



Procedural Rights of Juveniles Suspected or Accused in the European Union

RESEARCH REPORT | BELGIUM



Defence for Children
DCI-BELGIUM



**PROCEDURAL RIGHTS OF JUVENILES SUSPECTED
OR ACCUSED IN THE EUROPEAN UNION**

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Abbreviations

ECHR: EUROPEAN COURT OF HUMAN RIGHTS

CCP: CODE OF CRIMINAL PROCEDURE

ICRC: INTERNATIONAL CONVENTION ON THE RIGHTS OF THE CHILD

ACO: ACT CLASSED AS AN OFFENCE

INCC: INSTITUT NATIONAL DE CRIMINALISTIQUE ET DE CRIMINOLOGIE (NATIONAL INSTITUTE OF CRIMINOLOGY AND FORENSIC SCIENCES)

PCPI: PUBLIC CHILD PROTECTION INSTITUTION

LPJ: LAW OF 8 APRIL 1965 ON CHILD PROTECTION, ON HANDLING OF MINORS WHO HAVE COMMITTED AN ACT CLASSED AS AN OFFENCE AND ON THE REPARATION OF DAMAGES CAUSED BY THIS ACT

LPD: LAW OF 20 JULY 1990 ON PROVISIONAL DETENTION

UFM: UNACCOMPANIED FOREIGN MINOR

FPS: FEDERAL PUBLIC SERVICE

EU: EUROPEAN UNION

Reader information

A. Legislative changes that came into force after the Belgian National Report was written

On November 27th, 2016 the Law of November 21st, 2016 came into force pertaining to certain rights of persons subjected to interrogation (*Salduz bis law*).¹

Although Belgian law already met part of the European requirements, a number of legislative changes were still necessary, in particular concerning the transposition of Directive 2013/48/ EU on the right of access to a lawyer (to be transposed on the November 27th, 2016), and Directive 2010/54/EU on the right to interpretation and translation in criminal proceedings.

1. The right of access to a lawyer

The right of access to a lawyer is now guaranteed during all police questioning to any person heard as a suspect, whether or not deprived of his liberty, provided that the charges that are alleged against him concern a criminal offense for which a custodial sentence is possible. Previously, if the person was not deprived of his liberty, access to a lawyer was guaranteed only if the charges on which he was questioned were likely to lead to a deprivation of liberty for at least 1 year; which did not comply with the Directive.

From now on, in any case, the interrogation of a minor can only take place after a confidential consultation with a lawyer, either on police premises or by telephone. If the suspected minor is heard after a written summons (with disclosure of their rights and a brief summary of the charges) and if he arrives without a lawyer, the questioning can only take place after such a consultation. Failing this, the interrogation will be postponed. Previously, the minor was presumed to have consulted a lawyer before attending the hearing. If the questioning does not take place after convocation or the summons does not mention the rights and the summary of the charges, the hearing can only take place after the confidential consultation with a lawyer. If the lawyer, in agreement with the minor, requests it the hearing may be postponed only once so that the minor can consult a lawyer and be assisted by him during the interrogation. Previously, if the first hearing of the suspect did not take place on convocation or if the summons did not mention the rights and the summary of the charges, the hearing could be postponed only once at the request of the person to be questioned, in order to give him the opportunity to consult a lawyer.

The principle that the minor cannot waive his right of access to the lawyer has not been changed.

Moreover, the right to counsel during the interrogation is now granted to any suspect questioned for acts punishable by a "custodial sentence". Previously, this assistance was limited to hearings of suspects for acts punishable by a deprivation of liberty for at least one year.

The role of the lawyer at the hearing of the suspect is broadened: he may request that an investigation measure or an interrogation be carried out; he may also ask for clarification on questions raised, and comment on the investigation and on the interrogation (however, he is not allowed to answer questions for the suspect or to interfere with the conduct of the interrogation). In addition, counsel's assistance during investigative proceedings is extended to confrontation and multiple confrontations, as well as to the identification of suspects. Previously, this was possible only during the visit of the crime scene in order to reconstruct the facts.

Another important addition is that the statement of rights must now be adapted according to the age of the person or to a possible vulnerability that affects one's ability to understand one's rights. This shall be mentioned in the hearing transcript.

¹ Belgian Official Journal. 24 November 2016.

