Study on children's involvement in judicial proceedings – contextual overview for the criminal justice phase – Belgium

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Executive summary

Overview of the general elements of child-friendly justice in criminal proceedings

Belgium has established a youth protection system to deal with child suspects as well as children in danger and in need of protection (under which victims and witnesses may fall). As a result, a specialised judicial authority, the Youth Tribunal, is in charge of dealing with children in judicial proceedings and ensures that children are dealt with by specially trained professionals.

The Convention on the Rights of the Child (CRC) is directly applicable in Belgium and specialised laws and guidelines establish procedural safeguards for children involved in judicial proceedings.

Overview of children's involvement before, during and after judicial proceedings

Child victims and witnesses receive support from the moment they report a crime and throughout the proceedings via general or specialised services. Child-friendly support is not always guaranteed as not all police stations are equipped with a youth section (only in big cities) or the support is provided through services not specialised in child support e.g. the victim support service of the House of Justice assists child and adult victims but is not specialised to assist children as such. They can benefit from measures such as the audio-visual recording of the hearing performed by specially trained police officers depending on the seriousness of the crime.

The age of criminal responsibility is established at 18 years old. Hence, only protection, care or education measures can apply to children. However, children above 16 years old can be dealt with under adult criminal law and can be judged as adults under exceptional circumstances and strict conditions.

Furthermore, children from 16 years of age can appear before the police court[1] for violation of road traffic laws and regulations; homicide or unintentional injury in relation with a road traffic offence and offences related to insurance for motor vehicles.

Promotion and monitoring of a child-friendly approach to criminal justice, with an overview of strengths and potential gaps

The strength of the Belgian system lies in the safeguards guaranteed to children and the specialised youth protection system established to care and protect children. In addition, children cannot be held liable for their actions under the age of 18 years, with the exception of the deferral system where the child is transferred to an adult court due to the seriousness of the crime (only for children above 16 years old).

The main gap in the system is that, while the legal framework contains strong safeguards for children, in practice the experience for children may vary depending on whether a youth section is established in the police district, on the stance of the judge and the availability of space in institutions or specialised services. In addition, while children may not be held liable for criminal offences, the youth tribunal can order protection and educational measures which can include placement in a closed youth protection institution, which is a de facto deprivation of liberty. The guarantees and rights attached to a prison detention do not apply to such placements as they are considered as an educational measure and not a sanction as such. For example, the maximum duration of the placement is not known at the time the order is made, as the judge has the ability to extend it (in certain cases, until the age of 23). Similarly, the review of the measure is not automatic.

[1] *Politierechtbank - Tribunal de police* – see section 1 for more details.

Abbreviations

CA	Competent Authority
CC	Criminal Code
CCP	Code of Criminal Procedure
CoE	Council of Europe
CRC	United Nations Convention on the Rights of the Child
EC	European Commission
ECHR	Council of Europe Convention for the Protection of Human Rights and Fundamental Rights
EU	European Union
Youth Protection Act	Act of 8 April 1965 relating to the protection of youth and the care of minor who committed acts qualified as crime

1 Overview of the institutional framework

The Belgian legal system has taken a protective approach towards the child's involvement in judicial proceedings. As a general rule, the child does not have legal capacity to act. Hence, a child cannot file an action or act in judicial proceedings, unless represented by her/his legal representative. When a child commits acts 'qualified as an offence', a specialised judicial body, the Youth Tribunal, applies measures of protection, care and/or education and restorative justice under the Youth Protection Act[2]. Criminal responsibility starts at the age of 18 years[3]. For very serious offences, a child of 16 years or above may exceptionally be transferred to a special chamber of the Youth Tribunal or to the Court of Assize to be judged under criminal law applicable to adults. See more details in Section 2.3.1.

In Belgium, a child is defined as a person under 18 years of age[4]. In all decisions affecting the child, the interests of the child must be a primary consideration[5].

Belgium is a Federal State composed of three communities (the Flemish Community, the French Community and the German-speaking Community), three regions (the Walloon Region, Flanders and the Brussels Capital region) divided in 10 Provinces and 589 municipalities. The Federal authorities retain the competence to regulate the situation of children in judicial proceedings. The Communities are competent to implement legal measures and to regulate institutions and services supporting children, which they fund and organise[6].

Criminal Judicial System[7]

The judicial authorities dealing with children in judicial proceedings vary depending on the stage of the proceedings, the nature of the offence and the status of the child (victim, witness or offender).

For adult offenders: Before the trial and during the investigation, the investigating judge (*Onderzoekrechter – Juge d'instruction*) together with the prosecution offices (*Parket - Parquet*) are responsible for the investigation and prosecution of offences for which the Assize Courts, Correctional Tribunals and Police Tribunals are competent. The Pre-trial Chamber (*Raadkamer – Chambre du conseil*) and the Indictment Court (*Kamer van inbeschuldigingstelling - Chambre des mises en accusation*) are competent for deciding on pre-trial detention, whether there is sufficient evidence of guilt to open proceedings and which is the competent court with regard to the offence.

For child offenders: Where the case falls under the competence of Youth Tribunals, specialised youth prosecution offices are responsible for the investigation and prosecution. There is neither a Pre-trial Chamber nor Indictment Court under the youth protection system.

With regard to criminal matters, three 'formal' jurisdictions and one specialised jurisdiction have competence depending on the nature of the offence. 'Formal' jurisdictions are the Police Tribunal, the Correctional Tribunal and the Court of Assize; the specialised jurisdiction is the Youth Tribunal.

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[2] Act of 8 April 1965 relating to the protection of youth and the care of minor who committed acts qualified as an offence (hereafter Youth Protection Act).

[3] Regarding a minimum age of responsibility see section 2.3.1.

[4] In this study, the term 'child' and 'minor' are interchangeable and understood as a person under 18 years old. A young person is considered as an adult of 18 years old or above for the purpose of this study. (Article 388 of the Civil Code) All the legislation and Codes mentioned in this report are available in French and Dutch via the search tool on Belgium ejustice website.

[5] Article 22bis of the Belgian Constitution.

[6] A State reform has been announced, which would substantially change the competences of the concerned authorities.

[7] See also information available on the European e-Justice Portal.

The Police Tribunal (*Politierechtbank - Tribunal de police*) is competent for children of 16 years in case of violation of

a) road traffic laws and regulations;

b) Articles 418, 419 and 420 of the Criminal Code as far as there is a relation with an offence of the aforementioned articles of law and regulations; and

c) Act of 21 November 1989 with regard to the obligation to have liability insurance for motor vehicles.

Appeals against the Police Tribunal's decisions are heard by the First Instance Court (*Rechtbank van eerste aanleg - Tribunal de première instance*). Children may appear before this court as victims or witnesses of an offence.

The Correctional Tribunal (*Correctionele rechtbank - Tribunal Correctionnel*) deals with misdemeanours or crimes reduced to misdemeanours due to mitigating circumstances. Misdemeanours under Belgian law relate to offences such as manslaughter, burglary and robbery. The Correctional Tribunal is a section of the First Instance Court. Also before this court children may appear as victims or witnesses of an offence.

Courts of Assize (*Het hof van assisen - Cour d'assises*) are non-permanent Courts which are competent to deal with crimes. They are composed of a jury and professional judges. A case may be transferred to a Court of Assize by decision of the Indictment Court (*Kamer van inbeschuldigingstelling - Chambre des mises en accusation*). As mentioned above, a case involving a child suspect of 16 years or above may be transferred to the Court of Assize and children may appear as victims or witnesses.

The Youth Tribunal (*Jeugdrechtbank – Tribunal de la jeunesse*) is a specialised section of the First Instance Court competent where a child is suspected of having committed an act qualified as an offence, where children are in danger or in need of protection, as well as for specific matters such as adoption, visiting rights for separated parents and exercise of parental authority. Hence, a child offender will fall under the competence of the Youth Tribunal, but a child victim may also appear before the Youth Tribunal if care or protection measures are deemed necessary or if the offender is a child.

Youth Justice System – Child suspects, defendants and offenders

In Belgium, the system for child suspects, defendants and offenders is regulated by federal legislation (the Youth Protection Act[8]) and the Communities legislation (Decrees by the Flemish and French Communities)[9]. The Youth Protection Act sets important safeguards and rules, while the decrees provide rules for the implementation of the Act (including the measures ordered by the judge) and the organisation of related services. The principles of the Youth Protection Act are the following:

- delinquency prevention to address the underlying causes of child delinquency using a multidisciplinary framework;
- children are dealt with by stakeholders, officials and judges who have received specific and continuous training on the rights of the child;
- the goals of juvenile justice are: education, empowerment, social reintegration and protection of society[10];

[8] Youth Protection Act.

[9] Flemish Community Decree of 7 March 2008 on special assistance to youth (available in French and in Dutch); French Community Decree of 4 March 1991 on Youth Assistance.

[10] In order to make these goals effective, reparative justice is the obligatory first approach in all cases, as well at the level of the youth prosecution offices (before being deferred to the youth judge), as before youth judge. Information provided in writing by the Belgian authorities.

- children may not, under any circumstances, be compared to an adult or treated as an adult in their degree of responsibility and the consequences of their actions. Nevertheless, children should be made to realise the consequences of their actions;
- children enjoy the rights and freedoms set forth in the Constitution and the Convention on the Rights of the Child, including the right to be heard during the process leading to decisions that affect them and to take part in this process; such rights and freedoms are tied to special guarantees[11].

Child victims and child protection systems

Child victims and witnesses may go through the formal criminal justice system or/and the youth judicial system depending on the nature of the offence, the personal circumstances of the child or on whether the offender is an adult or a child. Some specific rules and procedures exist for dealing with child victims and witnesses in formal criminal proceedings. However, they are limited to certain procedures (such as the audio-visual recording of the interview).

In the formal judicial system and in Youth Tribunal proceedings, the interests of the child must be a primary consideration in the decisions of authorities, and the rights of the child established in the United Nations Convention on the Rights of the Child (CRC) must be guaranteed.

The Youth Judge at the Youth Tribunal is competent to order protection and care measures to support child victims of abuse. Social services can be ordered by the judge to investigate whether a child might need protection. They must alert the relevant authorities if they encounter a situation where a child is in need of protection.

There are no specific support services or authorities assisting child victims and witnesses throughout the judicial process. However, specialised services (such as SOS children, the Services *droit des jeunes*, the Flemish Confidential Centres for child abuse and neglect), specially trained legal counsels, police officers, prosecutors and judges will be involved and assist children at different stages of the proceedings. Information to victims and witnesses is available online, some of which is provided in a child friendly manner[12]. In addition, victim support services of the House of Justice provide assistance to victims, adults and children, and their families.

Principle of evolving capacities

The Constitution recognises the principle of evolving capacities in that the child has the right to benefit from measures and services that contribute to her/his development and the child has the right to express his/her views on any issues that concerns him/her; his/her view must be taken into account, having regard to maturity[13]. This also applies to children involved in judicial proceedings, regardless of their status as victim, witness, suspect or offender.

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[11] Preliminary Title of the Youth Protection Act. The special guarantees mentioned in the Act are the following:

a) young people have the right, whenever the law is likely to undermine some of their rights and freedoms, to be informed of the contents of these rights and freedoms; b) the parents are responsible for the care, education and supervision of their children. Therefore, young people cannot be fully or partially exempted from the parental authority unless measures to maintain this authority are counter-indicative; c) the situation of children having committed an act qualified as an offence requires monitoring, education, discipline and supervision. However, the dependence in which they are, their level of development and maturity creates special needs that require listening, advice and assistance; d) any intervention including an educational measure aims to encourage the child to integrate the norms of social life; e) for children who have committed an act qualified as an offence, use is made, where possible, to alternative measures to judicial proceedings prescribed by law, while remaining attentive to the imperative of social protection; f) within the framework of the law, only minimal interferences to the rights and freedoms of young people are permitted as required for the protection of society, taking into account the needs of young people, their families and the interests of victims' rights.

