articles 19, 21 and 22 shall be applied by the Belgian Government in the context of the provisions and restrictions set forth or authorized in articles 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, by the said Convention. "

Declarations :

" 6. The Belgian Government declares that it does not consider itself obligated to enact legislation in the field covered by article 20, paragraph 1, and that article 20 as a whole shall be applied taking into account the rights to freedom of thought and religion, freedom of opinion and freedom of assembly and association proclaimed in articles 18, 19 and 20 of the Universal Declaration of Human Rights and reaffirmed in articles 18, 19, 21 and 22 of the Covenant.

7. The Belgian Government declares that it interprets article 23, paragraph 2, as meaning that the right of persons of marriageable age to marry and to found a family presupposes not only that national law shall prescribe the marriageable age but that it may also regulate the exercise of that right. "

CRC	26 January 1990	16 December 1991	/	Declarations : <ul style="list-style-type: none"> - Non-discrimination (art 2, §1) does not necessarily imply the obligation for States automatically to guarantee foreigners the same rights as their nationals; - Articles 13 and 15 shall be applied within the context of articles 10 and 11 of the European Convention; - The right of the child to freedom of thought, conscience and religion implies also the freedom to choose his or her religion or belief. - article 40, 2, b, v) : This provision shall not apply to minors (1) declared guilty and are sentenced in a higher court following an appeal against their acquittal in a court of the first instance (2) referred directly to a higher court such as the Court of Assize.²
OP3 CRC	28 February 2012	30 May 2014	/	Declaration : <ul style="list-style-type: none"> - Belgium recognises the competence of the Committee on the Rights of the Child to receive, pursuant to article 12 of the Optional Protocol, communications from a State party which claims that another State is not fulfilling its obligations.
ECHR	4 November 1950	14 June 1955	/	/
EUCFR	Legally binding since 1 December 2009 (date of entry into force of the Treaty of Lisbon)	/	/	/

² **Interpretative declarations:**

"1. With regard to article 2, paragraph 1, according to the interpretation of the Belgian Government non-discrimination on grounds of national origin does not necessarily imply the obligation for States automatically to guarantee foreigners the same rights as their nationals. This concept should be understood as designed to rule out all arbitrary conduct but not differences in treatment based on objective and reasonable considerations, in accordance with the principles prevailing in democratic societies.

2. Articles 13 and 15 shall be applied by the Belgian Government within the context of the provisions and limitations set forth or authorized by said Convention in articles 10 and 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950.

3. The Belgian Government declares that it interprets article 14, paragraph 1, as meaning that, in accordance with the relevant provisions of article 18 of the International Covenant on Civil and Political Rights of 19 December 1966 and article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, the right of the child to freedom of thought, conscience and religion implies also the freedom to choose his or her religion or belief.

4. With regard to article 40, paragraph 2 (b) (v), the Belgian Government considers that the expression "according to law" at the end of that provision means that:

(a) This provision shall not apply to minors who, under Belgian law, are declared guilty and are sentenced in a higher court following an appeal against their acquittal in a court of the first instance;

(b) This provision shall not apply to minors who, under Belgian law, are referred directly to a higher court such as the Court of Assize. "

ECSR (revised)	3 may 1996 (previous version signed on 18 October 1961)	2 march 2004 (previous version ratified on 16 October 1990)	Declaration : - Belgium recognises it is bound by the following articles included in the part II : art. 1 to 18 ; 19 (except § 12) ; 20 to 22 ; 25 ; 26 ; 27 (§ 1 and 2) ; 28 to 30.
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2. The European directives

	Transposition	National legislation	Opt out
Directive 2010/64/EU	The directive should have been transposed by 30 October 2013 but has been only partially transposed in November 2016 (→ <i>The Belgian government feels the Belgian legislation already guarantees the other rights enshrined in the directive³</i>).	The law of 21 November 2016 regarding the rights of persons subject to an interrogation.	/
Directive 2012/13/EU	The directive should have been transposed on 2 June 2014 but still has not been implemented in Belgium.	/ The European court for human rights has expressed through its jurisprudence that European directives are put into force if they are clear, precise, unconditional and have still not been transposed in the national legislation once the deadline is reached. (Law of 4 December 1974, Van Duyn).	/
Directive 2013/48/EU	The directive has been transposed through a law put into force on 27 November 2016 (deadline for the transposition of the directive).	Law of 21 November 2016 regarding the rights of persons subject to an interrogation.	/
Directive 2016/800/EU	The directive has to be transposed	/	/

³ Council of Bars and Law Societies of Europe (CCBE) and European Lawyers Foundation (ELF), final report of the «TRAINAC» project on assessment, good practices and recommendations on the right to interpretation and translation, the right to information and the right of access to a lawyer in criminal proceedings, 2016, www.ccbe.eu.

	before 11 June 2019 and has not yet been put into force (but Belgian authorities are working on it).		
Directive 2016/1919	The directive has to be transposed by 25 May 2019	/	/

B. NATIONAL FRAMEWORK

	Law's name and reference	Law enactment	What does the law provide?	Derogations?
Juvenile justice system	Law regarding youth protection, from the arrest and/or interrogation of the children having committed an act deemed to constitute an offence to the compensations related to the prejudice caused (important modification of the law in 2006).	8 April 1965	<ul style="list-style-type: none"> - the law provides the functioning of the youth justice and the proceedings related to it as well as the territorial competences of the youth jurisdictions; - The youth court receive requisition orders against the minor suspected of having committed an act deemed to constitute an offence; - the youth court can take custody, preservation and educative measures ; - the law provides the rules regarding the deprivation of liberty and the minor interrogation; 	<ul style="list-style-type: none"> - In some situations (for ex. traffic violations) common law jurisdictions are competent); - Divestiture: if the youth judge considers custody, preservation and education measures are not adequate and the minor is at least 16 when the acts are committed, the judge can divestiture. In this situation, common criminal law will be applied.
Minimum age of criminal responsibility	/	/	<p>Under 18, someone does not commit an offence but an act deemed to constitute an offence and the common law is not applicable, the youth welfare legislation is. (cf. Law of 8 April 1965).</p> <p>The Belgian legislation does not provide a minimum age from which a minor could go in</p>	/

			front of a youth judge if he commits an act deemed to constitute an offence but provides the possibility to take measures depending on the minor's age.	
Right of access to a lawyer	<ul style="list-style-type: none"> - Code of criminal investigation, art. 47<i>bis</i> ; - Law regarding pre-trial detention, art. 2<i>bis</i> <ul style="list-style-type: none"> → This law was revised by the law reforming the Code of criminal investigation and by the law of 20 July 1990 regarding pre-trial detention in order to grant rights, including the right to access to and assistance by a lawyer, to every person interrogated or deprived of his liberty (Salduz law). → The law regarding rights of persons subject to interrogation (Salduz <i>bis</i> law). 	<ul style="list-style-type: none"> - 20 July 1990 ; - 13 August 2011 - 21 November 2016 	<ul style="list-style-type: none"> - If the minor is <u>not deprived of liberty</u> and is interrogated as a suspect, he has the right to a confidential consultation with a lawyer before the interrogation. If he is suspected to have committed an offence susceptible to lead to deprivation of liberty, he also enjoys the right to be assisted by a lawyer during the interrogation ; - If the minor is deprived of liberty and is interrogated as a suspect, he has the right to have a confidential consultation with a lawyer without delay before the first interrogation, would it be held by the police, the public prosecutor or the investigating judge. The consultation can last 30 minutes and can be extended in some cases; - Minors can not waive their rights to a confidential consultation. 	<ul style="list-style-type: none"> - If the suspect minor is deprived of liberty, a lawyer has to be joined through the online Salduz services. Once the service has been joined, the confidential consultation with the lawyer must take place within 2 hours. If no lawyer is available following the 2 hours delay, the interrogation can start without a lawyer.
Right of assistance by a lawyer	<ul style="list-style-type: none"> - Code of criminal investigation, art. 47<i>bis</i> ; - Law regarding pre-trial detention, art. 2<i>bis</i> 	<ul style="list-style-type: none"> - 13 August 2011 	<ul style="list-style-type: none"> - The suspect minor, if he is not deprived of his liberty and is suspected to have committed an offence that could lead to deprivation of liberty and the suspect 	<ul style="list-style-type: none"> - If the suspect minor is deprived of liberty, a lawyer has to be joined through the online Salduz services. Once

	<ul style="list-style-type: none"> → Revised by the law reforming the Code of criminal investigation and the law of 20 July 1990 regarding pre trial detention in order to grant rights, including the right of access to and assistance by a lawyer, to every person interrogated or deprived of liberty (Salduz law). → The law regarding rights of persons subject to interrogation (loi Salduz <i>bis</i>). 	<ul style="list-style-type: none"> - 21 November 2016 - 8 April 1965 	<p>minor deprived of his liberty both enjoy the right to be assisted by a lawyer during their interrogation. This right can not be waived.</p> <p>Every minor has the right to be assisted during any appearance in front of the judge/youth court or the public prosecutor;</p>	<p>the service has been joined, the confidential consultation with the lawyer must take place within 2 hours. If no lawyer is available following the 2 hours delay, the interrogation can start without a lawyer. ;</p> <ul style="list-style-type: none"> - The youth judge, as well as the public prosecutor, can have a consultation with the minor (without his lawyer) ; - If a divestiture is decided and the minor appears in front of a common law court, the right to be assisted by a lawyer can be waived except if he is judged for severe offences. But the minor can be assisted by a lawyer if he handles the process himself.
Legal aid system	<ul style="list-style-type: none"> - Law regarding legal aid (important reform in 2016 but no modification regarding minors). - Royal decree defining the conditions of access to a free or partially free second-line legal aid and legal assistance. 	<ul style="list-style-type: none"> - 23 November 1998 - 19 December 2003 	<ul style="list-style-type: none"> - Introduction of the provisions of the law in the criminal code (Book III <i>bis</i>) ; - In every judicial district, a legal aid committee is responsible for the organisation of legal aid; - Within every bar, a legal aid office is in charge of the voluntary lawyer list ; - Legal aid is handled by lawyers ; - First-line legal aid : provided through practical information, legal information, a first legal opinion or referral to another organisation, it is totally free ; - Second-line legal aid: provided to natural 	/