Finally, article 495 of the Judicial Code is amended in order to provide a legal basis for the standby legal counselling service of the lawyer called the “web application”. It is now expressly provided that the Association of the French and German-speaking Bars and the Association of Flemish Bars have the task of organizing the standby legal counselling service referred to in Articles 2bis (2) And 24bis / 1 of the Law of 20 July 1990 on preventive detention in such a way as to enable lawyers to be contacted as quickly as possible, using modern means of communication, the various contacts made by the users being retained. Article 4 of the Salduz Law provided for the organization of a standby legal counselling service by the Bar Associations. Since January 1st, 2012, this standby legal counselling service is organized through a “web application”. The insertion of this new paragraph in article 495 of the Judicial Code thus aims to perpetuate this practice and to register it as a new mission for the Bar Associations, with the State having the task of ensuring its financing.

2. The right to interpretation and translation in criminal proceedings

If a person who is interrogated as a victim or suspect (or in whatever capacity) does not understand or speak the language of the proceedings, or suffers from a hearing or speech impairment, the assistance of a sworn interpreter is enlisted. If no sworn interpreter is available, the interviewee is asked to write down his own statement. The cost of interpretation shall be borne by the State. Previously, the law provided that if the respondent wished to speak in a language other than that of the proceedings, either a sworn interpreter was called for, or his statements were noted in his language, or he was asked to write his own statement.

Under the Law on the Provisional Detention, someone who is deprived of his liberty has the right to confidential consultation with a lawyer of his choice and without undue delay (this is new) from that moment on and prior to the first questioning by the police or failing that, by the prosecutor or the investigating judge. From the moment contact is made with the chosen lawyer or the standby legal counselling service, the confidential consultation with the lawyer must take place within two hours. New: confidential consultation can take place by telephone at the request of the lawyer in agreement with the person concerned. Confidential consultation may last for thirty minutes but may now, in exceptional cases, be extended to a limited extent depending on the decision of the person conducting the interrogation. After the confidential consultation, the interrogation can begin. If the scheduled confidential consultation cannot take place within two hours, a confidential consultation by telephone nevertheless still takes place with the standby legal counselling service, after which the interrogation can begin. In the event of force majeure, the hearing may begin after the rights referred to in Article 47bis (2), (2) and (3) of the Code of Criminal Procedure have once again been communicated to the person concerned.

If the person interrogated does not understand or speak the language of the proceedings or is suffering from hearing or speech impediments, and if the lawyer does not understand or speak the language of the person to be heard, a sworn interpreter will be called during the confidential consultation with the lawyer. The hearing transcript states the assistance of a sworn interpreter and his name and authority. The cost of interpretation is borne by the State.

Finally, the accused person who does not understand the language of the proceedings shall be entitled to request a translation of the relevant passages of the warrant into a language he understands in order to enable him to know the charges against him and to defend himself effectively, unless an oral translation was provided. The application must be filed with the clerk of the Court of First Instance, under penalty of forfeiture, within three days of the issuance of the arrest warrant. The translation is provided within a reasonable time. If an oral translation was given this fact shall be stated in the arrest warrant. The costs of translation is borne by the State.

B. Future legislation

On June 1st, 2017, the Law of October 28th, 2016 will enter into force, supplementing in particular the transposition of Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings. This law amends the Code of Criminal Procedure, the Law of June 15th, 1935 on the use of languages in judicial matters and the Law of December 19th, 2003 on the European arrest warrant.

In essence, it is provided that the accused person who does not understand the language of the proceedings may request that the relevant passages of the summons, notification or indictment be translated into a language he understands to enable him to know the charges alleged against him so that he can defend himself effectively. He also may request a translation of the relevant passages of the judgment into a language he understands in order to enable him to know the charges for which he is convicted and to defend himself effectively (unless an oral translation has been provided). In addition, if the defendant or accused does not understand or speak the language of the proceedings or if he or she suffers from hearing or speech impairment, the court shall automatically appoint a sworn interpreter. If the person concerned suffers from hearing or speech impairment, he or she shall have the right to request that such assistance be supplemented by the person who usually talks to him. Finally, the accused or convicted person who does not understand the language of the proceedings may also ask the investigating judge or the public prosecutor, depending on the state of the proceedings, to translate documents other than those whose translation is already provided for in the Code of Criminal Procedure into a language he understands, in so far as these are parts of the case file that are essential to ensure that he can exercise his rights effectively.