[12] Information is available on various victim support organisations, information on how to report a crime and rights as victim is available on the police website, youth support organisations, Regional authorities websites or the Ministry of Justice website and the Belgium Portal.

[13] Article 22bis of the Belgian Constitution.

Non-discrimination

Direct and indirect discrimination on the grounds of age, sexual orientation, marital status, birth, wealth, religious or philosophical belief, political conviction, trade union conviction, language, current health status or future disability, a physical or genetic characteristic, social origin is prohibited under the Anti-Discrimination Act and Regional Decrees, which apply to services of the public and private sectors[14]. The refusal to ensure reasonable accommodation for children with disabilities is considered as discrimination. The prohibition of discrimination applies in areas such as social services, access to good and services, health or education.

Multi-disciplinary approach

Addressing the causes of delinquency and youth assistance on the basis of a multidisciplinary framework is one of the principles of the Youth Protection Act.

In the French Community in each judicial district, District Councils on Youth Assistance have been established with the primary role of ensuring that resources and attention are given to the needs of the district in assisting children as well as coordinating between local services and stimulating general prevention initiatives[15]. Such services may implement Court orders or follow the request of the child or his/her family.

In the Flemish Community, each district has a Committee for Special Youth Support which provides voluntary assistance to children and their families. The Committee coordinates the assistance carried out through various services[16].

Multi-disciplinary teams also exist to deal with situations of abuse: In the French Community, SOS-children (*SOS-Enfants*) teams exist under a single supervisory authority (the ONE) as well as the Confidential centres for child abuse and neglect (*Vertrouwenscentrum kindermishandeling)* for the Flemish Community.

Training

Judges and prosecutors are required to undergo specific training on every aspect of children's rights to sit or prosecute in the Youth Tribunal or Youth Prosecution Office[17]. The Superior Council of Justice (*Hoge Raad voor de Justitie – Conseil Supérieur de la Justice*) is in charge of regulating the training of judges, and the Institute for Judicial Training (*Instituut voor Gerechtelijke Opleiding – Institut de Formation Judiciaire*)[18] organises the training. Where a case involving a child suspect is transferred to the Specific chamber and the Court of Assize, at least 2 of the 3 judges must have received the training for Youth Judges. However, no training requirements exist regarding the prosecuting officers in charge of the case (see section 2.3.1).

In the French and German speaking communities, each bar association has a juvenile section composed of legal counsels who volunteered to be part of the juvenile section and have followed a training in juvenile law. The legal counsels must also follow continuing training to stay on the list of legal counsels of the juvenile section[19]. In the Flemish

[14] Article 4 of the Anti-discrimination Act of 10 May 2007. Information on the Act is available in English on the Center for Equal Opportunity and Opposition to Racism (CEOOR) website. See also French Community Decree of 12 December 2008 combatting certain forms of discrimination and Flemish region Decree of 10 July 2008 on equal opportunities and treatment.

[15] Article 21 of the Decree of the French Community of 4 March 1991.

[16] Committee for Special Youth Support (*Comite voor Bijzonder Jeugdzorg*).

[17] Guidelines of the Superior Council of Justice for the training of judges and judicial trainees (ratified by the General Assembly of 30 May 2012 – here available in French). CRC Committee noted that Belgium was correctly implementing the CRC on this aspect. See Summary record of the 1521st meeting (CRC/C/SR.1521), 10 June 2010, p.9.

[18] IGO-IFJ website.

[19] Specific regulation regarding the conditions of admission and of maintenance on the list of volonteered lawyers in juvenile law.

Community, legal counsels representing children must hold a certificate of special training in juvenile law to be on the list of juvenile legal counsels. The training involves a theory part, a practical part (e.g. communication with children workshop) and an internship[20]. In large districts, police stations include a youth section, where specialised police officers handle children's cases. Youth section police officers usually have a background education in social sciences, but it is not a requirement for youth section positions. Training is conducted on the initiative of the police officer and the youth section itself. A budget is allocated for police officers to obtain specialist training. Only police officers who have received specific training on audio-visual recording of the child's interview can carry out such interviews. There is less opportunity for police officers to specialise in small police districts due to the nature of their work and resources[21].

Within the general training of police officers, there is no specific training focussed on working with children[22]. Children should be referred to specially trained officers where available.

Vetting

No formal vetting process for professionals working with and for children has been identified. However, people applying for a position which involves working with and for children are required to provide a criminal record certificate with a specific mention whether the person had committed an offence against a child[23].

[20] Flemish Bar Association, Special training in juvenile law.

[21] Information collected through an interview with the youth section of the Molenbeek police.

[22] Information collected through an interview with the youth section of the Molenbeek police and discussion with a police officer of the Verviers district.

[23] In accordance with Article 596 of the Code of Criminal Procedure.

2 Child-friendly justice before and during criminal judicial proceedings

2.1 The child as a victim

2.1.1 Reporting a crime

In Belgium, criminal offences are in principle prosecuted *ex officio*, on the initiative of the crown prosecutor[24]; no formal complaint of the child victim or her/his legal representative is needed. Only specific offences are prosecuted upon the filing of a complaint[25]. In these cases, the legal representative can file a complaint on behalf of the child.

In the event an offence is not prosecuted, the victim (the child's legal representative in the case of a child victim) can file an action triggering the prosecution[26] (in this case the applicant is required to pay a fee of €125).

Victims must report the offence before the end of the prescription period for proceedings for the offence. However, a derogation is provided for child victims. For crimes related to sexual abuse, incitement of children to immoral behaviour, prostitution, female genital mutilation or human trafficking, the prescription period starts running only when the child reaches the age of eighteen years[27].

There are no provisions prohibiting children from reporting an offence. However, the child does not have the legal standing to file an action or register as a civil party or injured person in Belgium. The child can only do so through her/his legal representative. This is relevant as the status of injured person is necessary to receive information on the follow-up of the case and the status of civil party opens the door to many rights such as the right to consult the case file and to ask for additional acts of investigation.

The reporting of an offence can be done by the child in person, by phone or in writing with the police, the crown prosecutor or the investigating judge. The child can be accompanied by an adult of his/her choice[28].

With regard to some petty offences (e.g. vandalism, shoplifting and theft of a bicycle), such offences can be reported online[29]. However a child cannot report an offence online, unless it is done via his/her legal representative[30]. The child can however report such offence at the police station without a representative.

Internet abuse or internet-related offences can be reported online[31] by adults or children.

As regards to filing a complaint, the legal representatives of the child can file a complaint for a crime or misdemeanour, and/or register as a civil party before the investigating judge[32]. Filing a complaint involves the writing of an official report (*procès-verbal, proces-verbaal*),

[24] Article 1 of the Preliminary Title of the CCP.

[25] For example: the offence of defamation can only be prosecuted on the basis of filing a complaint (Article 450 of the CC).

[26] The victim can start the proceedings by calling the offender directly to court or by filing a complaint to the investigation judge in case of offence punishable by more than eight days of imprisonment. The investigating judge is obliged to start a judicial investigation but after the end of the investigation it is still up to the judicial authorities to decide whether enough evidence exists to bring the offender before a court. See European E-Justice Portal Rights of Victims in Criminal Proceedings. This is a result of the interpretation of Article 63 CCP.

[27] Article 21bis of the Preliminary Title of the CCP.

[28] Kinderrechtswinkels, Service droit des jeunes, Infor Jeunes Bruxelles, 'La position juridique du mineur dans la pratique', UGA, 2006, p.107.

[29] Police on Web website in French, in Dutch and in German.

[30] See Users' Manual of the Police on Web, p. 81.

[31] The federal Computer Crime Unite E-cops website and the civil contact point 'Stop child porno'.

[32] Article 63 of the CCP.

which is sent to the prosecution office. The victim must sign the official report. It does not grant the complainant the status of a victim. This is only done by registration as an 'injured person' (see Section 2.1.2). Where the legal representative does not file a complaint for the child, because of differing interests between the child and his/her legal representative, the child may apply at the court for the designation of an ad hoc guardian who will be able to act for the child.

As a general rule, victims must be treated properly and conscientiously, in particular, by providing them with all the necessary information and putting them in contact with specialised services, such as victims support services and judicial assistants. To this end, the House of Justice (*justiciehuis - maison de justice*) has the mission to receive and support victims, adults and children, throughout the judicial proceedings[33]. However, they are not specialised in assisting children as such.

The Code of Criminal Procedure (CCP) and ministerial circulars establish requirements with regard to assistance in reporting abuse and ill treatment of child victims by such victims. The responsible police officer has the obligation to offer the child victim the support of a specialised service (SOS Children/Child, Confidential Centres for child abuse and neglect or youth support service)[34].

As a general rule, victims of crime have the right to have the contact details of the police officer who helped them, information on the competent authorities and information on support services (see section 2.1.2 CCP).

Children can also call the helpline service number 103 to access the French speaking counselling services and number 1712 for the Dutch speaking counselling services. They can receive legal support and be directed to specialised services[35]. The system of helpline services for children in the French community assists children with respect to a wide range of crimes, albeit they are specialised in children abuse[36].

2.1.2 Provision of information

Victims, adults and children, have the right to receive the necessary information, notably on the possibility to become a civil party to the proceedings and to register as an injured person[37]. The police have the duty to provide all necessary information and to refer the victim to specialised services able to support them and provide them with more detailed information[38].

The following information must be communicated to the victim (adult and children) by the police officer handling the formal complaint:

- Contact details of the police service, including the name and position of the police officer processing the complaint;
- The number and date of the official report (*proces-verbaal - procès-verbal*) which is based on the complaint;
- An attestation certifying the filing of the complaint;
- The possibility for the victim to register as an injured person (see below);
- The offer to be referred to assistance services;

[33] More information on the services offered to the victims by the Houses of Justice available at this website.

[34] Ministerial Circular GPI 58 of 4 May 2007 on the police assistance to victims in the integrated police force section 6.4.1.

[35] For French speaking children, Service *ecoute-enfants*; for Dutch speaking children *Meldpunt geweld, misbruik and kindermishandeling*.

[36] Third and fourth periodic report of Belgium to the Children Rights Committee, p. 294.

[37] Article 3bis Preliminary Title of the CCP.

[38] Act of 7 December 1998 organising an integrated police force and Ministerial Circular GPI 58 of 4 May 2007 on the police assistance to victims in the integrated police force.

- The possibility to become a civil party.

Depending on the circumstances of the case, the police also have to communicate the following:

- Information on current and future investigative acts (in accordance with confidentiality and privacy rules);
- Information on judicial proceedings in general (the processing of the case);
- Information on the various forms of legal aid available (primary and secondary legal aid provided by Bar associations);
- Information on administrative procedures, such as the renewal of official documents (ID card, etc.);
- Information on necessary declarations before financial institutions for the loss or theft of checks or bank cards;
- Preventive counselling in order to avoid the victim having to repeat the facts of the complaint, which can occur when the victim renews contact with the police service. Various brochures Ministry of Interior can be used to this end;
- Possibility to retrieve confiscated or stolen property.

The communication of such information can be done at the time of the filing of the complaint or when the victim renews contact with the police services as a follow-up measure to the complaint. To decide when it is appropriate to communicate such information, the state of the victim following traumatic events is taken into consideration[39]. Lastly, the police officer receiving the victim has to explain the reason why some questions are asked[40].

Information can be obtained verbally or in form of leaflets available at the police station, courts, and victim support services, as well as on different websites. When providing information and assisting victims, the police are required to address victims in a polite way and in a manner adapted to the specific situation, without minimising what happened to them or making them feel guilty[41].

Information is provided to the legal representative of the child and the child. The legal counsel is also an important stakeholder who provides information to the child and her/his family on the rights of victims and on the proceedings.

Among the above-mentioned victim support services, there are specialised services providing information and counselling to child victims and their families. For instance, in the French Community, such specialised services include *SOS Enfant* and in the Flemish Community the *Vertrouwenscentrum kindermishandeling*[42]. These services are particularly specialised in the counselling of victims of child abuse and ill treatment.