			persons through legal opinion or legal aid in context of a legal proceedings or not or assistance in the context of a trial (including representation). It is free or partially free (fully free for minors).	
Designation of a lawyer	<ul style="list-style-type: none"> - Law regarding legal aid - Law regarding youth protection, interrogation and arrest of minors having committed an act deemed to constitute an offence and the compensations related to the prejudice caused. 	<ul style="list-style-type: none"> - 23 November 1998 - 8 April 1965 	<ul style="list-style-type: none"> - As minors benefit from second-line legal aid, the legal aid office designates a lawyer picked on the voluntary lawyer list and informs the lawyer of his designation (process used for designation and assigned lawyers). In case of emergency, assigned lawyer) the president of the bar designates a lawyer on the list and informs the office. - The president of the bar or the office makes sure, when a conflict of interest may occur, that the minor is assisted by a lawyer who does not work for his parents/guardian/etc. 	/
Socio-legal defence centres	<ul style="list-style-type: none"> - French community governmental decree regarding the conditions to benefit from subsidies for Open environment support services. - Flemish government decision until the implementation of the 	<ul style="list-style-type: none"> - 15 March 1999 - 14 September 	<ul style="list-style-type: none"> - The service intervenes without mandates, it is non-binding and free ; - Individual action: the service provides full and adequate legal information to minors and their relatives in a comprehensible language. It helps them with their legal and social issues and give them the opportunity to enjoy their rights and to go in front of a judge if needed ; - Collective action: the service aims at enhancing the legal and social situation of minors and share their knowledge with other institutions. - The service intervenes without mandates, it is non-binding and free ; 	/
<ul style="list-style-type: none"> → <i>Service Droits des Jeunes</i> (Juvenile rights service) → <i>Kinderrechtswinkel</i> (Children's rights 				

shop)	20 January 2012 decree regarding the implementation of the Decree of 20 January 2012 on the renewed children's rights and youth policy	2012	<ul style="list-style-type: none"> - Individual action: the service provides full and adequate legal information to minors and their relatives in a comprehensible language. It helps them with their legal and social issues and give them the opportunity to enjoy their rights and to go in front of a judge if needed ; it must be able to answer to questions regarding legal matters through phone calls, emails or during the on-call services ; it connects minors with lawyers ; - Collective action : the service aims at enhancing the legal and social situation of minors and share their knowledge with other institutions ; - It offers training to professionals and lawyers ; it organises pedagogical sessions in schools ; it contributes to draft reforms of the juvenile justice system 	/
National monitoring mechanism → <i>Délégué général aux droits de l'enfant</i> (General delegate of the youth support of the Wallonia-Brussels federation)	<ul style="list-style-type: none"> - Decree introducing a general delegate of youth support of the Wallonia-Brussels Federation). - French community government decree regarding the General delegate of the youth support. - The General delegate of the youth support was put in place in 1991 but the decree of the the Wallonia-Brussels federation government of 10 July 1991 introducing a General delegate of the youth support was 	<ul style="list-style-type: none"> - 20 June 2002 - 19 December 2002 	The general delegate : <ul style="list-style-type: none"> - promotes children's rights and best interests and raise awareness about those rights ; - monitors the proper application of legislation regarding children's rights; - submits proposals to the competent authorities aiming at adapting and improving the legislation ; - collects information, complaints or mediation requests regarding violations against children's rights and best interests ; - leads investigation on the Parliament's request ; - Is elected for a six years mandate 	/

	repealed and is now ruled by the 2002 decree.		renewable once and can not have another mandate.	
→ <i>Kinderrechtencommissaris</i>	Decree of the Flemish council that led to the creation of Children's right Committee and introducing the position of Children's rights commissioner.	- 15 July 1997	The Commissioner : <ul style="list-style-type: none"> - is elected for six years and can not have another mandate ; - defends children's rights and best interests ; - monitors the legislation compliance with the Children's rights convention; - investigates at the request of the Parliament or at his own initiative any questions regarding the respect of the convention ; - examines complaints regarding the violations of the Children's rights convention. 	/
→ <i>Commission nationale des droits de l'enfant</i> (Children's rights national commission)	Law implementing the agreement between the State, the Flemish community, the Flemish region, the Wallonia-Brussels federation, the Walloon region, the German community, the Brussels-capital region, the common community commission and the French community commission leading to the creation of a national commission for children's rights. The agreement was concluded in Brussels on 19 September 2005.	- 1 May 2006	The agreement provides that the commission: <ul style="list-style-type: none"> - contributes to the 5-year report that Belgium committed to produce in accordance with art. 44 of the Children's rights convention ; - has to present the report in front of the Committee on the rights of the child on behalf of the Belgian State ; - examines and monitors the implementation measures that are necessary in order to meet the suggestions and recommendations of the Committee on the rights of the child ; - can give its opinion on international conventions and protocols ; - contributes to the production of other documents regarding children's rights that the Belgian State must develop for 	/

			<p>international bodies ;</p> <ul style="list-style-type: none">- encourages collaboration and permanent exchange of information between the competent authorities in children's rights. <p>Children must be involved directly and in an adapted fashion to the commission's work.</p>	
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FEDERALE OVERHEIDSDIENST JUSTITIE

[C – 2016/09573]

23 NOVEMBER 2016. — Koninklijk besluit tot uitvoering van artikel 47bis, § 5, van het Wetboek van Strafvordering

FILIP, Koning der Belgen,

Aan allen die nu zijn en hierna wezen zullen, Onze Groet.

Gelet op artikel 108 van het Grondwet;

Gelet op artikel 47bis, § 5, van het Wetboek van Strafvordering;

Gelet op artikel 10/1 van de wet van 19 december 2003 betreffende het betreffende het Europees aanhoudingsbevel;

Gelet op het advies van de Inspecteur van Financiën, gegeven op 10 november 2016;

Gelet op de akkoordbevinding van de Minister van Begroting van 21 november 2016;

Gelet op de wetten op de Raad van State, gecoördineerd op 12 januari 1973, artikel 3, § 1;

Gelet op de dringende noodzakelijkheid,

Overwegende dat de wet van 21 november 2016 betreffende bepaalde rechten van personen die worden verhoord, in werking moet treden op 27 november 2016;

Overwegende dat deze wet in artikel 47bis van het Wetboek van strafvordering, in § 5, eerste lid, voorziet dat aan bepaalde door de wet bepaalde personen voor het eerste verhoor een verklaring van rechten moet worden overhandigd;

Overwegende dat artikel 47bis, § 5, tweede lid, bepaalt dat de vorm en inhoud van deze verklaring van rechten door de Koning moet worden bepaald;

Overwegende dat de verklaring van rechten zoals vastgesteld door het koninklijk besluit van 16 december 2011 tot uitvoering van artikel 47bis, § 4, van het Wetboek van Strafvordering, dringend moet worden aangepast aan de wijzigingen in de mee te delen rechten door de wet van 21 november 2016;

Overwegende dat het koninklijk besluit en de gevoegde modeldocumenten één van de essentiële elementen is van de wet van 21 november 2016 aangezien het de nieuwe rechten die aan personen die worden verhoord in een verstaanbare en begrijpelijke taal uitlegt. Overwegende dat het fundamenteel is dat alle personen die worden verhoord vanaf de inwerkingtreding van de wet op een uniforme wijze over deze rechten worden geïnformeerd, moet dit besluit dan ook worden aangenomen voor de inwerkingtreding van de wet zodat de verklaring van rechten vanaf 27 november 2016 kan worden gebruikt;

Op de voordracht van de Minister van Justitie,

Hebben Wij besloten en besluiten Wij :

Artikel 1. Aan de personen bedoeld in artikel 47bis, § 2 van het Wetboek van strafvordering wordt voor het eerste verhoor een verklaring van rechten overhandigd, zoals bepaald in bijlage 1 van dit besluit.

Art. 2. Aan de personen bedoeld in artikel 47bis, § 4 van het Wetboek van strafvordering wordt voor het eerste verhoor een verklaring van rechten overhandigd, zoals bepaald in bijlage 2 van dit besluit.

Art. 3. Aan de personen bedoeld in artikel 10/1 van de wet van 19 december 2003 betreffende het Europees aanhoudingsbevel een verklaring van rechten overhandigd, zoals bepaald in bijlage 3 van dit besluit.

Art. 4. De Minister van Justitie staat in voor een vertaling van de bijlagen naar minstens de officiële talen van de lidstaten van de Europese Unie.

Art. 5. Het koninklijk besluit van 16 december 2011 tot uitvoering van artikel 47bis, § 4, van het Wetboek van Strafvordering, wordt opgeheven.

Art. 6. Dit besluit treedt in werking op 27 november 2016.

Art. 7. De minister bevoegd voor Justitie is belast met de uitvoering van dit besluit.

Gegeven te Brussel, 23 november 2016.

FILIP

Van Koningswege :

De Minister van Justitie,
K. GEENS

SERVICE PUBLIC FEDERAL JUSTICE

[C – 2016/09573]

23 NOVEMBRE 2016. — Arrêté royal portant exécution de l'article 47bis, § 5, du Code d'instruction criminelle

PHILIPPE, Roi des Belges,

A tous, présents et à venir, Salut.

Vu l'article 108 de la Constitution;

Vu l'article 47bis, § 5, du Code d'instruction criminelle;

Vu l'article 10/1 de la loi du 19 décembre 2003 relative au mandat d'arrêt européen;

Vu l'avis de l'Inspecteur des Finances, donné le 10 novembre 2016;

Vu l'accord du Ministre du Budget, donné le 21 novembre 2016;

Vu les lois sur le Conseil d'Etat, coordonnées le 12 janvier 1973, l'article 3, § 1^{er};

Vu l'urgence,

Considérant que la loi du 21 novembre 2016 relative à certains droits des personnes soumises à un interrogatoire doit entrer en vigueur le 27 novembre 2016;

Considérant que cette loi prévoit à l'article 47bis, § 5, alinéa 1^{er}, du Code d'instruction criminelle qu'une déclaration des droits doit être remise à certaines personnes visées par la loi avant la première audition;

Considérant que l'article 47bis, § 5, alinéa 2, dispose que la forme et le contenu de cette déclaration des droits doivent être fixés par le Roi;

Considérant que la déclaration des droits établie par l'arrêté royal du 16 décembre 2011 portant exécution de l'article 47bis, § 4, du Code d'instruction criminelle doit être adaptée d'urgence aux modifications apportées par la loi du 21 novembre 2016 aux droits à communiquer;

Considérant que l'arrêté royal et ses annexes constitue un des éléments essentiels de la loi du 21 novembre 2016 puisqu'il explique dans une langue compréhensible et intelligible les nouveaux droits dont jouissent les personnes qui sont entendues; Considérant qu'il est essentiel que toutes les personnes qui sont entendues soient informées de manière uniforme de ces droits à dater de l'entrée en vigueur de la loi, il convient d'adopter le présent arrêté avant l'entrée en vigueur de la loi, de sorte que la déclaration des droits peut être utilisée dès le 27 novembre 2016;

Sur la proposition du Ministre de la Justice,

Nous avons arrêté et arrêtons :

Article 1^{er}. Une déclaration des droits, visée à l'annexe 1^{re} du présent arrêté, est remise aux personnes visées à l'article 47bis, § 2, du Code d'instruction criminelle avant la première audition.