I. Introduction

This report has been drafted as part of the “Procedural Rights of Juveniles Suspected or Accused in the European Union (PRO-JUS)” project.

The PRO-JUS project was carried out in five EU Member States (Belgium, France, Hungary, Spain and the Netherlands) and coordinated by the Terre des Hommes Regional Office for Central and South East Europe, based in Hungary, in partnership with Défense des Enfants International (Belgium), Hors la Rue (France), Rights International Spain (Spain) and Défense des Enfants International (Netherlands).

The PRO-JUS project aims to examine the circumstances of foreign children suspected or accused in criminal proceedings, taking into account their particularly vulnerable nature which could impede them from enjoying the rights enshrined in the three European procedural directives (EU directives 2010/64², 2012/13³ and 2013/48⁴).

By implementing a diverse set of actions, the project aims, on the one hand, to improve the knowledge and abilities of justice and police professionals to ensure that the rights of foreign children suspected or accused in criminal proceedings are respected, through a research study carried out over several countries; and on the other hand, to ensure that the three procedural directives mentioned above are implemented in harmony across the fifteen member states of the EU so that all children benefit from them, including foreign children, through wide distribution of the results and through national and international petitioning initiatives.

Children are faced with numerous obstacles when it comes to accessing justice and demanding respect for their rights. Among these obstacles, two in particular stand out: lack of legal capacity⁵ and juvenile status⁶. Their vulnerability can be even greater in criminal inquiries and proceedings.

Although it is difficult to establish exact statistics regarding the number of foreign children suspected or accused in the different member states of the EU, the most recent estimates⁷ suggest that the phenomenon of minors in conflict with the law remains significant in most EU member States.

To be able to stand trial, the accused person must be able to consult a lawyer, meet with them in an appropriate and comprehensible language, understand the content of the accusations brought against them, be informed of the functioning of the proceedings and be able to receive assistance in preparing their defence.

Language is the primary obstacle that can place barriers in the path of a child suspected or accused of a crime, in terms of the fairness of the proceedings, as well as access to their rights and to information about these rights in a language that they are able to understand and in an appropriate format. Moreover, access to a lawyer who is trained and skilled in defending the cases of foreign children is not evident; this can severely compromise the right to a defence, which must be “practical and effective”.

This report concerns the situation in Belgium; it is one of five national reports carried out as part of the PRO-JUS project. It is the fruit of a research project that combined desk research, analysis and semi-structured interviews with children and with professionals working with children suspected or accused in criminal proceedings (see the lists of professionals and children interviewed in Appendices 1 and 2). Carried out in accordance with a common research methodology used in all five participating countries, this report presents the results of the research and the good practices identified before setting forth a number of recommendations. In accordance with the research objectives, this report also highlights the factors that improve or impede the actual enjoyment of the rights enshrined in the three EU directives.

The information and results presented in this report and the other national reports will serve as a foundation for the subsequent drafting of a comparative regional report.

2 Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings.

3 Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings.

4 Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013, on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

5 Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice: https://www.coe.int/t/dghl/standardsetting/cdcj/CDCJ_Recommendations/GuidelinesChild-FriendlyJusticeE.pdf

6 S. GOLUB and A. GRANDJEAN, *Promoting equitable access to justice for all children*, UNICEF Insights, Issue 1/2014 (2014).

7 In France in 2015, for the city of Paris only, the ‘Judicial Protection of Juveniles’ indicates that 2,297 cases of children were referred to the prosecutor for minors, among which 1,199 cases affected foreign children for an amount of about 400 different children (Source: Internal document of the Judicial Protection of Juveniles, Service Territorial de Milieu Ouvert Paris Center, 19 April 2016). In Spain, the data obtained in 2015 reveals that 18,134 children aged 14-17 years were arrested or investigated for the commission of a criminal offence, out of which 3,927 were foreigners (Source: Ministry of the Interior, 2015 Statistical Annual Report, p. 297, available here: http://www.interior.gob.es/documents/642317/1204854/Anuario-Estadistico-2015_126150729_VF.pdf/808a7398-2d25-4259-b450-974dc505f2e3). In Hungary in 2015, the total number of juvenile offenders was 7,785 and out of this 195 were foreigners (Source: ENyUBS, 2016. Ministry of Home Affairs. <http://bsr.bm.hu>). In the Netherlands in 2015, the police interrogated 37,017 minors (Source: National Police Database). In 2014, 1,380 children were placed in judicial juvenile institutions, out of which 19.2% were of foreign descent (Source: Department for Judicial Youth Detention Centers (2015), JJI in getal 2010-2014’. The Hague: Ministry of Security and Justice).