In addition, specialised services are in place for children who entered the territory with no legal documents[43]. A system of guardianship exists for unaccompanied children arriving in Belgium[44]. Victims of human trafficking receive support in specialised centres in Belgium. However, these centres are not equipped to accommodate children in need[45]. Therefore,

[39] Ministerial Circular GPI 58 of 4 May 2007 on the police assistance to victims in the integrated police force, section 5.2.3.

[40] Ministerial Circular GPI 58 of 4 May 2007 on the police assistance to victims in the integrated police force, section 5.2.1.

[41] Ibid.

[42] French speaking/ SOS enfants website; Dutch speaking: Vertrouwenscentrum kindermishandeling and Kindinnood.

[43] Services to support child victim of sexual abuse; services for children arriving on the territory without legal documents with or without their legal representative and CEOOR list of victim services.

[44] Law-Programme of 24 December 2002).

[45] Circular of 26 September 2008 on the implementation of a multi-disciplinary cooperation for victims of human trafficking and / or some aggravated forms of human trafficking.

child victims of human trafficking are referred to centres for unaccompanied children, which provide specialised care and assistance. In Brussels these are the Minor N'Dako centre and Lisanga project, in Wallonia the Centre Esperanto, and in Flanders the Juna and Den Oever centres and Joba project.

The Victim Support Service (*Justitie huis - Maisons de Justice*), available within each judicial district in the country, assists victims, adults and children, providing information on procedures when dealing with the police, prosecutor office and courts[46].

For specialised legal counselling, bar associations in several judicial districts hold weekly legal counselling sessions specialising in child/youth law[47]. While there are legal counsels specialised in youth cases, their appointments is not required by law for representing children. In practice, specialised legal counsel will be appointed where available.

A victim of an offence needs to formally acquire the status of an 'injured person' in order to receive information on the follow-up made to the report of an offence or to the complaint made before the police. To this end, the victim needs to register, in person or via a legal counsel and submit a 'declaration of injured person' at the secretariat of the crown prosecutor[48]. Once registered, the victim will receive information on progress of the case: whether dismissal of the case and the reasons for dismissal; or whether it is being prosecuted or sent before an investigation jurisdiction or criminal court and the date set for hearings of the case.

Since 1st January 2013, the police have the obligation to inform the victim of the possibility to be registered as an injured person to obtain information on the follow-up of the reported offence. To this end, the police provide the victim with an ad hoc form. The legal representatives of the child victim are able to register at the police station secretariat, or with the officer receiving the report, or in person or via a legal counsel at the secretariat of the crown prosecutor, or by sending a registered letter to the secretariat of the crown prosecutor.

During the investigation and the trial, the child victim's legal representative can access the file and can request certain investigation acts to be performed, only if they became a civil party to the criminal proceedings[49].

In the case where the victim or witness, adult or child, is heard, the interviewer must inform the victim or witness of the following:

a. on the facts on which they will be heard;
b. that they can request that all the questions that are asked and the answers he/she gives are written down word for word;
c. that they may request that an investing act be performed (if they are civil party) or hearing carried out;
d. that her/his statements can be used as evidence in court;
e. that they cannot be compelled to incriminate themselves[50].

2.1.3 Protection from harm and protection of private and family life

As a rule, all proceedings must be public. For proceedings related to sexual abuse however, a party or the victim, adult or child, may request that the Court meets in closed sessions only[51]. For other offences, the judge can also decide to meet in closed hearing on the basis that a public hearing would go against the public order or morals[52]. As a result, a judge could

[46] More information available at Victim Support.

[47] More information on legal aid available at the Brussels Bar Association. Every judicial district offers similar legal aid throughout the country.

[48] Article 5bis of the Preliminary Title of the CCP.

[49] *Kinderrechtswinkels, Service droit des jeunes, Infor Jeunes Bruxelles, 'La position juridique du mineur dans la pratique'*, UGA, 2006, p.109.

[50] Article 47bis of the CCP.

[51] Article 190 of the CCP.

[52] Article 148 of the Constitution and Article 757 of the Judicial Code.

order a hearing to be closed in the interest of a child or the right to private and family life, but it is not automatic and left to his/her appreciation. In addition, either party may request the Court that the case be dealt with in closed session for all or part of the proceedings where the interests of child or the protection of privacy so requires[53].

The Criminal Code prohibits the publication or dissemination of discussions relating to proceedings before the Youth Court or its appeal court, by the media or any other way. Only the judgment is pronounced in public hearing[54]. The ethical code of journalists in Belgium requires journalists to respect the private life of children, especially of child victims. An appeal against a publication can be submitted to the Council of Deontology (*Raad voor de journalistiek* and *Conseil de Déontologie journalistique*).

When talking to the press, the crown prosecutor and the legal counsel are required to take into account the rights of the defence, the presumption of innocence and the respect for private life, as well as to the extent possible not to disseminate the identity of the persons involved in the proceedings[55].Specific protection is granted for the testimony of child victims. Unless the child victim has expressed his/her desire to testify before the Court, the testimony is made via videoconference carried out in a separate room in the presence of her/his legal counsel, an adult of his/her choice, technical staff necessary for the recording and a specialised psychologist. During the court's hearing, the judge can order the limitation of or prevent any visual contact between the suspect and the child victim[56]. Such protection remains available to young persons who have reached the age of 18 years at the time of the hearing.

The audio-visual recording of the interview of the child protects the child from having to repeat several times the facts related to the offence. Since 1st January 2013, the interview of a child, victim or witness, is carried out by audio-visual recording with respect to crimes of molestation, sexual abuse, prostitution, incitement of children to immoral behaviour and female genital mutilation, unless otherwise decided and justified by a decision of the crown prosecutor or the investigating judge.

The audio-visual recording of a child's interview was already laid down prior to January 2013 for offences of hostage taking, outrage to public decency, assault, denial of food or care to the point of compromising the health of a child, kidnapping of a child and human trafficking. For any other offences, the audio-visual recording of interviews can be carried out only on an exceptional basis and under serious circumstances[57].

A child of twelve years old or older needs to consent to the interview. If the child is younger than twelve, it is sufficient to inform the child about the interview procedures. Any person can request a free copy of his/her interview with the crown prosecutor, investigating judge or a police officer. Such a copy must be delivered right away or within one month. With regard to children, if it appears there is a risk that the copy might be taken away from the child or that the privacy of information is at risk of being violated, the crown prosecutor, with a reasoned decision, can refuse to deliver the copy. In such a case, the child can view, at the clerk's office, a copy of the interview accompanied by her/his legal counsel or with judicial assistance from the victim support service. However, in exceptional circumstances, such consultation can be delayed for up to three months, renewable once, by reasoned decision of the crown prosecutor[58].

The Youth Tribunal is competent to receive the crown prosecutor's submissions relating to children whose health, safety or morals are endangered, either because of the environment in which they are raised, or by the activities they engage in, or whose conditions of education

[53] Article 446ter of the Judicial Code.

[54] Article 433bis of the CC.

[55] Article 28quinquies of the CCP.

[56] Articles 190bis and 311 of the CCP.

[57] Article 92 of the CCP.

[58] Articles 28quinquies and 57 of the CCP.

are compromised by the behaviour of their guardians[59]. In practice, when a child is the victim of an offence, the police transmit the official transcript of the report to the prosecutor specialised in juvenile affairs to consider whether the child victim is in a difficult family/upbringing situation. When the offence is committed by a member of the child's family, an investigation will be made into the family's environment[60].

The Youth Tribunal can order a variety of measures relating to custody, preservation and education, including measures against parents or placement of the child in a host family or in the care of a specialised centre. Where the presence of an adult person in the residence poses a serious and immediate risk to the safety of one or more persons living in the same residence, the Crown Prosecutor can issue a restraining order. The restraining order includes both the duty to leave the house and to refrain from contact with the victim[61].

Specific assistance services exist to protect the child from harm, in particular for child victims of abuse, of domestic violence, for unaccompanied migrant children and for child victims of trafficking. This support is organised in Belgium at Community level (Flemish, French and German Communities). It does not depend on a judicial order and may take place before, during and after any proceedings.

Flemish Community

The **Confidential centre for child abuse** and neglect (*Vertrouwenscentrum kindermishandeling*)[62] is the first contact point and assistance service for the child victim of abuse. It provides initial support, examination of the situation and refers to adequate specialised help.

The Committee for particular youth care (*Comité voor bijzondere jeugdzorg*) is a public authority providing assistance to children in distress or danger as well as to their families.

The **Children's Rights Shop** (*kinderrechtswinkel*) provides legal assistance to the child and his/her family on his/her rights.

French Community

SOS-children (*SOS-enfants*)[63] is a service specialised in the detection of child abuse and care of such victims. It provides a tailored assistance to children have been victims or who are at risk of risk of abuse[64]. **Centres of assistance to child victims of abuse** (*Centres d'aides aux enfants victimes de maltraitance*) work with the SOS-children teams to ensure the psycho-social support to the guardians of the child, provide emergency accommodation to the child victim and support the child towards the reinsertion into a family environment.

The **Youth Support Service** (*Service d'Aide à la Jeunesse*)[65] is a public authority providing assistance to children in distress or danger as well as to their families. The service works in collaboration with the child and his/her family. Its work is done on a voluntary basis, with the consent and participation of the child and her/his family. It provides support for children in danger or experiencing any sort of difficulties, for children whose health, educational circumstances, and/or safety are compromised or when primary support services have difficulty to help the child. The service will reach out to the child and his/her family to negotiate a solution, which may include a referral to another service. There is a 'youth' support service per judicial district in the French speaking Community of Belgium.

The **service of youth rights** (*service du droit des jeunes*) provides legal assistance to the child and his/her family on his/her rights.

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[59] Article 36 (2°) of the Youth Protection Act.

[60] Bart De Smet, *Jeugdbeschermingsrecht in Hoofdlijnen*, Intersentia, 2010, p.217.

[61] Act of 15 May 2012 on temporary prohibition of residence in cases of domestic violence.

[62] Confidential centre for child abuse and neglect website.

[63] SOS-children website.

[64] Decree of French Community of 12 May 2004 on Assistance of children victims of abuse.

[65] Youth Support Service website.

German Community

The **Youth Welfare Service** (*Jugendhilfedienst (JHD)*) is responsible for children and young people (0 – 18 years) who find themselves in difficult situations. The service advises and assists children, their parents, and other stakeholders and institutions[66].

In addition, a nation-wide guardianship service is in charge of designating a guardian to assist and represent the unaccompanied children[67].

Child victims of domestic violence may call a nation-wide free helpline to receive psychological support and assistance[68].

One of the options of the Youth Support Service or Committee for particular youth care is to refer to an **assistance service in an open environment**, which includes specialised services able to assist a child in distress in various manners.

Esperanto[69] and the **Joseph Denamur Association** are specialised centres for the assistance of unaccompanied non-national migrant child victims of human trafficking. Children can receive appropriate care.

2.1.4 Protection from secondary victimisation and ensuring a child friendly environment

Child victims are provided with support from various services. Such services intervene at different levels. See section 2.1.3 for the breakdown of some of the services supporting the child victim in each linguistic community of Belgium.

For the audio-visual recording of the child's interview, the child can be assisted by a psychiatrist or a psychologist, as well as an adult of her/his choice[70]. In practice, the police officer is present with the child in the room, while the other people attend the interview behind a glass window[71].

The police are required to assist victims, adult or child, in a correct and conscientious manner[72]. Such assistance includes active listening to the victim, avoiding too long delays before assisting victims, addressing the victim in a polite and adapted tone, without being distant and without minimising the facts. The police should avoid referring the victim to different officers and avoid making the victim feel guilty for the assistance (s)he seeks. Any bad news should be announced in a prepared and reflective manner. Police officers must be particularly attentive to child victims. Victims of physical and sexual violence must receive specific assistance. To this end, a victim must be assisted in a separated room, with sufficient privacy[73].