Art. 2. Une déclaration des droits, visée à l'annexe 2 du présent arrêté, est remise aux personnes visées à l'article 47bis, § 4, du Code d'instruction criminelle avant la première audition.

Art. 3. Une déclaration des droits, visée à l'annexe 3 du présent arrêté, est remise aux personnes visées à l'article 10/1 de la loi du 19 décembre 2003 relative au mandat d'arrêt européen.

Art. 4. La traduction des annexes dans les langues officielles des États membres de l'Union européenne au moins est de la responsabilité du Ministre de la Justice.

Art. 5. L'arrêté royal du 16 décembre 2011 portant exécution de l'article 47bis, § 4, du Code d'instruction criminelle est abrogé.

Art. 6. Le présent arrêté entre en vigueur le 27 novembre 2016.

Art. 7. Le ministre qui a la Justice dans ses attributions est chargé de l'exécution du présent arrêté.

Donné à Bruxelles, le 23 novembre 2016.

PHILIPPE

Par le Roi :

Le Ministre de la Justice,
K. GEENS

VERKLARING VAN UW RECHTEN

Wanneer u **NIET VAN UW VRIJHEID BENT BENOMEN** en zal worden verhoord als verdachte

1/2

1. Recht op een vertrouwelijk overleg met advocaat en bijstand tijdens verhoor

A. Wanneer?

- U hebt recht op een vertrouwelijk overleg met een advocaat vóór het verhoor en op bijstand tijdens het verhoor.
- Wanneer de feiten waarover u verhoord wordt strafbaar zijn met gevangenisstraf.

B. Welke advocaat?

- U mag een advocaat naar keuze raadplegen.
- Onder bepaalde wettelijke voorwaarden kan u een beroep doen op een advocaat via het systeem van de juridische rechtsbijstand die geheel of gedeeltelijk kosteloos is. U kan het formulier met deze voorwaarden opvragen. De aanstelling van een advocaat vraagt u dan bij het bureau van juridische bijstand van de balie.

C. Wijze waarop het vertrouwelijk overleg kan verlopen?

Indien u een schriftelijke uitnodiging hebt ontvangen waarin de rechten vermeld onder de nummers 1 tot 4 worden opgesomd en waarin staat dat u geacht wordt een advocaat te hebben geraadpleegd vóór u zich aanmeldt voor het verhoor:

- Kan u geen uitstel meer krijgen omdat u al eerder een advocaat kon raadplegen.
- Indien u zich niet laat bijstaan door een advocaat, moet u voor aanvang van het verhoor worden gewezen op uw zwijgrecht (zie punt 3).

Indien u geen schriftelijke uitnodiging hebt ontvangen of een onvolledige schriftelijke uitnodiging:

- U kan éénmalig vragen om het verhoor uit te stellen op een latere datum/uur om uw advocaat te raadplegen;
- U kan kiezen om een telefonisch onderhoud te hebben met uw advocaat, waarna het verhoor kan aanvatten;
- U kan wachten op de komst van uw advocaat op de plaats van het verhoor.

D. Bijstand tijdens de verhoren

Uw advocaat ziet toe op:

- het respecteren van uw zwijgrecht en het recht uzelf niet te beschuldigen;
- de wijze waarop u tijdens het verhoor wordt behandeld, of er geen ongeoorloofde dwang of druk op u wordt uitgeoefend;
- de kennisgeving van uw rechten en de regelmatigheid van het verhoor.

Indien uw advocaat hierover opmerkingen heeft, kan hij die onmiddellijk in het proces-verbaal laten opnemen. Uw advocaat kan vragen dat een bepaalde opsporingshandeling wordt verricht of een bepaald verhoor wordt afgenomen. Hij kan verduidelijkende vragen over vragen die worden gesteld. Hij kan opmerkingen maken over het onderzoek en over het verhoor. Het is hem niet toegelaten te antwoorden in uw plaats of het verloop van het verhoor te hinderen.

E. Afstand van dit recht

U bent niet verplicht om een overleg met of de bijstand van een advocaat te vragen.

U kan hiervan vrijwillig en weloverwogen afstand doen indien u:

- meerderjarig bent;
- hiervoor een document ondertekend en gedateerd hebt.

VERKLARING VAN UW RECHTEN

Wanneer u **NIET VAN UW VRIJHEID BENT BENOMEN** en zal worden verhoord als verdachte

2/2

2. Beknopte mededeling van de feiten

U hebt het recht beknopt informatie te krijgen over de feiten waarover u zal worden verhoord.

3. Zwijgrecht

- U bent nooit verplicht uzelf te beschuldigen.
- Nadat u uw identiteit hebt bekend gemaakt, hebt u de keuze om een verklaring af te leggen, te antwoorden op de gestelde vragen of te zwijgen.

4. Andere rechten bij het verhoor

Het verhoor zelf begint met een aantal mededelingen. Buiten de herhaling van de beknopte mededeling van de feiten en het zwijgrecht, wordt u meegedeeld dat:

- U kan vragen dat alle gestelde vragen en alle gegeven antwoorden worden genoteerd in de gebruikte bewoordingen;
- U kan vragen dat een bepaalde opsporingshandeling wordt verricht of een bepaald verhoor wordt afgenomen;
- Uw verklaringen als bewijs in rechte kunnen dienen;
- U bent niet van uw vrijheid benomen en kan op elk moment gaan en staan waar u wil;
- Bij een ondervraging kan u gebruik maken van documenten die u in uw bezit hebt, zonder dat daarvoor het verhoor kan worden uitgesteld. U mag, tijdens of na het verhoor, eisen dat deze stukken bij het proces-verbaal van het verhoor worden gevoegd of ter griffie worden neergelegd.

5. Op het einde van het verhoor

Op het einde van het verhoor krijgt u de tekst van het verhoor te lezen. U kan ook vragen dat het u wordt voorgelezen.

Er zal u gevraagd worden of u iets aan uw verklaringen wil verbeteren of toevoegen.

6. Hulp van een tolk

- Indien u zich in een andere taal dan die van de procedure wenst uit te drukken, wordt een beëdigde tolk opgeroepen om u bij te staan tijdens het verhoor. Dit is kosteloos.
- U kan gevraagd worden om zelf uw verklaring op te schrijven in uw eigen taal.

U mag deze verklaring van rechten bijhouden

DÉCLARATION DE VOS DROITS

Lorsque vous n'êtes pas privé de votre liberté et que vous allez être entendu en tant que suspect

1/2

1. Droit à une concertation confidentielle avec un avocat et à une assistance pendant l'audition

A. Quand?

- Vous avez le droit à une concertation confidentielle avec un avocat avant l'audition et à son assistance pendant l'audition.
- Lorsque les faits pour lesquels vous êtes entendu sont punissables d'une peine de prison.

B. Quel avocat?

- Vous pouvez consulter un avocat de votre choix.
- Sous certaines conditions légales, vous pouvez faire appel à un avocat par le biais du système de l'aide juridique, qui est totalement ou partiellement gratuite. Vous pouvez demander le formulaire reprenant ces conditions. Vous demandez ensuite la désignation d'un avocat au bureau d'aide juridique du barreau.

C. Modalités de déroulement de la concertation confidentielle ?

Si vous avez reçu une convocation écrite dans laquelle sont énumérés les droits mentionnés aux points 1 à 4, et qui indique que vous êtes présumé avoir consulté un avocat avant de vous présenter à l'audition :

- Vous ne pouvez plus obtenir de report, vu que vous avez déjà eu la possibilité de consulter un avocat.
- Si vous ne vous faites pas assister par un avocat, il vous sera rappelé, avant le début de l'audition, que vous avez le droit au silence (voir point 3).

Si vous n'avez pas reçu de convocation écrite ou une convocation écrite incomplète :

- Vous pouvez demander une seule fois le report de l'audition à une date ou une heure ultérieure pour consulter votre avocat.
- Vous pouvez choisir de vous entretenir avec votre avocat par téléphone, après quoi l'audition pourra débiter.
- Vous pouvez attendre l'arrivée de votre avocat au lieu de l'audition.

D. Assistance pendant l'audition

Votre avocat veille :

- au respect de votre droit au silence et de votre droit de ne pas vous accuser vous-même;
- à la manière dont vous êtes traité pendant l'audition ou à l'absence de contraintes ou de pressions illicites exercées à votre égard;
- à la notification de vos droits et à la régularité de l'audition.

Si votre avocat a des remarques à ce sujet, il peut les faire mentionner immédiatement dans le procès-verbal. Votre avocat peut demander qu'il soit procédé à tel acte d'information ou à telle audition. Il peut demander des clarifications sur des questions qui sont posées. Il peut formuler des observations sur l'enquête et sur l'audition. Il ne lui est toutefois pas permis de répondre à votre place ou d'entraver le déroulement de l'audition.

E. Renonciation

Vous n'êtes pas obligé de demander une concertation ou l'assistance d'un avocat.

Vous pouvez y renoncer de manière volontaire et réfléchie :

- si vous êtes majeur ;
- après avoir signé et daté un document à cet effet.

DÉCLARATION DE VOS DROITS

Lorsque vous n'êtes pas privé de votre liberté et que vous allez être entendu en tant que suspect

2/2

2. Notification succincte des faits

Vous avez le droit d'être informé succinctement des faits à propos desquels vous serez entendu.

3. Droit au silence

- Vous n'êtes jamais obligé de vous accuser vous-même.
- Après avoir donné votre identité, vous pouvez choisir de faire une déclaration, de répondre aux questions posées ou de vous taire.