HYPOTHESIS AND PROBLEM STATEMENT

According to previous research on children in conflict with the law, it appears that children⁸ tend to lack awareness and have limited power and independence when it comes to accessing justice and demanding that their rights be respected. This initial vulnerability is compounded over the course of criminal inquiries and proceedings⁹, as a result of a variety of social and administrative elements, such as being of foreign nationality, being without a nationality, or belonging to a marginalised group.

The vulnerability¹⁰ of children may be attributable, among other things, to personal characteristics or specific circumstances such as injury, being foreign, level of maturity, etc. The vulnerability of a foreign child can be aggravated by a variety of obstacles, which could be internal (individual, biological, etc.) or external (the circumstances of the act committed, life context, etc.).

As such, the procedural guarantees that must be implemented for children suspected or accused in criminal proceedings present an additional challenge for national justice systems when it comes to foreign children. In the same way, accused or suspected children may previously have been victims of other offences.

Children with multiple vulnerabilities, such as foreign children¹¹ accused or suspected in criminal proceedings, face additional challenges in terms of protection. National child protection systems do not succeed in protecting them effectively, or in ensuring the availability of and their access to services of quality.

A previous study¹² revealed gaps between judicial regulations and actual practices, between the circumstances of national and foreign children, and between the practices implemented in urban and rural areas.

Previous analysis on the subject¹³, as well as the Council of Europe guidelines on child-friendly justice, has highlighted factors contributing positively to children effectively exercising their rights in criminal proceedings, as well as factors that have negative effects.

As a result, the central issue of this study is the following: Are children who are accused or suspected in criminal proceedings able to exercise effectively their rights as enshrined in EU Directives 2010/64, 2010/13 and 2013/48, both in theory and in practice?

Two secondary research questions contribute to answering the primary question:

1. What factors contribute positively, or have negative consequences, to/on foreign children effectively exercising their rights as provided under the three aforementioned directives?
2. How can the positive factors be exploited and how can the obstacles be overcome?

8 For the purposes of this research project, the term “child” is used to refer to any person under the age of eighteen (at the time when they are arrested, accused or suspected of committing an offence by a competent authority).

9 “Criminal proceedings” must be understood as proceedings in virtue of which a person is suspected or accused of having committed a crime (as defined by national or international law) until the final ruling is made to determine whether the suspected or accused person did in fact commit this criminal offence, including, where appropriate, judicial sentences and all appeals. Therefore, the point at which the person serves their sentence (following the judgement) is not included in the criminal proceedings. For the purposes of this study, criminal proceedings will be considered only from the point at which the person is officially entitled to exercise their rights as provided under the 3 directives: i.e., the point at which the person is informed of the accusations against them, they are accused of an act or they are deprived of liberty (arrest/provisional detention).

10 **The vulnerability of a child** is not a result of the age factor alone. It refers to the degree to which a child is capable of avoiding or modifying the impact of threats to their safety. It describes the way in which each child’s age, physical, intellectual and social development, emotional and behavioural functioning, the role of their family and their capacity for self-protection increases or reduces the possibility of serious harm being done to them. The vulnerability of the child must be considered from several perspectives, with age being only one of the factors. The factors that must be evaluated are: the child’s capacity for self-protection, their age, their communicative ability, the likelihood of severe damage taking place according to their level of development, the level of provocativeness of their behaviour or temperament, their behavioural needs, their emotional needs, their specific physical needs, their visibility by others/ their access to individuals capable of protecting them, the composition of their family, their role within the family, their physical appearance, their size and toughness, their tenacity and ability to find solutions to problems, any past experiences of victimisation, and their ability to recognise mistreatment or negligence.

11 The term “foreign person” here denotes a person who is not a national of the country in which they are accused or suspected, or in which the criminal procedure takes place. In other words, the foreign person does not have nationality of this country, which thus excludes holders of dual nationalities.