In domestic violence cases, police and judicial officers in charge of the case must check whether there are any other children in the family and whether they have suffered any consequence as a result of the domestic violence. To ensure appropriate follow-up, the presence of children must be recorded and sent to the crown prosecutor[74].

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[66] Youth Welfare Service website.

[67] Act of 24 December 2002 - Programme Law (I) (art. 479) - Title XIII - Chapter VI: Guardianship of unaccompanied foreign minors.

[68] For French speaking children, number 103, Service *ecoute-enfants*; for Dutch speaking children number 1712, *Meldpunt geweld, misbruik and kindermishandeling.*

[69] Espéranto Association website.

[70] Article 94 of the CCP.

[71] Information provided in writing by the Belgian authorities.

[72] Article 3bis of the Preliminary Title of the CCP and Ministerial Circular GPI 58 of 4 May 2007 on the police assistance to victims in the integrated police force.

[73] Ministerial Circular GPI 58 of 4 May 2007 on the police assistance to victims in the integrated police force, section 5.2.1.

[74] COL Circular No. 4/2006 of the College of Prosecutors General of the Courts of Appeal, 1 March 2006.

As a general rule, if the duration of criminal proceedings exceeds a reasonable time, the judge can sentence by simple declaration of guilt (without punishment) or pronounce a sentence below the minimum prescribed by law[75]. However, this depends on the initiative of the judge. The law does not provide an indication as to what constitutes a reasonable time, as it is deemed that this depends on the circumstances of the case, based on the complexity of the case[76].

The victim support service of the House of Justice provides support to the victim before and during the proceedings, including practical and psychological support.

Any person who has a direct interest (such as the victim) can make a request for mediation at any stage of the criminal proceedings and the execution of the sentence. In the case of a child victim, it would be the legal representative making such a request. The crown prosecutor, the investigating authorities and the judge must ensure that the parties involved in legal proceedings are informed about the possibility of requesting mediation. As long as they deem it appropriate in specific cases, they themselves can propose mediation to the parties. The mediation request is sent to a mediation service. The parties can be assisted by a legal counsel during the mediation[77].

2.1.5 Protecting the child during interviews and when giving testimony

As explained in section 2.1.3, specific protection is granted for the testimony of child victim in court. Unless the child victim has expressed his/her desire to testify before the Court, the testimony is carried out via videoconference in a separate room in the presence of her/his legal counsel, an adult of his/her choice, technical staff necessary for the recording and a psychologist expert. The judge can order the limitation of any visual contact between the suspect and the child victim or prevent it altogether[78]. Such protection remains available to the young person who reached the age of 18 years at the time of the hearing.

The interview of a child, victim or witness, is carried out by audio-visual recording with respect to crimes of molestation, sexual abuse, prostitution, incitement of children to immoral behaviour and female genital mutilation, hostage taking, outrage public decency, assault, denial of food or care to the point of compromising the health of a child, kidnapping of a child and human trafficking, unless otherwise decided and justified by motivated decision of the crown prosecutor or the investigating judge. For any other offences, the audio-visual recording of interview can be carried out only on an exceptional basis and under serious circumstances[79].

The interview is carried out in a room specifically adapted for such purposes. The persons allowed to be present during the interview are the interviewer, an adult of the child's choice, technical staff necessary for the recording and a psychologist or psychiatric expert[80]. In practice, they will however assist in the interview from behind a glass window.

According to the stage of the procedure at which the interview is carried out, the crown prosecutor or the investigating judge or a designated police officer carries out the interview. Officers specially trained in dealing with child victims carry out the audio recording of the child's interview.

The interviewer must explain to the child the reasons why the audio-visual recording of the interview is carried out and that the child has the right to ask that the recording be stopped at any time. Such a request must be recorded[81].

[75] Article 21ter of the CCP.

[76] Information collected through stakeholder's interview.

[77] Article 553 of the CCP.

[78] Articles 190bis and 311 of the CCP.

[79] This applies since 1 January 2013. Article 92 of the CCP.

[80] Article 94 of the CCP.

[81] Article 95 of the CCP.

The interview is recorded in an official report (*procès-verbal, proces-verbaal*) within 48 hours or immediately after, in the event that the suspect is deprived of liberty. The report notes the main elements of the interview and mentions the most significant passages, as well as the behaviour and expression of the child. The full transcript of the interview can be requested by the investigating judge, crown prosecutor, a party to the proceedings or the interviewee. Two original copies of the recording of the interview are made. The original copies can be destroyed by decision of the court, after the full execution of the sentence by the offender or after the expiration of the limitation period for prosecution or civil action, whichever occurs later[82].

If another interview of the child is necessary, it can only be done by reasoned decision of the crown prosecutor, investigating judge or court[83].

The audio-visual recording of the interview can only be accessed and watched by a limited number of persons who are involved in the investigation or in the proceedings of the case. The parties to the proceedings (suspect who is not in detention and civil party) can also access the recording by request to the investigating judge[84]. The audio-visual recording is played during the hearing before the Court in place of the testimony before the Court, unless the investigating judge or Court decides the testimony of the child in person before the court is necessary[85].

The child victim of serious crimes can be accompanied by an adult of their choice for any interview made by a judicial authority, unless otherwise ordered by the investigating authorities or judge in the interest of the child or of the truth[86].

2.1.6 Right to be heard and to participate in criminal proceedings

The Belgian Constitution recognises the right of the child to be heard on any question which concerns her/him. His/her opinion must be taken into account in accordance with the child's age and maturity[87].

In practice, the judge decides, on a case-by-case basis to hear the child victim during criminal proceedings[88]. It appears that judges do not hear children under the age of 12 years, which is considered as the age of sufficient maturity[89]. In practice, judges nevertheless can make exceptions and hear children under 12 years of age[90]. The judge can, by reasoned decision, decide to hear the child in Court, if (s)he deems it necessary for the ensure a truthful testimony[91]. If the judge does not order the hearing of the child in the courtroom, the audio-visual recording of the interview will be used in place of the hearing of the child.

The summary of the child's interview is accepted as evidence to the same extent as any other evidence.

According to the Judicial Code, a child under the age of 15 years cannot be heard under oath. The child's declaration is only collected as information and will not be used as formal evidence, rather as information to put other evidence into context[92]. Nevertheless, in any proceedings related to a child, the child with sufficient maturity may be heard upon her/his

[82] Articles 96, 97 and 101 of the CCP.

[83] Article 98 of the CCP.

[84] Article 99 of the CCP.

[85] Article 100 of the CCP.

[86] Article 91bis of the CCP. It concerns the crimes such as hostage taking, sexual abuse, homicide, etc.

[87] Article 22bis of the Belgian Constitution.

[88] Confirmed through interview with Defence for children.

[89] Information collected through interview with Defence for children.

[90] Information provided in writing by the Belgian authorities.

[91] Article 100 of the CCP.

[92] Article 931 of the Judicial Code.

request or upon decision of the judge. If the child requests to be heard, such request must be accepted, unless the crown prosecutor or the judge, by reasoned decision, decides that the child does not have the necessary maturity. In the case where the hearing is decided by the judge, the child can refuse to be heard. The child will be heard alone in a separate room, unless the judge deems it is in the best interests of the child to be assisted. The interview/hearing does not grant the child the status of party to the proceedings.

For a victim to access the judicial file during the investigation phase, he/she must register as a civil party. A civil party may also request additional investigating acts to be conducted by the investigating judge[93]. While the victim who registered as injured person has no access to the file, (s)he can ask that some documents be included in the file[94]. With regard to the child victim, such access and rights will take place via her/his legal representative.

In the event that no investigation has yet taken place, a victim can register as civil party by action, meaning that the investigating judge will be obliged to investigate the offence[95]. The victim can also summon directly a suspect of a misdemeanour before the police or correctional tribunal[96]. Any victim, adult or child, who is a civil party to the proceedings, may request additional acts of investigation such as an expertise[97].

As a consequence of her/his lack of legal capacity, a child cannot file an action on her/his own, but only via the action of his/her legal representative. When the victim is a child, the application to become civil party is submitted by both child's parents if they have joint custody or by the parent who exercises parental authority over the child[98]. However, the Civil Code provides that in case of conflict between the child and his/her parents, the judge designates an ad hoc guardian, either upon request of any interested party or *ex officio*. The guardian must be specifically allowed by the judge to represent the child in filing an action; however, such authorisation is not necessary for the guardian to become a civil party to proceedings in the name of the child[99].

For the purpose of compensation for damages, at the trial stage, victims can participate in the proceedings as a civil party. As a civil party claiming for compensation, victims must prove the damage resulting from the offence to claim compensation. Victims who are not a civil party may attend court hearings, which are open to the public[100].

2.1.7 Right to legal counsel, legal assistance and representation

In Belgium, the right to legal protection is a constitutional right[101].

Victims, adults and children, have the right to a legal counsel, assistance and representation. There are two forms of legal aid: primary and secondary legal aid. Primary legal aid consists of initial legal advice or referral to a specialised organisation. It is offered by the House of Justice in each judicial district, victim support organisations and the Commission of Legal Aid where lawyers hold weekly legal aid hours. It is accessible to everyone and is free of charge.

Secondary legal aid consists of legal assistance of a legal counsel partly or fully free of charge. Children have access to free secondary legal aid without needing to prove any other conditions (such as low income)[102].

[93] Article 61ter of the CCP.

[94] Article 5bis of the CCP.

[95] This is a result of the interpretation of Article 63 of the CCP.

[96] Article 182 of the CCP.

[97] Article 61quinquies of the CCP.

[98] Article 376 of the Civil Code.

[99] Articles 378 and 410 of the Civil Code.

[100] Articles 148 and 149 of the Constitution guarantee that judicial hearings are open to the public. The public access may be prohibited under specific circumstances by motivated decision of the Court. However, in this case, the delivery of the judgment will remain accessible to the public.

[101] Article 23, second indent, 2° of the Constitution.

Any party to the proceedings before the Youth Tribunal under 18 years of age who does not have a lawyer receives the assistance of a legal counsel, appointed *ex officio*[103]. Child victims in proceedings before other courts also have the right to legal counsel. The child or legal representative will need to request the assistance of a legal counsel in this case. The child has the right to change legal counsel upon request. However, the child needs to proactively request the change and advance a reason for the request [104].

2.1.8 Remedies or compensation exist for violation of rights and failure to act

If the legal counsel failed to act - a victim, adult or the legal representative of the child - can either file an action before a Court or file a complaint before the President of the Bar where the legal counsel is registered. The victim can benefit from professional insurance for damages following the fault of a legal counsel[105].

In Belgium, victims have the choice whether to claim compensation in civil proceedings or to join the civil claim to the criminal proceedings. In practice, claims for compensation under civil proceedings are more costly; hence the civil claim in criminal proceedings is a preferred option. Only the legal representatives of the child can file a complaint for the child (see above section 3.1.6).

In addition, the legal representatives of a child victim may apply for financial support from the Commission for Financial aid for victims of violent crimes and occasional rescuer. The Commission provides financial aid under the following conditions:

- Victims of deliberate violent crimes;
- The victim cannot receive sufficient compensation for the damages elsewhere;
- The final judgment in the criminal proceedings has been issued;
- Serious physical and/or psychological injury has been incurred

The parents or legal representatives of the child victim may apply for emergency compensation before the end of the criminal proceedings if the victim demonstrates the damage will become more significant if he/she were to wait until the end of the proceedings to receive compensation. Additional compensation is possible if the situation for the victim worsens after the first compensation[106].

The crown prosecutor and offender have the right to lodge an appeal against a decision issued by the court in criminal proceedings. Victims who are civil parties to a criminal case can lodge an appeal against a decision of the Police Tribunal or Correctional Tribunal only with regards to the civil claim attached to the criminal case[107]. Decisions of the Court of Assize can only be appealed before the Court of Cassation (*Hof van cassatie – Cour de cassation*). In this case the appeal can only relate to the legality of the decision and cannot relate to the facts of the case.

As explained above in section 2.1.6, in the event where no investigation has yet taken place, a victim can register as civil party by action resulting in an obligation of the investigating judge to investigate the offence[108]. The victim can also summon the suspect of a misdemeanour directly before the police or correctional tribunal[109].