4. Autres droits pendant l'audition

L'audition en tant que telle commence par un certain nombre de communications. Outre la répétition de la notification succincte des faits et du droit au silence, vous êtes informé que :

- Vous pouvez demander que toutes les questions posées et toutes les réponses données soient notées dans les termes utilisés;
- Vous pouvez demander qu'il soit procédé à tel acte d'information ou à telle audition;
- Vos déclarations pourront être utilisées comme preuve en justice ;
- Vous n'êtes pas privé de votre liberté et pouvez aller et venir à tout moment;
- Lors d'un interrogatoire, vous pouvez faire usage de documents en votre possession sans que l'audition puisse être reportée à cet effet. Pendant ou après l'audition, vous pouvez exiger que ces documents soient joints au procès-verbal de l'audition ou déposés au greffe.

5. À la fin de l'audition

À la fin de l'audition, le texte de l'audition vous est remis pour lecture. Vous pouvez également demander qu'il vous en soit donné lecture.

Il vous sera demandé si vous souhaitez apporter des corrections ou des précisions à vos déclarations.

6. Aide d'un interprète

- Si vous souhaitez vous exprimer dans une autre langue que celle de la procédure, il sera fait appel à un interprète assermenté pour vous assister pendant l'audition. Cette assistance est gratuite.
- Vous pouvez également être invité à noter vous-même vos déclarations dans votre propre langue.

Vous pouvez conserver cette déclaration des droits.

VERKLARING VAN UW RECHTEN

Wanneer u **VAN UW VRIJHEID BENT BENOMEN**
en zal worden verhoord als verdachte

1/4

Welke rechten moeten u vóór aanvang van het verhoor worden meegedeeld ?**1. Recht op een vertrouwelijk overleg met advocaat en bijstand tijdens verhoor****A. Advocaat**

- U kan een advocaat naar keuze laten contacteren.
- Indien u geen eigen advocaat hebt of deze verhinderd is, kan u een advocaat van de permanentiedienst laten contacteren.
- Indien u voldoet aan bepaalde wettelijke voorwaarden is deze juridische bijstand geheel of gedeeltelijk kosteloos. U kan het formulier met deze voorwaarden opvragen.

B. Voorafgaand vertrouwelijk overleg

- U hebt voor het eerstvolgende verhoor – en binnen de 2 uren na het contact met de advocaat of de permanentiedienst – recht op een vertrouwelijk overleg met uw advocaat gedurende dertig minuten, uitzonderlijk verlengbaar op beslissing van de verhoorder.
- Dit overleg kan zowel telefonisch als op de plaats van het verhoor gebeuren.
- Heeft het geplande overleg met uw advocaat niet binnen de 2 uren plaatsgevonden, dan vindt alsnog een vertrouwelijk telefonisch overleg plaats met de permanentiedienst. Nadien kan het verhoor starten.
- Indien uw advocaat tijdens het verhoor toekomt, mag hij het verdere verhoor bijwonen.

C. Bijstand tijdens de verhoren

- U hebt recht op bijstand van uw advocaat tijdens de verhoren.
- Uw advocaat ziet toe op:
 - het respecteren van uw zwijgrecht en

- het recht uzelf niet te beschuldigen;
- de wijze waarop u tijdens het verhoor wordt behandeld, of er geen ongeoorloofde dwang of druk op u wordt uitgeoefend;
- de kennisgeving van uw rechten en de regelmatigheid van het verhoor.

Indien uw advocaat hierover opmerkingen heeft, kan hij die onmiddellijk in het proces-verbaal laten opnemen. Uw advocaat kan vragen dat een bepaalde opsporingshandeling wordt verricht of een bepaald verhoor wordt afgenomen. Hij kan verduidelijking vragen over vragen die worden gesteld. Hij kan opmerkingen maken over het onderzoek en over het verhoor. Het is hem niet toegelaten te antwoorden in uw plaats of het verloop van het verhoor te hinderen.

- Uzelf of uw advocaat heeft het recht het verhoor één keer te onderbreken voor een bijkomend vertrouwelijk overleg. Ook indien tijdens het verhoor nieuwe feiten aan het licht komen, mag u een bijkomend vertrouwelijk overleg met uw advocaat voeren. Dit mag maximum 15 minuten duren.

VERKLARING VAN UW RECHTEN

Wanneer u **VAN UW VRIJHEID BENT BENOMEN** en zal worden verhoord als verdachte

2/4

D. Afstand

U bent niet verplicht om een overleg of de bijstand van een advocaat te vragen.

U kan hiervan vrijwillig en weloverwogen afstand doen indien u:

- meerderjarig bent;
- nadat u hiervoor een document ondertekend en gedateerd hebt;
- indien mogelijk, kan het verhoor worden gefilmd; u kan dit met uw advocaat bespreken (zie ook punt 7).

U kan hiervoor een telefonisch contact hebben met de permanentiedienst.

E. Afwijking

In uitzonderlijke omstandigheden en bij dwingende redenen, kan de procureur des Konings of de onderzoeksrechter beslissen om uw recht op voorafgaandelijk vertrouwelijk overleg of bijstand van een advocaat tijdens het verhoor niet toe te kennen. Hij moet deze beslissing motiveren.

2. Beknopte mededeling van de feiten

U hebt het recht beknopt informatie te krijgen over de feiten waarover u zal worden verhoord.

3. Zwijgrecht

- U bent nooit verplicht uzelf te beschuldigen.
- Nadat u uw identiteit hebt bekend gemaakt, hebt u de keuze om een verklaring af te leggen, te antwoorden op de gestelde vragen of te zwijgen.

4. Iemand laten weten dat u gearresteerd bent

U hebt het recht een derde te laten inlichten over uw arrestatie.

Dit kan echter worden uitgesteld om dwingende redenen door de procureur des Konings of de onderzoeksrechter voor de duur die nodig is om de belangen van het onderzoek te beschermen.

5. Medische hulp

- U hebt recht op kosteloze medische bijstand indien nodig.
- U mag vragen dat een arts van uw keuze u onderzoekt. Dit gebeurt op uw eigen kosten.

VERKLARING VAN UW RECHTEN

Wanneer u **VAN UW VRIJHEID BENT BENOMEN**
en zal worden verhoord als verdachte

3/4

Welke bijkomende rechten hebt u tijdens het verhoor ?

6. Andere rechten bij het verhoor

Het verhoor zelf begint met een aantal mededelingen. Buiten de herhaling van de beknopte mededeling van de feiten en het zwijgrecht, wordt u meegedeeld dat:

- U kan vragen dat alle gestelde vragen en alle gegeven antwoorden worden genoteerd in de gebruikte bewoordingen;
- U kan vragen dat een bepaalde opsporingshandeling wordt verricht of een bepaald verhoor wordt afgenomen;
- Uw verklaringen als bewijs in rechte kunnen dienen.
- Bij een ondervraging kan u gebruik maken van documenten die u in uw bezit hebt, zonder dat daarvoor het verhoor kan worden uitgesteld. U mag, tijdens of na het verhoor, eisen dat deze stukken bij het proces-verbaal van het verhoor worden gevoegd of ter griffie worden neergelegd.

7. Filmen van het verhoor

- Indien mogelijk, kan het verhoor worden gefilmd ter controle van het verloop van het verhoor.
- De verhoorder, de procureur des Konings of de onderzoeksrechter kunnen dit beslissen.

8. Op het einde van het verhoor

Op het einde van het verhoor krijgt u de tekst van het verhoor te lezen. U kan ook vragen dat het u wordt voorgelezen.

Er zal u gevraagd worden of u iets aan uw verklaringen wil verbeteren of toevoegen.

9. Hulp van een tolk

- Indien u de taal niet verstaat of spreekt, of indien u lijdt aan gehoor- of spraakstoornissen en indien uw advocaat uw taal niet verstaat of spreekt, hebt u recht op een beëdigd tolk tijdens het vertrouwelijk overleg met uw advocaat. Dit is kosteloos.
- Indien u zich in een andere taal dan die van de procedure wenst uit te drukken, wordt een beëdigde tolk opgeroepen om u bij te staan tijdens het verhoor. Dit is kosteloos.
- U kan gevraagd worden om zelf uw verklaring op te schrijven in uw eigen taal.

VERKLARING VAN UW RECHTEN

Wanneer u **VAN UW VRIJHEID BENT BENOMEN** en zal worden verhoord als verdachte

4/4

Hoe lang mag u van uw vrijheid worden benomen?

1. In principe 24 uren

U mag maximaal 24 uren van uw vrijheid worden benomen.

2. Bevel tot verlenging

De onderzoeksrechter kan echter beslissen om uw arrestatie met maximaal 24 uren te verlengen.

In dit geval hebt u recht op één bijkomend vertrouwelijk overleg met een advocaat gedurende maximum 30 minuten.

Uw advocaat mag u ook bijstaan bij de verhoren tijdens deze verlenging.

3. Onderzoeksrechter

- Binnen de 24 uren (eventueel verlengd met 24 uren) wordt u ofwel in vrijheid gesteld ofwel voor de onderzoeksrechter gebracht. Deze beslist over uw verdere vrijheidsbeneming en over het afleveren van een bevel tot aanhouding.
- De onderzoeksrechter is verplicht om u hierover eerst te horen. Ook tijdens dit verhoor hebt u recht op bijstand van uw advocaat. De onderzoeksrechter moet uw opmerkingen, of deze van uw advocaat, horen over de mogelijkheid dat een bevel tot aanhouding zal worden uitgevaardigd.

Enkel als u meerderjarig bent, kan u afstand doen van dit recht.

— Levert de onderzoeksrechter een bevel tot aanhouding af, dan hebt u volgende rechten:

- U mag vrij verkeer hebben met uw advocaat.
- Binnen de vijf dagen na de aflevering van het bevel tot aanhouding moet u voor de raadkamer verschijnen, waar u de aanhouding en voorlopige hechtenis kan aanvechten.
- De dag voorafgaand aan de zitting van de raadkamer mag u uw dossier raadplegen.
- Tenzij u een mondelinge vertaling hebt gekregen van het bevel tot aanhouding, kan u een vertaling van de relevante passages van het bevel tot aanhouding vragen, indien u de taal van de procedure niet verstaat. U moet hiertoe een verzoek indienen ter griffie van de rechtbank van eerste aanleg binnen drie dagen na het verlenen van het bevel tot aanhouding. Deze vertaling is kosteloos.
- Uw advocaat kan u meer uitleg geven over het verdere verloop van deze procedure.
- Indien u niet de Belgische nationaliteit hebt, mag u uw consulaire autoriteiten verwittigen van uw aanhouding.