12 GYURKÓ, SZ. (ed) - NEMETH, B.: *Comparative situation analysis of juvenile justice systems in 20 CEE countries in accordance with the four relevant Terre des hommes scopes*, Budapest, Tdh. 2016 (not published yet)

13 Ibid.

METHODOLOGY

The national reports for the five countries have been drawn up based on the data and information gathered during the research phase, carried out on the basis of a carefully designed research methodology that was approved by all partners. The research methodology aimed to provide guidelines for the researchers and to ensure that relevant information and data were collected that could then be compared. The research methodology template included:

Desk research

Each researcher carried out in-depth desk research based on available information and data. In particular, they focused on national legislation, official documents, statistics and national reports. The researchers were asked to attempt to collect as much relevant information as possible from all available sources (publications, doctoral theses, academic research, etc. on the topic and associated subjects).

Semi-structured interviews with professionals and children

In addition to the desk research, the researchers also carried out semi-structured interviews with professionals and with foreign minors in each country. The project envisaged the use of semi-structured interviews in order to obtain first-hand information from the most significant participants (sole interveners or those who played an important role on behalf of foreign minors in criminal proceedings) and from foreign minors accused or suspected in criminal proceedings. The interviews took place based on different sets of questions for the professionals and for the minors.

A questionnaire was initially produced in English and then translated into the different languages. To ensure that the questions and results were comparable, adaptations for each country had to be minimised. The translated questions had to correspond to the meaning of the original questions in English.

Ethical issues

Several ethical principles guided the study:

Informed consent: persons participating in the interviews were informed in detail of the use that would subsequently be made of the information they were going to provide, so that they could give their informed consent. For children, this principle involved explanations in a language that they could understand easily, and adapted interview questions;

Data protection: confidentiality of the data gathered during the research was ensured and the data was stored securely;

Targeted use of data: the data gathered during the interviews must be used for this study only. Authorisation is required for the use of interview data for any other purpose.

LIMITATIONS

Despite several methods undertaken to obtain recent statistics on the nationalities of minors in conflict with the law in Belgium, we were unable to gather official data, simply because these statistics do not exist, either on a federal level or on the level of federal entities (see p. 15).

II. Contextual Overview

II.1 The juvenile justice system in Belgium: a brief overview

II.1.1 Specific characteristics linked to Belgium's federal status

Belgium is a federal State composed of three communities (Flemish, French and German-speaking) and three regions (Flanders, Wallonia and Brussels Capital). Decision-making power is therefore not centralised but shared between the federal State, the communities and the regions. These three autonomous political levels each hold different jurisdictions and all are responsible for international co-operation, including the making of treaties, for issues relevant to their jurisdiction.

Young people who are accused of having committed an "act classed as an offence" (fait qualifié infraction) are split between the jurisdiction of the federal State and that of the communities.

- **The powers of the federal State:**

- Organisation of the juvenile courts;
- Territorial jurisdiction over the juvenile courts;
- Proceedings brought before the juvenile courts;
- Deprivation of liberty and rules pertaining to juvenile hearings.

The law of reference with regards to juvenile justice in Belgium is the **law of 8 April 1965 on child protection, on handling of minors who have committed an act classed as an offence and on the reparation of damages caused by this act**, substantially modified in 2006 (hereinafter 'LPJ').

The philosophy behind the law is primarily "protectionist": its purpose, at least in theory, is to protect young people and not to punish them.

The expression "act classed as an offence" serves to recall that the young person falls outside of the scope of application of criminal law. In fact, the law presumes indisputably that the minor does not possess the necessary discernment, i.e. the capacity to understand the criminal nature of any act they may commit. Therefore, they cannot be subject to classic criminal sanctions (imprisonment, fines, etc.) but only to measures of supervision, protection and education, with education and protection being the most important objectives. For one of these measures to be taken against a minor, however, this "act classed as an offence" must be declared established, with regards to both material and moral elements.

There is no minimum age at which a minor who has committed an act classed as an offence to be triable at the juvenile court. The measures that can be taken by the judge do, however, depend on the age of the child (no removal from the family environment before the age of twelve, placement in an enclosed centre, in principle, at the age of fourteen, etc.). Moreover, any delinquent act committed by a young person under the age of eighteen derives from the jurisdiction of the juvenile court, even if they are not tried until after reaching legal age (except where the issue of declination of jurisdiction is concerned, which is discussed below).