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[102] Information collected through interview with Defend for children.

[103] Article 54bis of the Youth Protection Act of 8 April 1965.

[104] Information collected through interview with Defence for children.

[105] More information available on the Brussels Bar Association website.

[106] 'Financial support for victims of intentional acts of violent' leaflet available in Dutch or French (*Financiële hulp aan slachtoffers van opzettelijke gewelddaden - L'aide financière aux victimes d'actes intentionnels de violence*).

[107] Article 202 of the CCP.

[108] This is a result of the interpretation of Article 63 of the CCP.

[109] Article 182 of the CCP.

As mentioned in section 2.1.6, as a consequence of her/his lack of legal capacity, a child cannot file an action on her/his own, but only via the action of his/her legal representative, with the exception of the designation of an ad hoc tutor in case of conflict between the child and his/her parents[110]..

2.2 The child as a witness

2.2.1 Reporting a crime

Any person witness of a criminal offence can report the offence to the police or crown prosecutor[111]. See section 2.1.1 on the modality of reporting a criminal offence for children.

2.2.2 Provision of information

There are no specific provisions on the right of a witness to information. In practice, witnesses may be informed by the police on rights and assistance available if child witnesses need specific support.

As mentioned above in section 2.1.4, if a child reports as a witness of domestic violence, the police and judicial officers will enquire about the consequences for the children of the domestic violence. In order to ensure follow-up on such a situation, the presence of children must be recorded and sent to the crown prosecutor[112]. If there is a reason to believe that the child needs protection measures, social services and the competent youth judge will be alerted.

If a witness is threatened, the child will be considered as a victim. In such cases, the victim's right to information applies as mentioned in section 2.1.2.

2.2.3 Protection from harm and protection of private and family life

Specific protection is granted for the testimony of child witnesses. Unless the child witness has expressed his/her desire to testify before the Court, the testimony must be given via videoconference carried out in a separate room in the presence of her/his an adult of his/her choice, technical staff necessary for the recording and a psychologist (although they will be present behind a glass window). The judge can order the limitation of or prevent any visual contact between the suspect and the child witness[113]. Such protection remains available to the young person who reaches the age of 18 years at the time of the hearing.

The Commission on protection of witnesses is competent to organise protection measures for witnesses, adults and children, as well as financial assistance[114].

In addition, as mentioned above in section 2.1.3, the Youth Tribunal is competent to receive the crown prosecutor's submissions relating to children whose health, safety or morals are endangered, either because of the environment in which they are raised, or by reason of the activities they engage in, or whose conditions of education are compromised by the behaviour of their guardians[115].

The Youth Tribunal may order a variety of measures relating to custody, preservation and education, including measures against parents or placement of the child in host family or in the care of a specialised centre.

2.2.4 Minimising the burden of proceedings and ensuring a child friendly environment

The information in sections 2.1.3 and 2.1.4 is applicable to child witnesses.

[110] Articles 378 and 410 of the Civil Code.

[111] Article 30 of the CCP.

[112] COL Circular No. 4/2006 of the College of Prosecutors General of the Courts of Appeal, 1 March 2006.

[113] Articles 190bis and 311 of the CCP.

[114] Article 103 of the CCP.

[115] Article 36 (2°) of the Youth Protection Act.

2.2.5 Protecting the child during interviews and when giving testimony

The information in sections 2.2.3 and 2.1.5 is applicable to child witnesses.

2.2.6 Right to be heard and to participate in criminal proceedings

As explained in section 3.1, the Belgian Constitution recognises the right of the child to express their views on any question which concerns her/him. His/her opinion must be taken into account in accordance with the child's age and maturity[116]. This applies to child witnesses too.

As mentioned in section 2.1.6, in practice, it does not appear that there is an obligation on the judge to hear the child. Rather it is done on the initiative of the judge, on a case-by-case basis[117]. The judge may by a reasoned decision hear the child in Court, if (s)he deems it necessary for the manifestation of the truth[118]. If the judge does not order the hearing of the child in the courtroom, the audio-visual recording of the interview will be used in place of the hearing of the child.

A child under the age of 15 years cannot be heard under oath. The child's declaration is only collected as information[119]. Nevertheless in any proceedings related to the child, the child with sufficient maturity may be heard on her/his request or upon decision of the judge. If the child requests to be heard, such request must be accepted, unless the crown prosecutor or the judge, upon a motivated decision, determines that the child does not have the necessary maturity. In the case where the hearing is decided by the judge, the child may refuse to be heard. The child will be heard alone, unless the judge deems it is the best interests of the child to be assisted. The interview/hearing does not grant the child the status of party to the proceedings.

2.2.7 Right to legal counsel, legal assistance and representation

Child witnesses have a right to be assisted by a legal counsel at any stage of the proceedings and they have the right to free legal aid. See section 2.1.7 on children's access to legal counsel.

2.2.8 Remedies or compensation for violation of rights and failure to act

A witness who is a victim of violation of rights or failure to act can claim remedies or compensation (through her/his legal representative) for any damages occurred as a result of such failure or violation. Hence, the witness will take on the status of victim. See the child as a victim section 2.1.8.

2.3 The child as a suspect/ defendant

2.3.1 Age of criminal responsibility

The age of criminal responsibility is set at 18 years[120]. A child does not commit 'crimes' under the Belgian system; rather they commit 'acts qualified as an offence', for which a specialised jurisdiction, the Youth Tribunal, is competent to apply measures of protection, care, education or/and restorative justice[121]. Children who were younger than 18 years at the time of committing the offence may thus face protection measures. Such measures can

[116] Article 22bis of the Belgian Constitution.
[117] Confirmed through interview with Defence for children.
[118] Article 100 of the CCP.
[119] Article 931 of the Judicial Code.
[120] Article 36 (4°) of the Youth Protection Act.
[121] Youth Protection Act.

however extend to a deprivation of liberty in a closed educational centre or institution of youth protection[122].

There is no minimum age to which the juvenile protection system applies. It is up to the crown prosecutor to decide whether or not to prosecute a child. In practice, children under 10 or 12 years are rarely prosecuted. The age of discernment between 'good' and 'bad' is deemed to be reached around 10-12 years[123]. Three measures are possible for the child under 12 years:

- reprimand;
- supervision by a competent social service;
- intensive educational support.

In practice, the judge can consider the child as a child in danger and chose protection measures[124].

There are two exceptions to the rule that only the juvenile protection system applies to children: 1) the Youth Tribunal declines jurisdiction and transfer the child to adult criminal jurisdiction[125] or 2) road traffic offences[126].

1) The transfer to criminal jurisdiction dealing with adults is an exception based on the assessment of the maturity and the personality of the individual and the seriousness of the offence. After conducting a psychosocial investigation, the Youth Tribunal can conclude that a protection measure is not appropriate. Such a transfer is permitted only if the child has already been subject to a protection measure applied by the Tribunal or if it based on the seriousness of the offence, for example murder, attempted murder, sexual abuse, physical assault resulting in lasting physical injuries, torture or robbery. Lastly, it can apply to children who committed the offence between the ages of 16 and 18 years.

When the transfer relates to a misdemeanour or a crime for which the Correctional Tribunal is competent (not the Court of Assize), the case is transferred to a special chamber applying adult criminal law within the Youth Tribunal. For crimes falling within the competence of a Court of Assize, the Court of Assize will be composed of at least two judges who have received specific training. The Constitutional Court[127] declared void the requirement to send the case to the prosecutor's office in application of the common (adult) procedure. However, no requirement exists yet for the youth prosecution office to be in charge of the case, when the child is sent before the Court of Assize. In practice, the prosecutor in charge is usually trained to youth protection cases[128].

2) Adult jurisdictions are competent, upon request of the crown prosecutor, to try children between the ages of 16 and 18 years, suspected of traffic offences, including homicide and involuntary injury related to a traffic offence, and in relation to mandatory motor vehicles insurance. The adult jurisdiction may refer the child back to the Youth Tribunal if the court deems that youth protection measures are more appropriate. For such cases, pre-detention of the child is not allowed unless in the event of hit-and-run offence.

The same rights and safeguards described in the sections below apply to children in the above two cases unless otherwise specified. Indeed, the child transferred to the adult system remains a child and therefore entitled to the rights and protection provided to children. The

[122] Article 37 of the Youth Protection Act.

[123] Johan Put, 'The Juvenile Justice System in Belgium', in *Juvenile Justice Systems in Europe: Current Situation and Reform Developments*, Volume 1, p.6.

[124] Information provided in writing by the Belgian authorities.

[125] Article 57bis of the Youth Protection Act.

[126] Article 36bis of the Youth Protection Act.

[127] Constitutional Court decision of 13 March 2008 (No 49/2008), paragraph B.30.8.

[128] Information collected in writing by the Belgian authorities.

rights and safeguards, which do not apply are those related to proceedings before the Youth Judge, which are not applicable anymore once the child is transferred to the adult system.

When the child reaches 18 years

Juvenile protection measures end when the child reaches the age of 18 years. However extension can be granted under certain circumstances until the person reaches the age of 20 - 23[129].

When the young person who committed the offence as child, reaches the age of 18 years during the judicial proceedings, the Youth Tribunal can order provisional measures until the person reaches the age of 20 years[130]. The Tribunal can order definitive measures for a period not exceeding the day when the person reaches the age of 23 years, in the case where they committed the offence after the age of 16 years[131]. The transfer system to be judged as an adult under the formal criminal law can apply in the same terms to a young person who reaches the age of 18 years at the time of the proceedings.

2.3.2 Provision of information

Children have the right, where the law can infringe his/her rights and freedoms, to be informed of the content of her/his rights and freedoms[132]. There are no details on what this information must contain. The general rule, that the prosecutor and examining judge must inform the accused person of the right to a lawyer, applies to the child[133].

In case of administrative custody (in cases of breach of the peace, safety or when there are reasonable grounds to believe that the person is about to commit an offence), any person (child or adult) who is arrested administratively must be informed of:

- The deprivation of liberty;
- The reasons which underlie it;
- The maximum duration of the deprivation of liberty;
- The material procedures when being placed in custody;
- The possibility of resorting to coercive measures.

The rights attached to the deprivation of liberty must be notified, either orally or in writing and in a language she/he understands, to any person (child or adult) who is subject to administrative arrest/custody and at the moment the administrative police officer carries out or confirms the deprivation of liberty[134].

This notification is confirmed in writing in the register of detainees. The communication of the rights of arrested persons may be organised collectively provided that this procedure is mentioned in the register.

When a child is deprived of his/her liberty following his/her arrest or has been released based on a promise or the signing of a commitment to appear at the Court hearing, the officer in charge of the deprivation of liberty must promptly give or order to have given an oral or written information of the arrest, of the reasons and the place where the child is detained to the father and mother of the child, his/her guardian or persons having custody in law or in fact. If the child is married, the notice must be given to the spouse rather than the aforementioned persons[135].

[129] Article 37(3) of the Youth Protection Act in force since 1 January 2013.

[130] Article 52 of the Youth Protection Act.

[131] Article 37 of the Youth Protection Act.

[132] Preliminary Title of the Act.

[133] Act of 20 July 1990 on pre-trial detention.

[134] Article 33ter of the Act of 5 August 1992 on the police functions.

[135] Article 48bis of the Youth Protection Act.

The prosecutor must notify in writing the child suspected of having committed an act qualified as an offence, her/his legal representative and the person having custody over the child by law or in fact, that they may participate in mediation and that they have the possibility to apply to a mediation service, organised by the communities[136]. Regarding this option see also section 2.3.6.

Once the Youth Tribunal takes charge of a case, the Youth Tribunal must inform the persons exercising parental authority over the child and, where applicable, the persons who have custody by law or de facto, to allow them to be present at the hearing[137].

In case of judicial arrest (upon the request of a judge), usually the legal counsel provides all the information to the child[138]. The presence of a legal counsel is mandatory for children whether deprived of liberty or not. Consultation with a legal counsel is mandatory before any hearing. The legal counsel is responsible for explaining the legal proceedings.