U mag deze verklaring van rechten bijhouden

DÉCLARATION DE VOS DROITS

Lorsque vous êtes privé de votre liberté et que vous allez être entendu en tant que suspect

1/4

Quels sont les droits qui doivent vous être communiqués avant le début de l'audition ?

1. Droit à une concertation confidentielle avec un avocat et à une assistance pendant l'audition

A. Avocat

- Vous pouvez contacter un avocat de votre choix.
- Si vous n'avez pas d'avocat ou si celui-ci est empêché, vous pouvez demander que l'on contacte un avocat de la permanence.
- Si vous remplissez certaines conditions légales, cette assistance juridique est totalement ou partiellement gratuite. Vous pouvez demander le formulaire reprenant ces conditions.

B. Concertation confidentielle préalable

- Vous avez droit, avant la première audition qui suit et dans les 2 heures suivant le contact avec l'avocat ou la permanence, à une concertation confidentielle avec votre avocat pendant 30 minutes, exceptionnellement prolongeable sur décision des personnes qui vont vous interroger.
- Cette concertation peut se faire par téléphone ou sur le lieu de l'audition.
- Si la concertation planifiée avec votre avocat n'a pas eu lieu dans les 2 heures, une concertation confidentielle par téléphone a néanmoins encore lieu avec la permanence. L'audition pourra commencer après.
- Si votre avocat arrive pendant l'audition, il peut assister à la suite de son déroulement.

C. Assistance pendant les auditions

- Vous avez droit à l'assistance de votre avocat pendant les auditions.
- Votre avocat veille :
 - au respect de votre droit au silence et de votre droit de ne pas vous accuser vous-même;
 - à la manière dont vous êtes traité pendant l'audition ou à l'absence de contraintes ou de pressions illicites exercées à votre égard;
 - à la notification de vos droits et à la régularité de l'audition.

Si votre avocat a des remarques à ce sujet, il peut les faire mentionner immédiatement dans le procès-verbal. Votre avocat peut demander qu'il soit procédé à tel acte d'information ou à telle audition. Il peut demander des clarifications sur des questions qui sont posées. Il peut formuler des observations sur l'enquête et sur l'audition. Il ne lui est toutefois pas permis de répondre à votre place ou d'entraver le déroulement de l'audition.

- Vous ou votre avocat avez le droit d'interrompre une seule fois l'audition pour une concertation confidentielle supplémentaire. De même, si de nouveaux faits apparaissent pendant l'audition, vous pouvez mener une concertation confidentielle supplémentaire avec votre avocat. Celle-ci peut durer 15 minutes maximum.

DÉCLARATION DE VOS DROITS

Lorsque vous êtes privé de votre liberté et que vous allez être entendu en tant que suspect

2/4

D. Renonciation

Vous n'êtes pas obligé de demander une concertation ou l'assistance d'un avocat.

Vous pouvez y renoncer de manière volontaire et réfléchie :

- si vous êtes majeur ;
- après avoir signé et daté un document à cet effet ;
- si possible, l'audition peut être audio filmée ; vous pouvez en discuter avec votre avocat (voir aussi le point 7).

Vous pouvez avoir un contact téléphonique avec le service de permanence à ce sujet.

E. Dérogation

En cas de circonstances exceptionnelles et de motifs impérieux, le procureur du Roi ou le juge d'instruction peut décider de ne pas accorder votre droit à la concertation confidentielle préalable ou à l'assistance d'un avocat pendant l'audition. Il doit motiver cette décision.

2. Notification succincte des faits

Vous avez le droit d'être informé succinctement des faits à propos desquels vous serez entendu.

3. Droit au silence

- Vous n'êtes jamais obligé de vous accuser vous-même.
- Après avoir donné votre identité, vous pouvez choisir de faire une déclaration, de répondre aux questions posées ou de vous taire.

4. Droit d'informer quelqu'un de votre arrestation

Vous avez le droit de faire prévenir un tiers de votre arrestation.

Le procureur du Roi ou le juge d'instruction peut, en raison de motifs impérieux, reporter ce moment pendant la durée nécessaire pour préserver les intérêts de l'enquête.

5. Aide médicale

- Si nécessaire, vous avez droit à une aide médicale gratuite.
- Vous pouvez également demander qu'un médecin de votre choix vous examine. Cet examen s'effectue à vos propres frais.

DÉCLARATION DE VOS DROITS

Lorsque vous êtes privé de votre liberté
et que vous allez être entendu en tant que
suspect

3/4

Quels sont vos droits supplémentaires pendant l'audition ?

6. Autres droits pendant l'audition

L'audition en tant que telle commence par un certain nombre de communications. Outre la répétition de la notification succincte des faits et du droit au silence, vous êtes informé que :

- Vous pouvez demander que toutes les questions posées et toutes les réponses données soient notées dans les termes utilisés;
- Vous pouvez demander qu'il soit procédé à tel acte d'information ou à telle audition;
- Vos déclarations pourront être utilisées comme preuve en justice.
- Lors d'un interrogatoire, vous pouvez faire usage de documents en votre possession sans que l'audition puisse être reportée à cet effet. Pendant ou après l'audition, vous pouvez exiger que ces documents soient joints au procès-verbal de l'audition ou déposés au greffe.

7. Enregistrement audio filmé de l'audition

- Si possible, l'audition peut être audio filmée afin d'en contrôler le déroulement.
- La personne qui procède à l'audition, le procureur du Roi ou le Juge d'instruction peuvent décider de procéder à cet enregistrement.

8. À la fin de l'audition

À la fin de l'audition, le texte de l'audition vous est remis pour lecture. Vous pouvez également demander qu'il vous en soit donné lecture.

Il vous sera demandé si vous souhaitez apporter des corrections ou des précisions à vos déclarations.

9. Aide d'un interprète

- Si vous ne comprenez pas ou ne parlez pas la langue ou si vous souffrez de troubles de l'audition ou de la parole, et si votre avocat ne comprend pas ou ne parle pas votre langue, vous avez le droit à un interprète assermenté pendant la concertation confidentielle préalable avec votre avocat. Cette assistance est gratuite.
- Si vous souhaitez vous exprimer dans une autre langue que celle de la procédure, il sera fait appel à un interprète assermenté pour vous assister pendant l'audition. Cette assistance est gratuite.
- Vous pouvez également être invité à noter vous-même vos déclarations dans votre propre langue.

DÉCLARATION DE VOS DROITS

Lorsque vous êtes privé de votre liberté et que vous allez être entendu en tant que suspect

4/4

Pendant combien de temps pouvez-vous être privé de liberté ?

1. En principe, 24 heures

Vous pouvez être privé de votre liberté pendant 24 heures maximum.

2. Ordonnance de prolongation

Le juge d'instruction peut décider de prolonger votre arrestation de 24 heures maximum.

Dans ce cas, vous avez droit à une seule concertation confidentielle supplémentaire avec un avocat pendant 30 minutes maximum.

Votre avocat peut également vous assister durant les auditions effectuées pendant cette prolongation.

3. Juge d'instruction

- Dans les 24 heures (éventuellement prolongées de 24 heures), vous êtes soit remis en liberté, soit déféré devant le juge d'instruction. Celui-ci se prononce sur la suite de votre privation de liberté et sur la délivrance d'un mandat d'arrêt.
- Le juge d'instruction est obligé de vous entendre d'abord à ce sujet. Pendant cette audition, vous avez également droit à l'assistance de votre avocat. Le juge d'instruction doit entendre vos observations, ou celles de votre avocat, concernant la possibilité qu'un mandat d'arrêt soit décerné.

Vous ne pouvez renoncer à ce droit que si vous êtes majeur.

— Si le juge d'instruction délivre un mandat d'arrêt, vous avez les droits suivants :

- Vous pouvez communiquer librement avec votre avocat.
- Dans les cinq jours suivant la délivrance du mandat d'arrêt, vous devez comparaître devant la chambre du conseil, où vous pourrez contester l'arrestation et la détention préventive.
- A moins que vous n'ayez reçu une traduction orale du mandat d'arrêt, vous pouvez demander la traduction des passages pertinents du mandat d'arrêt si vous ne comprenez pas la langue de la procédure. Vous devez alors déposer une demande au greffe du tribunal de première instance dans les trois jours de la délivrance du mandat d'arrêt. Cette traduction est gratuite.
- Vous pouvez consulter votre dossier la veille de l'audience de la chambre du conseil.
- Votre avocat peut vous fournir des informations supplémentaires sur la suite de cette procédure.
- Si vous ne possédez pas la nationalité belge, vous avez le droit de prévenir vos autorités consulaires de votre arrestation.

Vous pouvez conserver cette déclaration des droits.

VERKLARING VAN UW RECHTEN

Wanneer u **VAN UW VRIJHEID BENT BENOMEN** op grond van een Europees aanhoudingsbevel of een signalering

1/4

Welke rechten moeten u vóór aanvang van het verhoor worden meegedeeld ?

1. Recht op een vertrouwelijk overleg met advocaat en bijstand tijdens verhoor

A. Advocaat

- U kan een advocaat naar keuze laten contacteren.
- Indien u geen eigen advocaat hebt of deze verhinderd is, kan u een advocaat van de permanentiedienst laten contacteren.
- Indien u voldoet aan bepaalde wettelijke voorwaarden is deze juridische bijstand geheel of gedeeltelijk kosteloos. U kan het formulier met deze voorwaarden opvragen.

B. Voorafgaand vertrouwelijk overleg

- U hebt voor het eerstvolgende verhoor – en binnen de 2 uren na het contact met de advocaat of de permanentiedienst – recht op een vertrouwelijk overleg met uw advocaat gedurende dertig minuten, uitzonderlijk verlengbaar op beslissing van de verhoorder.
- Dit overleg kan zowel telefonisch als op de plaats van het verhoor gebeuren.
- Heeft het geplande overleg met uw advocaat niet binnen de 2 uren plaatsgevonden, dan vindt alsnog een vertrouwelijk telefonisch overleg plaats met de permanentiedienst. Nadien kan het verhoor starten.
- Indien uw advocaat tijdens het verhoor toekomt, mag hij het verdere verhoor bijwonen.