We shall finally raise that further to the terrorist attacks which took place in Paris on 13 November 2015 and in Brussels on 22 March 2016, the federal government decided to strengthen the legal arsenal allowing to fight against terrorism. The law of 27 April 2016 relative to complementary measures regarding the fight against terrorism, entered into force on May 19th, 2016, plans thus three substantial modifications¹⁴:

1° the possibility of proceeding to searches 24 hours a day;

2° the revision of the legislation relative to the special techniques of investigation to widen the use of particular methods of research, in particular for the purpose of the fight against weapons trafficking;

3° the implementation of common data banks.

¹⁴ C. PHILIPS, « Lutte contre le terrorisme : le législateur renforce le cadre légal », *Bulletin juridique et social*, juin 2016, n° 566, p. 1.

The law of 20 April 2015 aiming at strengthening the fight against terrorism, entered into force on 15 August 2015, had already hardened the legal framework by incriminating the fact of moving abroad from Belgium or towards Belgium from foreign countries to commit an offence; by allowing the listening, the apprehension and the recording of private communications or telecommunications to investigate all terrorist offences and by planning the forfeiture of the Belgian nationality to punish any terrorist offence, as far as it has not the effect of rendering the condemned person stateless¹⁵. Four legislative proposals are pending before the House of Representatives to modify article 12 of the Constitution in order to allow, for certain offences, the extension of the police custody of 24 hours (the current delay) to 48 perhaps 72 hours¹⁶.

- **The powers of the Communities:**

- Determination of measures that may be taken against minors who have committed an act classed as an offence;
- The nature and subject of these measures, their criteria and conditions, duration, extension and revision;
- The hierarchy of measures, specific motivations, organising of private and public services to carry out investigations and implement the measures;
- Determination and organisation of the conditions for and effects of declination of jurisdiction by the juvenile court in the event of an observed insufficiency of the measures;
- The functioning of the Public Child Protection Institutions (PCPIs) and Gemeenschapsinstellingen (Community Institutions or GIs).

With the exception of the functioning of the PCPIs and the GIs, all of these powers were transferred to the Communities during the last State reform in 2014.

The legal text of reference for the French community is the **decree of 4 March 1991 on youth welfare**, which, although it deals first and foremost with the assistance to be provided to children who are “in difficulty” or “in danger”, nonetheless contains just as many provisions that can be applied to children who are suspected of or have committed an ACO, particularly with regards to the rights of these young people and the PCPI framework.

II.1.2 The parties involved

In juvenile justice, the parties involved may be:

- The police (who usually have a juvenile division)
- The juvenile prosecution service

N.B.: since 1 September 2006, each prosecution service is supported by a criminologist who fulfils three important functions:

- ✓ meeting with the young person and their parents to inform them of the possibility of providing mediation and, for some parents, a parenting course (the latter measure is no longer applied, however, due to a lack of services responsible for implementing it);
- ✓ forming collaborative links with schools and psycho-social-medical centres to combat absenteeism from school;
- ✓ forming collaborative links in order to combat mistreatment of children more effectively.
- The trial judge (although their role is greatly reduced)
- The juvenile court judge and the juvenile appeals judge
- The minor’s lawyer
- The legal protection service and the director of legal aid
- Public services (Public Child Protection Institutions, hereinafter PCPIs)
- Private services

¹⁵ C. PHILIPS, « Lutte contre le terrorisme : durcissement du cadre législatif », *Bulletin juridique et social*, septembre 2015, n° 547, p. 1.

¹⁶ Proposal for the revision of article 12 of the constitution in order to allow a delay of 72 hours for certain offences, *Doc. parl.*, Ch., session 2015-2016, n°54-1529/001 ; Proposal for the revision of article 12 of the constitution in order to allow the extension of the police custody to 48 hours, *Doc. parl.*, Ch., session 2015-2016, n°54-1712/001 ; ; Proposal for the revision of article 12, al. 3, of the constitution in order to extend the police custody to 48 hours, *Doc. parl.*, Ch., session 2015-2016, n°54-1713/001 ; Proposition de révision de l’article 12, alinéa 3, de la Constitution, *Doc. parl.*, Ch., session 2015-2016, n°54-1741/001.