Before any interview, the authority carrying out the interview (police officer, prosecution officer or judge) must provide the following information:

At the beginning of any interview, a suspect of an offence, child or adult must be informed

- of the facts on which they will be questioned;
- that they can request that all the questions that are asked and the answers he/she gives are written down word for word;
- that they may request that an investigating act to be performed or hearing carried out;
- that her/his statements can be used as evidence in court;
- that they cannot be compelled to incriminate themselves;
- that they have a choice, after providing information on her/his identity, to make a statement, to answer questions or remain silent;
- that they have the right, prior to the first hearing, to consult privately with a legal counsel of their choice or with a legal counsel who has been appointed, provided that the facts for which they may be charged may result in the issuance of an arrest warrant[139].

A written form containing the rights of the child must be provided to the child before his/her first interview[140].

2.3.3 Immediate actions following first contact with police or other relevant authority

Several police stations (mostly those in the big cities) have a special youth division in charge of dealing with child victims or offenders. However, there is no legal requirement for the establishment of such divisions[141]. The police officer in charge will contact the prosecutor, as well the bar association to alert them of the need for legal counsel for the child[142]. Where no specialised section exists in the police station, the police officer in charge also requests the prosecutor or Youth Judge to decide how the child should be dealt with. Nevertheless, in every police station, there will always be someone trained to assist victims, whether adults or children, but not necessary trained to assist a child[143].

[136] Article 45quater of the Youth Protection Act.

[137] Article 51 of the Youth Protection Act.

[138] Information collected via a police officer.

[139] Article 47bis of the CCP.

[140] Ibid.

[141] Johan Put, 'The Juvenile Justice System in Belgium', in *Juvenile Justice Systems in Europe: Current Situation and Reform Developments*, Volume 1, p.14.

[142] Information collected via a police officer and through interview with the chief of the Youth Section of the Molenbeek police.

[143] Information collected in writing by the Belgian authorities.

As mentioned in section 2.3.2, when a child is deprived of his/her liberty following his/her arrest or has been released against a promise to appear at the Court hearing or to sign a commitment, the officer in charge of the deprivation of liberty must promptly give or order to give oral or written information of the arrest of the reasons for the arrest and the place where the child is detained to the legal representatives of the child or/and person having custody of the child in fact. If the child is married, the notice must be given to the spouse rather than the aforementioned persons[144]. A child has the right to freedom which can only suffer minimal interference as required for the protection of society, taking into account the needs of the child, their families and interests of victims' rights[145]. The same rules apply to children and adults with regard to the privation of liberty and handling by the police. For example, a child (or adult) may be handcuffed if it falls under specific circumstances such as the behaviour of the suspect, the nature of the offence, violence or resistance of the arrest or the risk of escape[146].

2.3.4 Conditions for pre-trial detention/ custody

The police can place a child in custody. The same principles apply to the child as to an adult. Custody may last up to 12 hours (for administrative custody) or 24 hours (for judicial custody – upon the request of a magistrate/judge). The child must be referred before a Youth Judge within this time. The principle is to keep the detention in custody to a minimum[147]. The prosecutor's office (on duty) preferably the office specialised in youth cases, otherwise the one for adults will be informed as soon as possible of the custody[148]. In practice, there should always be a reference to a magistrate on duty for youth cases except maybe during the weekends.

The investigating judge has the possibility to extend the period of custody for an additional 24 hours under limited conditions when serious indications of guilt exist and exceptional circumstances and absolute necessity require it[149].

In case of deprivation of liberty the following principles apply to children:

a. the child must have as a minimum the same rights as adults;
b. given the presumption of vulnerability stemming from the status as a child, a child cannot validly waive those rights (including assistance of a legal counsel and rights surrounding the interview of someone deprived of liberty);
c. (s)he must receive the additional rights provided for in the Youth Protection Act[150] (such as the rights guaranteed in the CRC).

The largest police stations have separate cells to place a child; however smaller police stations do not have a separate section owing to a lack of space[151].

The investigating judge cannot deliver an arrest warrant against a child but she/he can order temporary care measures and refer the case to the Youth Tribunal. Such measures include:

- To refer the child to the monitoring of the competent social service;
- Community work (up to 30 hours);
- Prohibition to meet certain persons, prohibition to go to certain places, prohibition to perform certain activities or to go out;

[144] Article 48bis of the Youth Protection Act.

[145] Information provided in writing by the Belgian authorities.

[146] Article 37bis of the Act of 5 August 1992 on the function of the police.

[147] Preliminary title of the Youth Protection Act.

[148] Information collected through interview with Defence for children.

[149] Article 15bis of the Pre-trial detention Act. Article 49 of the Youth Protection Act. See Amaury de Terwangne, "The assistance to the minor during his/her interview by the police, prosecution office or the judge", *Le Journal du droit des jeunes* (N° 310, December 2011), p.29.

[150] Circular of the Prosecutors General of the Courts of Appeal COL 12/2011 of 23 November 2011.

[151] Information collected through interview with Defence for children.

- Respect conditions or prohibitions determined by the judge[152].

The Youth Tribunal can order the above mentioned temporary care measures as well. During the time of the measure, the child may remain where she/he lives or be taken under the care and monitoring of a competent social service. The temporary measure must last for the shortest possible time.

Any person deprived of his/her liberty has the right to medical assistance[153].

In the situation where the Youth Tribunal transferred the case of the child to be judged under adult criminal law, the child may face pre-trial detention in closed centres for children or in prisons with adults[154]. In practice, children are placed in specialised closed centres, only exceptionally can they be placed in prisons (where no other alternatives exist)[155].

See section 2.3.3 on immediate actions following first contact with the police and other authorities and section 2.3.10 on the right to consult a legal counsel.

2.3.5 Protection of private and family life

As a Constitutional principle, hearings before Courts and Tribunal are open to the public. However, as an exception, the judge can decide to meet in closed hearing on the basis that a public hearing would go against the public order or morals[156]. As a result, a judge, on the basis of this exception and Article 6 of the ECHR, could order a hearing to be closed in the interest of a child or the right to private and family life, but it is not automatic and left to the appreciation of the judge. In addition, either party may request the Court that the case be dealt with in closed session for all or part of the proceedings in the interest of morality or public order, where the interests of child or the protection of privacy so requires, or to the extent it is deemed required by the court, where publicity would affects the interests of the administration of justice[157].

As a practice, the media cannot record or film any hearing or take picture during the hearing. In addition, the publication or dissemination of the account of a hearing before the Youth Tribunal, investigating judge or Court of Appeal is prohibited under the Criminal Code. No photograph, image or text revealing the identity of the child suspect may be published. Any violation can be punished by imprisonment from two months to two years and a fine. Only the reasons of the judicial decision pronounced in a public hearing can be published or disseminated[158]. There are no particular safeguards for children transferred to the adult system aside from the potential use of the exception mentioned in the first paragraph of this section.

When talking to the press, the crown prosecutor and the legal counsel are required to take into account the rights of the defence, the presumption of innocence and the respect for private life, as well as to the extent possible not to disseminate the identity of the persons involved in the proceedings[159].

2.3.6 Alternatives to judicial proceedings

Mediation and restorative justice are available in juvenile proceedings in Belgium. The Judge or the Tribunal must consider offering mediation or a restorative group consultation if a victim

[152] Article 52 of the Youth Protection Act.

[153] Article 2bis of the Pre-trial detention Act.

[154] Report on detained minor of the General Delegate for the rights of the child of the French Community, available in French, January 2013.

[155] Preliminary Title of the Youth Protection Act.

[156] Article 148 of the Constitution and Article 757 of the Judicial Code.

[157] Article 446ter of the Judicial Code.

[158] Article 433bis of the CC.

[159] Article 28quinquies of the CCP.

has been identified[160]. The prosecution office within the Youth Tribunal must also consider offering mediation. Both the Judge and the prosecutor must motivate why they do not want to offer a mediation of restorative group consultation if they defer the child to the youth court or decide upon a youth protection measure.

However, in the event the child pursues mediation, the prosecution office may still prosecute the child. In the latter case, the prosecutor must provide the reason why he/she decides to prosecute despite the mediation[161].

As mentioned in section 2.3.2, the prosecutor must notify in writing the child suspected of having committed an act qualified as an offence, her/his legal representative and the people having custody over the child by law or in fact, that they may participate in mediation and that they have, in this context, the possibility to apply to a mediation service[162].

When the child is transferred before an adult jurisdiction, mediation is also possible. As mentioned in section 2.1.4, any person who has a direct interest can make a request for mediation at any stage of the criminal proceedings and the execution of the sentence. The crown prosecutor, the investigating authorities and the judge must ensure that the parties involved in legal proceedings are informed about the possibility of requesting mediation. As long as they deem appropriate in specific cases, they themselves can propose mediation to the parties[163]. As mentioned above, the prosecutor can still decide to prosecute the child despite the mediation.

2.3.7 Minimising the burden of proceedings and ensuring a child friendly environment

There are no specific techniques identified for protecting the child offender in judicial proceedings[164]. Child offenders are dealt with by specialised authorities (Youth Tribunal, Youth Prosecution Offices and Youth Judge) whose officials receive training in order to hold for such a position. Offenders, adults or children, have the right not to attend the hearing, except for giving testimony.

As mentioned in section 2.3.4, the largest police stations have separate cells to place children; however smaller police stations do not have a separate section owing to a lack of space[165].

As mentioned in section 2.1.4, as a general rule, if the duration of the criminal proceedings exceeds a reasonable time, the judge can sentence by simple declaration of guilt (without punishment) or pronounce a sentence below the minimum prescribed by law[166]. However, this depends on the initiative of the judge. The law does not provide an indication as to what constitutes a reasonable time, as this depends on the circumstances of the case, notably based on the complexity of the case[167]. For proceedings before the Youth Tribunal, the time limit for the preparatory procedure is set at six months from the date of the referral of the case before the Youth Tribunal until the file is transferred to the crown prosecutor at the end of the investigations. Thereafter, the crown prosecutor has two months to subpoena the suspect before the Youth Tribunal[168].

[160] Article 37bis of the Youth Protection Act having been amended following the Constitutional Court annulment of the previous requirements of serious indication of guilt and declaration of the minor that he/she was involved in the act qualified as an offence.

[161] Information collected in writing by the Belgian authorities.

[162] Article 45quater of the Youth Protection Act.

[163] Article 553 of the CCP.

[164] Belgium report in Juvenile Justice Systems in Europe: Current Situation and Reform Developments, Volume 1, p.28.

[165] Information collected through interview with Defence for children.

[166] Article 21ter of the CCP.

[167] Information collected through interview.

[168] Article 52bis of the Youth Protection Act.

2.3.8 Protecting the child during interviews and when giving testimony

No interview of the child suspect deprived of his/her liberty may be carried out without the presence of a legal counsel[169], whether the child is under the Youth Protection system or transferred before an adult jurisdiction. Child suspects not deprived of their liberty, in the same way as adult, have the right to consult a legal counsel before the first interview. As opposed to adults, child suspects (transferred or not) cannot waive this right[170].

It is noted that an interview (*verhoren - audition*) is understood as a directed and systematic interrogation carried out by a competent authority (judge, police or prosecutor) over a specific offence, for which the person interviewed can be charged and deprived of liberty[171].

There is no specific right identified for the child to be accompanied by his/her legal representative during the interview.

As an exception to the above principle, the Youth Judge must hear personally the child before ordering any measure against the child[172].

Where a specialised youth section exists in the police station, the police may carry out the interview as soon as the legal counsel has arrived to represent the child. Where no specialised section exists in the police station, the police officer in charge will immediately alert the prosecutor who will decide when and how it is appropriate to interview the child; either the child will be heard within 10 days with his/her legal representative or the child will be heard by the judge immediately. This decision depends on the gravity of the facts and whether the suspect is deprived of their liberty[173].