C. Bijstand tijdens de verhoren

- U hebt recht op bijstand van uw advocaat tijdens de verhoren.

- Uw advocaat ziet toe op:
 - het respecteren van uw zwijgrecht en het recht uzelf niet te beschuldigen;
 - de wijze waarop u tijdens het verhoor wordt behandeld, of er geen ongeoorloofde dwang of druk op u wordt uitgeoefend;
 - de kennisgeving van uw rechten en de regelmatigheid van het verhoor.

Indien uw advocaat hierover opmerkingen heeft, kan hij die onmiddellijk in het proces verbaal laten opnemen. Uw advocaat kan verduidelijking vragen over vragen die worden gesteld. Het is hem niet toegelaten te antwoorden in uw plaats of het verloop van het verhoor te verhinderen.

- Uzelf of uw advocaat heeft het recht het verhoor één keer te onderbreken voor een bijkomend vertrouwelijk overleg. Ook indien tijdens het verhoor nieuwe feiten aan het licht komen, mag u een bijkomend vertrouwelijk overleg met uw advocaat voeren. Dit mag maximum 15 minuten duren.

D. Afstand

U bent niet verplicht om een overleg of de bijstand van een advocaat te vragen.

U kan hiervan vrijwillig en weloverwogen afstand doen indien u:

- meerderjarig bent;
- nadat u hiervoor een document ondertekend en gedateerd hebt;
- indien mogelijk, kan het verhoor worden gefilmd; u kan dit met uw advocaat bespreken (zie ook punt 7).

U kan hiervoor een telefonisch contact hebben met de permanentiedienst.

VERKLARING VAN UW RECHTEN

Wanneer u **VAN UW VRIJHEID BENT BENOMEN** op grond van een Europees aanhoudingsbevel of een signalering

2/4

E. Afwijking

In uitzonderlijke omstandigheden en bij dwingende redenen, kan de procureur des Konings of de onderzoeksrechter beslissen om uw recht op voorafgaandelijk vertrouwelijk overleg of bijstand van een advocaat tijdens het verhoor niet toe te kennen. Hij moet deze beslissing motiveren.

F. Recht op een advocaat in het land dat het Europees aanhoudingsbevel heeft uitgevaardigd

U hebt het recht om een advocaat aan te wijzen in het land dat het Europees aanhoudingsbevel heeft uitgevaardigd. Deze advocaat kan uw advocaat in België informatie en advies verstrekken inzake de procedure tot overlevering.

2. Informatie over het Europees aanhoudingsbevel of de signalering

- U hebt het recht te worden geïnformeerd van de inhoud van het Europees aanhoudingsbevel of de signalering.
- Indien uw overlevering wordt gevraagd met het oog op de tenuitvoerlegging van een straf en u geen kennis had van deze veroordeling of van de bestaande strafprocedure, kunt u verzoeken om ten informatieve titel en op voorwaarde dat dit tijdig kan worden uitgevoerd, een kopie te krijgen van de buitenlandse veroordeling.

3. Zwijgrecht

- U bent nooit verplicht uzelf te beschuldigen.
- Nadat u uw identiteit hebt bekend gemaakt, hebt u de keuze om een verklaring af te leggen, te antwoorden op de gestelde vragen of te zwijgen.

4. Iemand laten weten dat u gearresteerd bent

U hebt het recht een derde te laten inlichten over uw arrestatie.

Dit kan echter worden uitgesteld om dwingende redenen door de procureur des Konings of de onderzoeksrechter voor de duur die nodig is om de belangen van het onderzoek te beschermen.

5. Medische hulp

- U hebt recht op kosteloze medische bijstand indien nodig.
- U mag vragen dat een arts van uw keuze u onderzoekt. Dit gebeurt op uw eigen kosten.

VERKLARING VAN UW RECHTEN

Wanneer u **VAN UW VRIJHEID BENT BENOMEN** op grond van een Europees aanhoudingsbevel of een signalering

3/4

Welke bijkomende rechten hebt u tijdens het verhoor ?**6. Andere rechten bij het verhoor**

Het verhoor zelf begint met een aantal mededelingen. Buiten de herhaling van de beknopte mededeling van de feiten en het zwijgrecht, wordt u meegedeeld dat:

- U kan vragen dat alle gestelde vragen en alle gegeven antwoorden worden genoteerd in de gebruikte bewoordingen;
- U kan vragen dat een bepaalde opsporingshandeling wordt verricht of een bepaald verhoor wordt afgenomen;
- Uw verklaringen als bewijs in rechte kunnen dienen;
- Bij een ondervraging kan u gebruik maken van documenten die u in uw bezit hebt, zonder dat daarvoor het verhoor kan worden uitgesteld. U mag, tijdens of na het verhoor, eisen dat deze stukken bij het proces-verbaal van het verhoor worden gevoegd of ter griffie worden neergelegd.

7. Filmen van het verhoor

- Indien mogelijk, kan het verhoor worden gefilmd ter controle van het verloop van het verhoor.
- De verhoorder, de procureur des Konings of de onderzoeksrechter kunnen dit beslissen.

8. Op het einde van het verhoor

Op het einde van het verhoor krijgt u de tekst van het verhoor te lezen. U kan ook vragen dat het u wordt voorgelezen.

Er zal u gevraagd worden of u iets aan uw verklaringen wil verbeteren of toevoegen.

9. Hulp van een tolk

- Indien u de taal niet verstaat of spreekt, of indien u lijdt aan gehoor- of spraakstoornissen en indien uw advocaat uw taal niet verstaat of spreekt, hebt u recht op een beëdigd tolk tijdens het vertrouwelijk overleg met uw advocaat. Dit is kosteloos.
- Indien u zich in een andere taal dan die van de procedure wenst uit te drukken, wordt een beëdigd tolk opgeroepen om u bij te staan tijdens het verhoor. Dit is kosteloos.
- U kan gevraagd worden om zelf uw verklaring op te schrijven in uw eigen taal.

10. Instemming met de overlevering

U kan instemmen met uw overlevering aan het land dat u zoekt. U kan uw instemming beperken tot de feiten die worden vermeld in het Europees aanhoudingsbevel. U kan ook afstand doen van het specialiteitsbeginsel, wat inhoudt dat u na overlevering vervolgd of in een strafuitvoering kan worden opgesloten voor andere feiten dan waarvoor de overlevering wordt gevraagd.

Indien u wil instemmen met de overlevering, wordt u na het verhoor door de onderzoeksrechter, verhoord door de procureur des Konings. Deze zal u meer uitleg geven over de gevolgen. U kan hierbij worden bijgestaan door uw advocaat. U kan enkel instemmen voor de procureur des Konings.

Eens u rechtsgeldig hebt ingestemd met de overlevering, kan u hier niet meer op teruggekomen.

VERKLARING VAN UW RECHTEN

Wanneer u **VAN UW VRIJHEID BENT BENOMEN** op grond van een Europees aanhoudingsbevel of een signalering

4/4

Hoe lang mag u van uw vrijheid worden benomen?

1. In principe 24 uren

U mag maximaal 24 uren van uw vrijheid worden benomen.

2. Onderzoeksrechter

— Binnen de 24 uren wordt u ofwel in vrijheid gesteld ofwel voor de onderzoeksrechter gebracht. Deze beslist over de eventuele hechtenis op grond van het Europees aanhoudingsbevel.

— De onderzoeksrechter is verplicht om u hierover eerst te horen. U hebt recht op bijstand van uw advocaat. De onderzoeksrechter moet uw opmerkingen, of deze van uw advocaat, horen over de eventuele hechtenis.

Enkel als u meerderjarig bent, kan u afstand doen van het recht op bijstand van een advocaat.

- Levert de onderzoeksrechter een bevel tot aanhouding af, dan hebt u volgende rechten:
- U mag vrij verkeer hebben met uw advocaat.
 - Binnen de vijftien dagen na de aanhouding moet u voor de raadkamer verschijnen, waar u de hechtenis en de overlevering op basis van een Europees aanhoudingsbevel kan aanvechten. U kan tegen deze beslissing beroep aantekenen bij de kamer van inbeschuldigingstelling, die binnen de vijftien dagen uitspraak doet. Het hoger beroep moet worden aangetekend binnen de vierentwintig uur na de betekening van de beslissing van de raadkamer.
 - De dag voorafgaand aan de zitting van de raadkamer of de kamer van

inbeschuldigingstelling mag u uw dossier raadplegen.

- Uw advocaat kan u meer uitleg geven over het verdere verloop van deze procedure.
- Indien u niet de Belgische nationaliteit hebt, mag u uw consulaire autoriteiten verwittigen van uw aanhouding.
- Indien u de taal van het Europees aanhoudingsbevel, of de taal waarnaar het werd vertaald, niet verstaat, ontvangt u voor de verschijning voor de raadkamer en uiterlijk voor een definitieve beslissing wordt gewezen met betrekking tot de tenuitvoerlegging, ofwel een schriftelijke vertaling van het Europees aanhoudingsbevel naar een taal die u verstaat, ofwel een mondelinge vertaling van het Europees aanhoudingsbevel of een mondelinge vertaling van de essentiële processtukken.

U mag deze verklaring van rechten bijhouden

DÉCLARATION DE VOS DROITS

Lorsque vous **ÊTES PRIVÉ DE VOTRE LIBERTÉ** sur base d'un mandat d'arrêt européen ou d'un signalement

1/4

Quels sont les droits qui doivent vous être communiqués avant le début de l'audition ?

1. Droit à une concertation confidentielle avec un avocat et à une assistance pendant l'audition

A. Avocat

- Vous pouvez faire contacter un avocat de votre choix.
- Si vous n'avez pas d'avocat ou si celui-ci est empêché, vous pouvez demander que l'on contacte un avocat de la permanence.
- Si vous remplissez certaines conditions légales, cette assistance juridique est totalement ou partiellement gratuite. Vous pouvez demander le formulaire reprenant ces conditions.

B. Concertation confidentielle préalable

- Vous avez droit, avant la première audition qui suit et dans les 2 heures suivant le contact avec l'avocat ou la permanence, à une concertation confidentielle avec votre avocat pendant 30 minutes, exceptionnellement prolongeable sur décision de la personne qui va vous interroger.
- Cette concertation peut se faire par téléphone ou sur le lieu de l'audition.
- Si la concertation planifiée avec votre avocat n'a pas eu lieu dans les 2 heures, une concertation confidentielle par téléphone a néanmoins encore lieu avec la permanence. L'audition pourra commencer après.
- Si votre avocat arrive pendant l'audition, il peut assister à la suite de son déroulement.

C. Assistance pendant l'audition

- Vous avez droit à l'assistance de votre avocat pendant les auditions.
- Votre avocat veille :
 - au respect de votre droit au silence et de votre droit de ne pas vous accuser vous-même;

- à la manière dont vous êtes traité pendant l'audition ou à l'absence de contraintes ou de pressions illicites exercées à votre égard;
- à la notification de vos droits et à la régularité de l'audition.

Si votre avocat a des remarques à ce sujet, il peut les faire mentionner immédiatement dans le procès-verbal. Votre avocat peut demander qu'il soit procédé à tel acte d'information ou à telle audition. Il peut demander des clarifications sur des questions qui sont posées. Il peut formuler des observations sur l'enquête et sur l'audition. Il ne lui est toutefois pas permis de répondre à votre place ou d'entraver le déroulement de l'audition.

- Vous ou votre avocat avez le droit d'interrompre une seule fois l'audition pour une concertation confidentielle supplémentaire. De même, si de nouveaux faits apparaissent pendant l'audition, vous pouvez mener une concertation confidentielle supplémentaire avec votre avocat. Celle-ci peut durer 15 minutes maximum.

D. Renonciation

Vous n'êtes pas obligé de demander une concertation ou l'assistance d'un avocat.

Vous pouvez y renoncer de manière volontaire et réfléchie :

- si vous êtes majeur ;
- après avoir signé et daté un document à cet effet ;
- si possible, l'audition peut être audio filmée ; vous pouvez en discuter avec votre avocat (voir aussi le point 7).

Vous pouvez avoir un contact téléphonique avec le service de permanence à ce sujet.

DÉCLARATION DE VOS DROITS

Lorsque vous **ÊTES PRIVÉ DE VOTRE LIBERTÉ** sur base d'un mandat d'arrêt européen ou d'un signalement

2/4

E. Dérogation

En cas de circonstances exceptionnelles et de motifs impérieux, le procureur du Roi ou le juge d'instruction peut décider de ne pas accorder votre droit à la concertation confidentielle préalable ou à l'assistance d'un avocat pendant l'audition. Il doit motiver cette décision.

F. Droit à un avocat dans le pays émetteur du mandat d'arrêt européen

Vous avez le droit de désigner un avocat dans le pays émetteur du mandat d'arrêt européen. Cet avocat peut solliciter des informations et avis relatifs à la procédure de remise auprès de l'avocat en Belgique.

2. Informations concernant le mandat d'arrêt européen ou le signalement

- Vous avez le droit d'être informé du contenu du mandat d'arrêt européen ou du signalement.
- Si votre remise a été requise en vue de l'exécution d'une peine et si vous n'avez pas encore été informé de cette condamnation ou de la procédure pénale existante à votre encontre, vous pouvez demander, à titre informatif et à condition que cette demande puisse être rencontrée à temps, une copie du jugement étranger.

3. Droit au silence

- Vous n'êtes jamais obligé de vous accuser vous-même.
- Après avoir donné votre identité, vous pouvez choisir de faire une déclaration, de répondre aux questions posées ou de vous taire.

4. Droit d'informer quelqu'un de votre arrestation

Vous avez le droit de faire prévenir un tiers de votre arrestation.

Le procureur du Roi ou le juge d'instruction peut, en raison de motifs impérieux, reporter ce moment pendant la durée nécessaire pour préserver les intérêts de l'enquête.

5. Aide médicale

- Si nécessaire, vous avez droit à une aide médicale gratuite.
- Vous pouvez également demander qu'un médecin de votre choix vous examine. Cet examen s'effectue à vos propres frais.

DÉCLARATION DE VOS DROITS

Lorsque vous **ÊTES PRIVÉ DE VOTRE LIBERTÉ** sur base d'un mandat d'arrêt européen ou d'un signalement

3/4

Quels sont vos droits supplémentaires pendant l'audition ?

6. Autres droits pendant l'audition

L'audition en tant que telle commence par un certain nombre de communications. Outre la répétition de la notification succincte des faits et du droit au silence, vous êtes informé que :

- Vous pouvez demander que toutes les questions posées et toutes les réponses données soient notées dans les termes utilisés;
- Vous pouvez demander qu'il soit procédé à tel acte d'information ou à telle audition;
- Vos déclarations pourront être utilisées comme preuve en justice;
- Lors d'un interrogatoire, vous pouvez faire usage de documents en votre possession sans que l'audition puisse être reportée à cet effet. Pendant ou après l'audition, vous pouvez exiger que ces documents soient joints au procès-verbal de l'audition ou déposés au greffe.

7. Enregistrement audio filmé de l'audition

- Si possible, l'audition peut être audio filmée afin d'en contrôler le déroulement.
- La personne qui procède à l'audition, le procureur du Roi ou le juge d'instruction peut décider de procéder à cet enregistrement.

8. À la fin de l'audition

À la fin de l'audition, le texte de l'audition vous est remis pour lecture. Vous pouvez également demander qu'il vous en soit donné lecture.

Il vous sera demandé si vous souhaitez apporter des corrections ou des précisions à vos déclarations.

9. Aide d'un interprète

- Si vous ne comprenez pas ou ne parlez pas la langue ou si vous souffrez de troubles de l'audition ou de la parole, et si votre avocat ne comprend pas ou ne parle pas votre langue, vous avez le droit à un interprète assermenté pendant la concertation confidentielle préalable avec votre avocat. Cette assistance est gratuite.
- Si vous souhaitez vous exprimer dans une autre langue que celle de la procédure, il sera fait appel à un interprète assermenté pour vous assister pendant l'audition. Cette assistance est gratuite.
- Vous pouvez également être invité à noter vous-même vos déclarations dans votre propre langue.

10. Consentement à la remise

Vous avez la possibilité de consentir à être remis à l'autorité judiciaire d'émission. Le consentement peut être limité aux faits qui sont mentionnés au mandat d'arrêt européen. Vous pouvez aussi renoncer au bénéfice de la règle de la spécialité. Dans pareil cas, vous pouvez être remis ou être poursuivi par les autorités étrangères ou être écroué en exécution de peine pour des faits autres que ceux pour lesquels le mandat d'arrêt européen a été délivré.

Si vous souhaitez consentir à votre remise, vous serez, après avoir été entendu par le juge d'instruction, entendu par le procureur du Roi, qui vous donnera toutes les explications au sujet des conséquences de votre consentement. Lors de cette audition, vous pouvez, le cas échéant, être assisté de votre avocat. Le consentement n'est valable que s'il est donné auprès du procureur du Roi.

Une fois votre consentement valablement donné, il ne peut être révoqué.

DÉCLARATION DE VOS DROITS

Lorsque vous **ÊTES PRIVÉ DE VOTRE LIBERTÉ** sur base d'un mandat d'arrêt européen ou d'un signalement

4/4

Pendant combien de temps pouvez-vous être privé de liberté ?

1. En principe, 24 heures

Vous pouvez être privé de votre liberté pendant 24 heures maximum.

2. Juge d'instruction

- Dans les 24 heures, vous êtes soit remis en liberté, soit déféré devant le juge d'instruction. Celui-ci décide de l'éventuelle détention sur base du mandat d'arrêt européen.
- Le juge d'instruction est obligé de vous entendre d'abord à ce sujet. Vous avez le droit à l'assistance de votre avocat. Le juge d'instruction doit entendre vos observations, ou celles de votre avocat, concernant l'éventuelle détention.

Vous ne pouvez renoncer à ce droit d'assistance d'un avocat que si vous êtes majeur.

- Si le juge d'instruction délivre un mandat d'arrêt, vous avez les droits suivants :
 - Vous pouvez communiquer librement avec votre avocat.
 - Dans les quinze jours suivant l'arrestation, vous devez comparaître devant la chambre du conseil, où vous pourrez contester la détention et la remise sur base du mandat d'arrêt européen. Vous pouvez faire appel de cette décision auprès de la chambre des mises en accusation qui devra statuer dans les quinze jours. L'appel doit être signé dans les vingt-quatre heures après la signification de la décision de la chambre du conseil.
 - Vous pouvez consulter votre dossier la veille de l'audience de la chambre du conseil ou de la chambre des mises en accusation.

- Votre avocat peut vous fournir des informations supplémentaires sur la suite de cette procédure.
- Si vous ne possédez pas la nationalité belge, vous avez le droit de prévenir vos autorités consulaires de votre arrestation.
- Si vous ne comprenez pas la langue du mandat d'arrêt européen ou la langue dans laquelle il est traduit, vous recevrez, avant votre comparution devant la chambre du conseil et au plus tard avant qu'une décision définitive ne soit rendue à propos de son exécution, soit une traduction écrite du mandat d'arrêt européen dans une langue que vous comprenez, soit une traduction orale du mandat d'arrêt européen, soit une traduction orale des passages pertinents du mandat d'arrêt européen.

Vous pouvez conserver cette déclaration des droits.

Annexe 4. Statistiques du Parquet Jeunesse sur les FQI commis par des mineurs d'âge¹

Tableau 1. Types de prévention

Le tableau montre la proportion des différents types de prévention par rapport au nombre d'affaires FQI signalées au parquet. Chaque affaire est comptabilisée dans une seule rubrique. Les données concernent toute la Belgique, à l'exception du parquet d'Eupen.

Type de prévention	2011	2012	2013	2014	2015
Atteintes aux biens	50,30%	46,11%	43,96%	42,84%	44,83%
Atteintes aux personnes	18,91%	20,07%	20,04%	19,60%	18,74%
Ordre et sécurité publique	10,19%	10,37%	10,66%	10,63%	10,96%
Stupéfiants - Drogues	7,11%	8,97%	11,09%	12,62%	11,29%
Matières Police (roulage)	6,56%	7,50%	7,10%	6,98%	6,36%
Autres	3,95%	3,44%	3,16%	2,89%	3,24%
Famille et moralité publique	2,98%	3,54%	3,99%	4,44%	4,58%
Nombre total de FQI	79.565	63.290	59.780	58.819	57.160

Tableau 2. Age

Le tableau montre la proportion du nombre d'affaires FQI signalées au parquet selon l'âge du mineur. Il s'agit toujours de l'âge du mineur au moment des faits. Un mineur est compté à chaque fois qu'un nouveau numéro de notice le concernant est créé suite à un fait qualifié infraction. Il/elle peut, par exemple, être repris(e) sous différentes catégories d'âge ou plusieurs fois dans une même catégorie d'âge. Les données concernent toute la Belgique, à l'exception du parquet d'Eupen.