During the interview, the child suspect must be informed of his/her rights as mentioned in section 2.3.2. The child has the right not to speak, to ask for the full transcript of the interview and to request that investigation measures be taken (such as interviews of other persons or verification of evidence)[174].

The child suspect deprived of his/her liberty can consult confidentially a legal counsel for 30 minutes before the hearing and within two hours of the legal counsel being appointed. During the hearing, the legal counsel assists the child in order to ensure that the child does not accuse him/herself, that the child is well treated and that the child is properly aware of his/her rights. The interview may be interrupted for 15 minutes for an additional confidential consultation between the child and the legal counsel. The legal counsel can request that in the official report of the interview a mention is made of any violation of rights the legal counsel would have observed[175].

While the child has the right to receive a transcript of the interview, if the crown prosecutor deems that there is a risk that the child be deprived of the transcript copy, (s)he can decide not to provide the child with the transcript copy. In that case, the child and his/her legal counsel can consult the transcript in the judicial file. The crown prosecutor can then however delay the access to the file for a period of maximum six months on the basis of serious and exceptional reasons. The investigating judge may still decide to provide a copy of the transcript to the legal counsel in that case[176].

The child suspect has the right to be assisted by legal counsel for all the hearings and interviews before the Youth Judge. See section 2.3.10 on the right to legal counsel. The

[169] Article 2bis of the Act of 20 July 1990 on pre-trial detention.

[170] Article 47bis of the CCP.

[171] COL Circular 8/2011 of the College of Prosecutors General of the Courts of Appeal. See also Amaury de Terwangne, “The assistance of a minor during his interview by the police, prosecution office or the judge”, *JdJ - Le Journal du droit des jeunes* (N° 310, December 2011), pp.9-10.

[172] Article 52ter of the Youth Protection Act.

[173] Information collected via a police officer working in a district where no youth section exists.

[174] Article 47bis of the CCP.

[175] Article 47bis of the CCP and Article 2bis of the Act of 20 July 1990 on pre-trial detention.

[176] Articles 28quinquies and 57 of the CCP.

requirement to be personally interviewed by the judge can be waived when the health condition of the child justifies the waiving[177].

Lastly, any person who has been interviewed can request to be heard in another language and benefit from the assistance of an interpreter[178].

2.3.9 Right to be heard and to participate in criminal proceedings

As mentioned in the child as a victim (2.1.6) and witness (2.2.6) sections, the right of the child to be heard is a constitutional right[179].

In addition, the Youth Protection Act guarantees the application of the rights and freedoms, which include those set forth in the Constitution and the Convention on the Rights of the Child, to children, including the right to be heard during the process leading to decisions that affect them and to take part in this process. Furthermore, it requires that these rights and freedoms be complemented by special guarantees, including consideration of their level of dependency (due to being a child), their level of development and maturity, in their own right, special needs that require attention, advice and assistance[180].

The Youth Judge is required to hear children of 12 years old or above in person unless the health conditions of the child justify a waiving of this obligation or if the child refuses[181].

When first interviewed by a judicial authority or the police, the child has the right to consult with a legal counsel. When the child is deprived of liberty, the consultation and presence of the legal counsel is mandatory for any hearing[182]. (See sections 2.3.8 and 2.3.10.)

As mentioned in section 2.1.6, a child under the age of 15 years cannot be heard under oath. The child's declaration is only collected as information and will not be used as formal evidence, rather as information to put other evidence into context[183]. In any proceedings related to a child, the child with sufficient maturity may be heard upon her/his request or upon decision of the judge. If the child requests to be heard, such request must be accepted, unless the crown prosecutor or the judge, by reasoned decision, decides that the child does not have the necessary maturity. In the case where the hearing is decided by the judge, the child can refuse to be heard. The child will be heard alone in a separate room, unless the judge deems it is in the best interests of the child to be assisted.

As any person heard in a judicial proceeding, the child and his/her legal counsel can request that some investigating acts be carried out and that a specific hearing be organised[184].There is no formal role for the parent of the child offender aside from being the child's legal representative. However, the parents may be summoned to be heard by the Youth Judge or ordered to attend a programme of 'parental education'. In addition, the Youth Judge may order the full or partial deprivation of the parental authority of one or both parents[185].

2.3.10 Right to legal counsel, legal assistance and representation

In Belgium, the right to legal protection is a constitutional right[186].

As mentioned in section 2.1.7, there are two forms of legal aid: primary and secondary legal aid. Primary legal aid consists of initial legal advice or referral to specialised organisation.

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[177] Article 52ter of the Youth Protection Act.

[178] Article 47 bis of the CCP.

[179] Article 22bis of the Belgian Constitution.

[180] Preliminary title of the Youth Protection Act.

[181] Article 52ter of the Youth Protection Act.

[182] Amaury de Terwangne, "The assistance to the minor during his/her interview by the police, prosecution office or the judge", *Le Journal du droit des jeunes* (N° 310, Décembre 2011), p.17.

[183] Article 931 of the Judicial Code.

[184] Article 47bis of the CCP.

[185] Articles 29bis,32, 45bis and 51 of the Youth Protection Act.

[186] Article 23, second indent, 2° of the Constitution.

Primary legal aid is offered by the House of Justice in each judicial district and by the Commission of Legal Aid where lawyers hold weekly legal aid hours. It is accessible to everyone and is free of charge.

Secondary legal aid consists of legal assistance of a legal counsel. Secondary legal aid is free of charge for all children.

Any party to the proceedings under 18 years of age who does not have a lawyer receives the assistance of a legal counsel, appointed ex officio. When the Youth Tribunal takes on a case, the prosecutor's office sends a notice to the responsible bar association to designate a legal counsel within two working days. The president of the bar association or the counselling office ensures, in a case of a conflict of interests, that the child is assisted by a lawyer other than the one representing her/his father or mother, guardians, or persons who have custody of the child or who are vested with a right of action[187].

Most of the bar associations in the country have a youth section, which includes legal counsels having received specific training on representing children. A child has the right to change lawyer if the child deems she/he is not properly represented. This requires the child to provide convincing arguments supporting such a request[188].

Any person, adult or child, has the right to consult with a legal counsel confidentially before being questioned. The right to consult with a legal counsel cannot be waived by a child (as opposed to adults)[189]. It is guaranteed to the child suspect whether or not he/she is deprived of liberty.

When deprived of liberty, the consultation with the legal counsel should be done between the moment of deprivation of liberty and the first interview. The consultation must be confidential and can last a maximum of 30 minutes. The child has a free choice of the legal counsel unless one is designated by the bar association. The consultation must be conducted within two hours after the legal counsel has been alerted[190]. The legal counsel can assist the child deprived of liberty during the hearing as well. The intervention of the legal counsel only relates to three aspects:

- The right of the child not to incriminate themselves;
- The treatment of the child during the hearing;
- The notification of rights[191].

Subsequently, the hearing can be interrupted for an additional consultation of 15 minutes with the legal counsel, at the request of the child or the legal counsel.

The child has the right to be assisted by a legal counsel for any hearing. If the child is not assisted by a legal counsel, a legal counsel will be appointed by the judge. Similarly, the child has the right to be assisted by a legal counsel before the Youth Tribunal. However, the examining judge and youth judge have the possibility to have a private conversation with the child[192].

2.3.11 Remedies or compensation for violation of rights and failure to act

The child offender via his/her legal representative or legal counsel has a right to lodge an appeal against the decision of the judge before the Court of Appeal. If the child is transferred before the Court of Assize, there is no appeal possible, except for an appeal on procedural issues or interpretation of the legislation before the Court of Cassation. The child offender

[187] Article 54bis of the Youth Protection Act.

[188] It appears that in a number of cases, the legal counsel did not properly present the views of the child. Information collected through interviews with Defence for children Belgium.

[189] Article 2bis of the Act of 20 July 1990 on pre-trial detention.

[190] Ibid.

[191] Ibid.

[192] Articles 49 and 52ter of the Youth Protection Act.

can raise any issue with regard to the violation of his/her right during the proceedings or in the appeal claim. As mentioned in section 2.1.8, as a consequence of her/his lack of legal capacity, a child cannot file an action on her/his own, but only via the action of his/her legal representative, with the exception of the designation of an ad hoc tutor in case of conflict between the child and his/her parents[193]. See section 2.1.8 on remedies for failure to act.

[193] Articles 378 and 410 of the Civil Code.

3 Child-friendly justice after judicial proceedings

3.1 The child as a victim or offender

3.1.1 Provision of information

A copy of the decision of the Youth Tribunal must be handed out directly at the public hearing to a child of 12 years or more, and to his/her parents, guardians or persons having custody in law or in fact. If this cannot be made at the hearing, the decision will be notified by court letter[194]. The copy of the judgment must indicate the legal remedies available against the decision, including procedures and deadlines.

With regard to the formal (adult) judicial system, the judicial decision may only be notified to a child of sixteen years or more[195]. The copy of the judicial decision will be handed to the parents.

Information on the withdrawal of an investigation or prosecution, decision to prosecute, time for court proceedings and the handing out of the judgment is provided to the victim if they have registered as an injured person[196]. Information about the right to appeal and how to appeal can be provided by the judicial clerk or the legal counsel.

3.1.2 Sentencing

As mentioned in Section 2.3.1, the age of criminal responsibility is set at 18 years old. As a result, the Youth Tribunal does not impose sanctions on the child but it can order measures, some of which imply deprivation of liberty. The Youth Tribunal can order the following measures:

- Measures of custody/care;
- Measures of protection;
- Measures of education.

Such measures can consist of one or several of the following[197]:

- To reprimand the child and urge those providing her/him shelter to better monitor and educate them in the future;
- To refer the child to the monitoring of the competent social service;
- To order intensive educational support and individualised coaching by an educator depending on the service selected by the communities (not yet effective in Flemish community);
- To impose educational and general interest community services based on their age and capacity, of 150 hours or more;
- To order outpatient treatment with a psychological or psychiatric service, sex education or a service competent in the field of alcoholism or drug abuse (not yet effective);
- To entrust the child to an organisation offering coaching to achieve a positive benefit consisting either in training or participation in activities (not yet effective);
- To entrust the child to a trustworthy person in the manner prescribed by the communities or place them in an appropriate facility in the manner prescribed by the communities for their housing, their treatment, their education, their education or their training;

[194] Article 61bis of the Youth Protection Act.

[195] Article 35 of the Judicial Code.

[196] Article 5bis of the CCP.

[197] Article ,37§2, 37§2bis, 37§2ter of the Youth Protection Act.

- To entrust them to a Community institution of public youth protection in a closed or open environment. The decision should specify the duration of the measure and whether it prescribes a closed educational environment. The judge or competent social service visits the person assigned to a Community institution for public youth protection in a closed environment, if the placement exceeds fifteen days;
- To order placement in a hospital (not yet effective);
- To entrust the child to residential placement in an institution specialised in alcoholism, drug addiction or any other addiction, if a medical report, dated less than a month, certifies that the physical or mental the person cannot be protected in any other way (not yet effective);
- To entrust the child to residential placement in an open or closed section of a child psychiatry service, if it is established in an independent child psychiatry report, not older than one month, that (s)he suffers from a mental disorder which seriously affects her/his sense of judgement or ability to control her/his actions (not yet effective);
- To give the opportunity to the child to propose a project written in which he agrees to do things;
- To maintain the child in the living environment under certain conditions.

In choosing one or more of the above measure, the Youth Tribunal takes into account the following factors (art.37):

2. personality and maturity of the person;
3. his/her living environment;
4. the seriousness of the circumstances in which the acts were committed, the damage and the consequences for the victim;
5. previous measures taken in respect of the individual and his/her behaviour during the execution of them;
6. the security of the child;
7. public safety.