Age du mineur	2011	2012	2013	2014	2015
En-dessous de 6 ans	0,69%	0,70%	0,65%	0,56%	0,65%
De 6 ans à 12 ans	4,58%	4,37%	4,50%	4,60%	3,74%
De 12 ans à 14 ans	12,16%	11,84%	11,70%	11,46%	10,73%
De 14 ans à 16 ans	33,17%	33,83%	33,33%	32,88%	34,25%
De 16 ans à 18 ans	47,31%	46,95%	47,62%	48,71%	48,95%
À partir de 18 ans	0,91%	0,97%	1,06%	0,99%	0,87%
Inconnu/erreur	1,18%	1,34%	1,14%	0,80%	0,81%

Tableau 3. Sexe

Ce tableau montre la proportion d'affaires FQI signalées au parquet concernant des garçons d'une part et des filles d'autre part. Les données concernent toute la Belgique, à l'exception du parquet d'Eupen.

Sexe du mineur	2011	2012	2013	2014	2015
Masculin	75,89%	76,26%	76,98%	78,17%	78,80%
Féminin	22,81%	22,32%	21,95%	20,67%	20,15%
Inconnu/erreur	1,30%	1,42%	1,07%	1,16%	1,05%

¹ Les données ont été tirées et assemblées à partir des « *Statistiques annuelles du flux d'entrée des affaires protectionnelles dans les parquets de la jeunesse* » disponibles sur le site du Ministère Public : <http://www.om-mp.be/stat/jeu/f/index.html>.

**Annexe 5. Règlement de l'Ordre des barreaux francophones et germanophone du 14 mars 2011 sur
l'avocat qui intervient pour assurer la défense d'un mineur, inséré dans le Code de déontologie
d'AVOCATS.BE, version du 01 juillet 2016.**

Section 3 – Défense d'un mineur

Article 2.20 (M.B. 17.01.2013)

L'avocat assiste, conseille, représente et défend un client mineur d'une manière analogue à son intervention au profit d'un client majeur.

Lorsque le mineur ne perçoit pas sa situation et ne peut exprimer un avis raisonné, l'avocat est le garant du respect des droits du mineur et des règles de la procédure.

L'avocat assure la défense du mineur d'une manière qui tient compte de son âge, de sa maturité et de ses capacités intellectuelles et émotionnelles et il favorise sa compréhension de la procédure et sa participation à celle-ci.

Article 2.21 (M.B. 17.01.2013)

L'avocat est librement choisi par le mineur dont la décision n'est pas soumise à l'autorisation de son représentant légal.

L'avocat ne tient pas son mandat du représentant légal et n'a pas à tenir compte de ses éventuelles injonctions.

Sans préjudice des dispositions en vigueur dans le cadre de l'aide juridique, le mineur peut changer d'avocat.

Si l'avocat déchargé a des raisons de croire que cette succession pose problème, il en avise d'urgence le bâtonnier.

Article 2.22 (M.B. 17.01.2013)

L'avocat peut être consulté par le mineur et son représentant légal lorsqu'il n'y a pas d'opposition d'intérêts.

Il ne peut intervenir dans une instance en même temps pour le mineur et ses parents s'il y a conflit entre leurs intérêts ou un risque sérieux d'un tel conflit.

Pour le mineur déferé pour des faits qualifiés d'infractions, un tel conflit d'intérêts est toujours présumé.

Article 2.23 (M.B. 17.01.2013)

Dans le respect de son secret professionnel, l'avocat ne communique avec un tiers, même avec les parents ou les intervenants du secteur psycho-éducatif, que dans la mesure nécessaire à l'exécution de sa mission.

Sauf situation d'extrême urgence, l'avocat ne fait usage de la possibilité prévue à l'article 458*bis* du code pénal, qui autorise, sous certaines conditions, d'informer le procureur du Roi qu'il existe un

danger grave et imminent pour l'intégrité mentale ou physique d'un mineur, qu'après s'en être entretenu avec son bâtonnier.

Article 2.24 (M.B. 17.01.2013)

En conformité avec les règles du code judiciaire relatives à l'aide juridique, chaque barreau institue en son sein une section « jeunesse » dont la dénomination et l'organisation sont laissées à sa discrétion.

Cette section est composée d'avocats volontaires qui s'engagent à suivre la formation que le barreau organise et qui leur dispense notamment une connaissance approfondie des textes légaux et réglementaires spécifiques aux mineurs.

Le barreau veille aussi à ouvrir cette formation à d'autres domaines que le droit, tels que la connaissance du réseau socio-éducatif de prise en charge, une approche de l'enfant fondée sur les sciences humaines, psychologiques et médicales, la communication et l'écoute des mineurs.

Cette formation peut être organisée en commun par plusieurs barreaux ou par l'Ordre des barreaux francophones et germanophone.

La section « jeunesse » a notamment pour missions, sous le contrôle des instances ordinales, de :

- 1° veiller à la formation continue de ses membres, en ce compris dans des matières non juridiques ;
- 2° diffuser auprès des mineurs une information accessible sur les missions de l'avocat et sur les moyens d'obtenir concrètement l'assistance d'un conseil ;
- 3° contribuer à l'élaboration et la tenue à jour d'un vade-mecum commun à tous les barreaux de l'Ordre des barreaux francophones et germanophone ayant pour objet la défense et l'assistance des mineurs.

Article 2.25 (M.B. 17.01.2013)

Sans préjudice de l'article 2.21, le bureau d'aide juridique désigne pour le mineur qui le sollicite, ou le bâtonnier commet d'office, par priorité, un avocat membre de la section jeunesse, sauf si une autre désignation apparaît mieux indiquée.

Annexe 6. Aanbeveling van de OVB over de aanstelling van jeugdadvocaten (7 december 2005)

Aanbeveling aanstelling jeugdadvocaten

Motivering en overwegingen

1. De minderjarige geniet volledige kosteloosheid van de juridische tweedelijnsbijstand en rechtsbijstand (art. 1, § 1, 9° van het KB van 18 december 2003 tot vaststelling van de voorwaarden van de volledige of gedeeltelijke kosteloosheid van de juridische tweedelijnsbijstand en van de rechtsbijstand).

De Raad van de Orde stelt jaarlijks een lijst op met advocaten die prestaties wensen te verrichten in het kader van de door het Bureau georganiseerde juridische tweedelijnsbijstand. De lijst vermeldt de voorkeurmateries die de advocaten opgeven en die zij staven of waarvoor zij zich ertoe verbinden een opleiding te volgen die door de Raad van de Orde of OVB wordt georganiseerd (art. 508/7, al. 3 en 4 Ger. W.).

De Orde van Advocaten ziet toe op de kwaliteit van de prestaties die door de advocaten worden verstrekt in het kader van de juridische tweedelijnsbijstand (art. 508/8, al. 1 Ger. W.).

De Orde van Advocaten stelt bij elke balie een Bureau voor Juridische Bijstand involgens de nadere regels en voorwaarden die hij bepaalt. Het Bureau heeft ondermeer tot taak om wachtdiensten te organiseren (art. 508/7, al. 1 en 2 Ger. W.).

2. Ter vrijwaring van de rechten van de bijzondere categorie van rechtzoekenden, in functie van het specifieke wettelijke kader en voor de organisatie door de Bureaus voor Juridische Bijstand van jeugdpermanenties, ondermeer om in aanstellingen in het weekend of ambtshalve toevoegingen te voorzien, is een afzonderlijke regeling wenselijk.

Bijkomend kan overwogen worden dat:

- de Orde van Vlaamse Balies reeds een specifieke vorming organiseert voor advocaten die belangen van minderjarigen behartigen;
- de wetgever denkt aan de invoering van jeugdadvocaten, dewelke het bewijs dienen te leveren van hun bijzondere opleiding en vorming (wetsontwerp tot invoering van een boek IIIter "Juridische bijstand verleend door advocaten aan minderjarigen", in het tweede deel van het Gerechtelijk Wetboek; overgezonden door de Senaat naar de Commissie Justitie van de Kamer, voor verdere bespreking; nadat het verval van het eerdere wetsontwerp werd opgeheven bij wet van 8 december 2003, *B.S.* 19 december 2003);
- de Orde van Vlaamse Balies destijds evenzeer voor de bemiddelaars in familiezaken, via de uitvaardiging van een reglement, heeft geanticipeerd op de totstandkoming van nieuwe wetgeving.

3. De uitvaardiging van een aanbeveling is afdoende, teneinde een uniformiteit tussen de onderscheiden balies tot stand te brengen. De aanbeveling zal een tijdelijk karakter kennen, in afwachting van ondermeer de aanvaarding van het reglement inzake voorkeurmateries en specialisaties – zoals thans behandeld door de Algemene Vergadering van de Orde van Vlaamse Balies.

Aanbeveling

1. De Raad van de Orde stelt, na het advies te hebben ingewonnen van het Bureau voor Juridische Bijstand en van de verantwoordelijken van de jeugdpermanentie, jaarlijks een lijst op van advocaten, nodig om alle aanstellingen of toevoegingen in het kader van de juridische bijstand en rechtsbijstand voor minderjarigen te behartigen.

Hij bepaalt daarbij, in functie van zijn toezicht op de kwaliteit van de prestaties die door advocaten worden verstrekt aan minderjarigen, het minimum aantal advocaten dat nodig is om deze aanstellingen te verrichten.

2. Op die lijst worden advocaten opgenomen die de door de Orde van Vlaamse Balies geaccrediteerde opleiding van advocaten voor minderjarigen hebben gevolgd en eventueel die advocaten die voorkomen op de lijst van art. 508/7, vierde lid Ger. W. en die zich verbinden een opleiding te volgen.
3. Ieder lid van de balie kan zich kandidaat stellen met een gemotiveerd verzoek.
4. De raad van de Orde neemt een gemotiveerde beslissing bij afwijzing van het verzoek tot inschrijving op de lijst.

**Goedgekeurd op de Algemene Vergadering van de Orde van Vlaamse Balies van
7 december 2005**



Coordination :



Défense des Enfants
DEI-BELGIQUE