The availability of means of treatment, education or any other resources considered and the benefit for the individual are also taken into account

In the case the Youth Tribunal decides to transfer the case to formal jurisdiction to be decided under adult criminal law (see Section 2.3.1), the child can be sentenced to the same sanctions as adults, consisting of the following:

- Fines;
- Special confiscation;
- Imprisonment (up to 30 years);
- Conditional sentence;
- Probation;
- Community service (from 20 to 300 hours);
- Prohibition of certain civil and political rights;
- Dismissal of titles;
- Obligation to be handed over to the Tribunal of enforcement of sentences;
- Publication of the decision;
- Declaration of guilt.

3.1.3 Deprivation of liberty

The Youth Tribunal can order protection measures which include the placement of the child in a closed environment educational centre. Mediation and open environment placement are

favoured to closed environment placement. The following principle of subsidiary exists: first a restorative offer is preferred; second, if the mediation is refused or not adequate, a written project prepared with the child should be considered; thirdly an educative measure can be imposed or treatment with a specialised service such as psychological or substance addiction treatment services, and fourth the judge can opt for a placement in an open institution. The placement in a closed institution should be considered as the last option[198].

When a closed environment placement is ordered, the judge must detail the maximum period of placement, which can be extended only in exceptional circumstances (in case of dangerous behaviour of the child or persistent bad behaviour) until the age of 20 or 23 years when the act was committed over the age of 16 years and under 18 years[199]. Such placement cannot be ordered for children under the age of 12 years.

In the case of deprivation of liberty the following principles apply to children

a. the child must have at least the same rights as an adult;

b. given the presumption of vulnerability stemming from the status as a child, a child cannot validly waive those rights (including assistance of a legal counsel and rights relating to the interview of someone deprived of liberty);

c. (s)he must receive the additional rights provided for in the Youth Protection Act[200].

The situation of children placed in closed centres is dealt with at the regional level and according to the regulation of the centres. In the French Community, the child has the right to written correspondence with anyone outside of the centre unless the judge orders otherwise. The child can also use the telephone free of charge at least once a week. The child can have visits from friends and family members at least once a week. The child can communicate freely with his/her legal counsel and the visits of the legal counsel are not limited[201]. In the Flemish Community, the right to have direct and regular contact with the parent or person who raised the child is also guaranteed, unless the judge orders otherwise[202].

Children in Belgium are under the obligation to attend schools. Children placed in closed centres also fall under such obligation, therefore classes are organised within the centres[203]. However the education programmes offered in such centres are usually more limited to certain options, such as technical workshops on carpentry or electricity.

When a child arrives in a centre, the child is checked within three days by a medical team located within the centre. The medical team will then follow-up and assist the child with any medical issue[204].

When a child is judged under adult criminal law

Children sentenced to imprisonment or detention under adult criminal law serve their sentence in a federal centre reserved for children (centres of Saint Hubert and Tongres) until they reach the age of 18 years. After 18 years, the young adult will normally remain in the

[198] Information collected in writing by the Belgian authorities and Article 37(1) of the Youth Protection Act.

[199] Article 37 of the Youth Protection Act.

[200] Circular of the Prosecutors General of the Courts of Appeal COL 12/2011 of 23 November 2011.

[201] General Rules of the Public Institutions of Youth Protection approved by the Decree of the French Community of 25 May 1999.

[202] Article 14 of the Flemish Decree of 7 May 2004 on the minor status with regards to integrated youth welfare.

[203] "Schooling and the re-schooling in educational sections of Public Institutions of Youth Protection, starting from the particular project of Jumet", a study carried out by ULB and ULG at the request of the Minster of Health, Childhood and Youth Protection, 2007.

[204] General Rules of the Public Institutions of Youth Protection approved by the Decree of the French Community of 25 May 1999.

centre, but in exceptional circumstances or where space is lacking he/she may be transferred to an adult prison[205].

Assistance of a legal counsel remains mandatory in the case of deprivation of liberty. If the person has become an adult they are allowed to renounce the assistance of a legal counsel[206].

Any person deprived of his/her liberty has the right to medical assistance[207].

3.1.4 Criminal records

For children who have committed an 'act qualified as offence', record will be made in the central judicial records. However, municipal criminal records will not contain any mention of sentencing or measures order. Hence such record will not appear in the certificate of good conduct and morals. The information may only be accessible upon specific request of certain authorities such as in the case of application of the child (when adult) for a position in the army or federal police[208]. Criminal records of sentencing are only made in the event where the case of the child has been transferred to be judged under adult criminal law.

[205] Report from the Child's Rights Commissioner of the Flemish Community (*Kinderrechtencommissariaat dossier*), Inside Outside – Guarantees for children in detention examined (*Binnen (ste) buiten Rechtswaarborgen voor minderjarigen in detentie doorgelicht*) available in Dutch, p.136.

[206] Amaury de Terwangne, "The assistance to the minor during his/her interview by the police, prosecution office or the judge", *Le Journal du droit des jeunes* (N° 310, Décembre 2011).

[207] Article 2bis of the Pre-trial detention Act.

[208] Article 590, 594 and 595 of the CPP.

4 Strengths and potential gaps

The strength of the Belgian system lies in the protection philosophy behind the legal framework and juvenile system in place. The child is guaranteed a protected status. Only specialised services, including a specialised prosecution office, judges and tribunals, deal with children when involved in criminal proceedings. There is a strong emphasis on the rehabilitation of the child. Measures ordered will always be complemented by educational measures, and when implementing the sentencing, children will be accompanied by specially trained educators. Lastly, no measures will be recorded in the municipal criminal record.

The weakness of the Belgian system relates to the possibility to transfer cases involving child suspects to a special chamber or to the Court of Assize applying adult criminal law. The Committee on the Rights of the Child had expressed its concerns on the possibility to try a child as an adult[209]. While the conditions for the transfer have been restricted and the numbers have decreased, it still concerns between 96-294 cases per year[210]. When transferred, the child loses the ability to benefit from educational and protection measures. The impact on the child can be significant and no rehabilitation measures exist for children sentenced under adult criminal law[211].

Once the child is placed in a closed community youth protection institution, the child risks a limitation on his/her rights, such as the right to maintain contact with family members or right to privacy as the correspondence may be checked. There are no uniform guidelines on the approach of educators towards the child in such centres; some may take a more educative approach; some a more repressive approach. In addition, access to education in such centres is limited to the type of training provided, usually a technical curriculum (classes in electronics, etc.). Hence the child has no option to follow another curriculum such as science or languages. In addition, such placement does not trigger the guarantee of all the rights assigned to inmates of prisons, as the judge has the ability to extend the placement (until the age of 23)[212]. At the time the placement order is made, it is thus not possible to know the maximum duration of the placement because of subsequent extensions and similarly, the review of the measure is not automatic.

The approach towards a child suspect may vary greatly from one judge to another. Some take a repressive stance while others apply a more lenient approach. As a result it has been argued that there is a lack of legal certainty[213].

While there is a strong push for alternative dispute resolution for child offenders such as mediation and restorative justice at any stage of the proceedings before the Youth Tribunal, in the event where the child pursues mediation, the prosecution office may still carry out prosecution against the child.

While measures ordered by the Youth Tribunal must be complemented by educational measures, those are not always implemented due to the overload experienced by the services implementing educational measures[214].

Another gap relates to the deprivation of liberty in case of transfer to the adult criminal law, where a majority of child offenders are deprived of liberty prior to and during the trial, there

[209] Concluding observations of the Committee on the Rights of the Child: Belgium, 13 June 2002.

[210] In 2007, the number of children convicted in court as adult amounted to 294 (Committee on the Rights of the Child, Written replies by the Government of Belgium to the list of issues prepared by the Committee, Document CRC/C/BEL/Q/3-4/Add.1). In 2011, the number of cases of children deferred amounted to 96 cases (number collected via interview with an associate of the General Delegate for the Rights of the Child for the French speaking Community of Belgium).

[211] Information collected through interview with an associate of the General Delegate for the Rights of the Child for the French speaking Community of Belgium

[212] Information collected through interview the Former Children Rights Commissioner (Flemish Community).

[213] Information collected through interview with the Former Children Rights Commissioner (Flemish Community).

[214] Information provided in writing from the Belgian authorities.

are no specific safeguards to avoid undue delays and lengthy pre-trial detention. As such pre-trial detention may last longer than one year[215].

Specific safeguards are in place to support child victims and witnesses, such as the audio-visual recording of the interview and the right to be heard (applicable only to the victim). However, such safeguards are limited in those areas (i.e. interview of the child) and much is left to the discretion of professionals. For example, the way information on rights is provided to children will vary from one police station to another, especially depending on whether the police station has a youth section or not. Similarly, the judge is given great freedom in assessing whether it is appropriate or not to hear the child. The CRC Committee has noted that Belgium falls short of implementing its recommendation on the right to be heard in judicial and administrative proceedings[216].

Lastly, due to the lack of legal capacity, child victims, witnesses or suspects, have, to a large extent, to rely on their legal representatives to act on their behalf. The system does not provide a sufficient consideration of the ability of the child to take decisions by themselves, and the right to be heard and to have his/her views taken into consideration remains weak in Belgium.

[215] Concluding observations of the Committee on the Rights of the Child: Belgium, 11 June 2010 (Document CRC/C/BEL/CO/3-4).

[216] CRC Committee Concluding observations on Belgium report (CRC/C/BEL/CO/3-4), 18 June 2010, point 37.

Conclusions

Children involved in criminal proceedings in Belgium have access to a wide range of safeguards and access to specialised assistance. Victims and witnesses benefit from several safeguards most precisely with regards to the hearing/interview of the child. A comprehensive youth protection system ensures the care and protection of children in need of care and protection as well as the education and rehabilitation of children suspects. The age of criminal liability, set at 18 years, guarantees that children can benefit from the specialised youth protection system. Training is also available for those professionals who deal with children in judicial proceedings and is compulsory in order to be a youth judge or youth prosecutor.

However, gaps exist in the legal framework and in the implementation of the legal framework. The most important relate to child suspects. Child suspects of an offence may face placement in closed youth protection institutions, which in practice is similar to detention, without benefiting from all the guarantees of someone detained.

Child suspects of an offence above 16 years old are particular vulnerable to being transferred to the adult jurisdiction. While transfer can be ordered under strict conditions, it still represents a certain number of children who will then be treated as adults throughout the judicial proceedings with the caveat that youth judges will be in charge of judging their cases in application of adult criminal law.

Annex – Legislation reviewed during the writing of this report[217]

Federal legislation:

- The Belgian Constitution
- The Civil Code
- The Judicial Code
- The Criminal Code
- The Code of Criminal Procedure
- Law-Programme of 24 December 2002
- Act of 7 December 1998 organising an integrated police force
- Act of 5 August 1992 on the police functions
- Act of 20 July 1990 on pre-trial detention
- Act of 8 April 1965 relating to the protection of youth and the care of minor who committed acts qualified as an offence

Regional legislation:

- French Community Decree of 12 December 2008 combatting certain forms of discrimination
- Flemish region Decree of 10 July 2008 on equal opportunities and treatment
- Flemish Community Decree of 7 March 2008 on special assistance to youth
- Anti-discrimination Act of 10 May 2007
- French Community Decree of 12 May 2004 on Assistance of children victims of abuse
- Flemish Decree of 7 May 2004 on the minor status with regards to integrated youth welfare
- French Community Decree of the of 25 May 1999 approving the General Rules of the Public Institutions of Youth Protection
- French Community Decree of 4 March 1991 on Youth Assistance

Circulars:

- Circular of the Prosecutors General of the Courts of Appeal COL 12/2011 of 23 November 2011
- Circular of 26 September 2008 on the implementation of a multi-disciplinary cooperation for victims of human trafficking and / or some aggravated forms of human trafficking
- Ministerial Circular GPI 58 of 4 May 2007 on the police assistance to victims in the integrated police force section 6.4.1
- COL Circular No. 4/2006 of the College of Prosecutors General of the Courts of Appeal, 1 March 2006

Guidelines:

- Guidelines of the Superior Council of Justice for the training of judges and judicial trainees (ratified by the General Assembly of 30 May 2012)

[217] Please note that all the legislation and Codes mentioned in this report are available in French and Dutch via the search tool on Belgium ejustice website.