II.1.3 The elements of the proceedings

There is a distinction between provisional measures and measures on the merits.

Provisional measures are taken before the judgement, in an “office” hearing, which takes place in the judge’s office and not in a hearing chamber. They cannot prejudge on the merits and, in principle, the measures have a maximum duration of six months¹⁷. The young person can thus have a series of measures imposed upon them on the spot, but on a provisional basis, even though the judge has not yet ruled on their guilt or on the measure that must be taken against them in this event.

It is important to note that provisional measures against young people cannot be of a punitive nature. They can only be in the interests of protecting the young person from themselves or society, or of favouring the progress of the inquiry. The juvenile judge can decide that the young person must stay with their family and impose conditions that they must respect, such as no longer frequenting certain persons or complying with an order not to leave. The provisional measure can also involve placement with a trustworthy person (e.g. a grandparent), in an appropriate establishment (e.g. a host family), in a hospital, PCPI or child psychiatry unit.

Measures on the merits are taken at the time of sentencing. Their duration is set by the sentence (revised annually). In principle, they end upon turning eighteen. If the young person displays behaviour that is truly dangerous to themselves or others, the juvenile court may decide to extend the measures beyond coming of age, up to a maximum age of twenty years¹⁸. If the young person has committed an offence after the age of seventeen, the juvenile court judge may sentence certain measures until the young person reaches the age of twenty.

All decisions are open to appeal.

It should be noted that when an act classed as an offence is brought before a court, the court is obliged to inform the persons exercising parental authority for the minor and, where appropriate, persons with the rights to custody or de facto custody. The order to appear will be addressed to them¹⁹. The juvenile court may also summon, at any time once the case is brought before it, the minor, their parents, guardians, persons with custody or any other person it deems appropriate to hear.

II.1.4 Types of measures

Firstly, the juvenile prosecution service is informed by **police report** that a young person is accused of committing an act classed as an offence. It falls to the juvenile prosecution service to classify the actions and determine the direction that the case will take.

While the **prosecutor’s office** still has the option of bringing the case of a delinquent minor before the juvenile court, it can also take certain measures arising from its jurisdiction:

- ✓ offering a parenting course: however, this measure is not applied due to a lack of services responsible for implementing it;
- ✓ addressing a warning letter to the minor accused of committing an act classed as an offence, to inform the young person that it has been made aware of their actions, that it considers the minor to be responsible for these actions and that it has decided to dismiss the case without charge;
- ✓ summoning the minor accused of committing an act classed as an offence and their legal representatives and issuing them with a notification of wrongdoing and the risks incurred;
- ✓ if the victim has been identified, proposing mediation;
- ✓ on the same condition, issuing an offer of mediation and of restorative group dialogue²⁰.

The **juvenile court** may take supervision, protection and education measures against persons referred to it. It should be recalled that these measures are not punishments and that they must always be taken with the young person’s interests at heart.

¹⁷ After this period, the juvenile judge may only extend on a monthly basis and on the condition of exceptional motive. Each month, the young person can request a review of the provisional measures.

¹⁸ The LPJ had envisaged the possibility of extending measures up to the age of twenty-three; however, this involves a cost that the Governments were not in a position to bear.

¹⁹ As well as to the minor if the act is apt to have their emancipation revoked or to have a measure taken against them or modified because they have committed an act classed as an offence and are aged twelve or under.

²⁰ Restorative group dialogue is a dialogue between the victim, the young person and other persons supporting them. An independent mediator unites the victim with the young person and those close to them. The objective of the dialogue is to agree acceptable provisions for all parties involved with a view to repairing the consequences of the acts committed. For further information on restorative measures, see Ministerial Circular n° 1/2007 of 7 March 2007 on the laws of 15 May 2006 and 13 June 2006 modifying the legislation on child protection and the handling of minors having committed an act classed as an offence, *Moniteur Belge*, 8 March 2007, spec. pp. 11488-11500.

There is a distinction to be made between three types of measures: those in which the young person remains in their family environment, those that allow the young person to be removed from their family environment, and declination of jurisdiction, which is an exceptional measure.

The judge's decision to pursue one or other of these measures will be determined by the character and level of maturity of the interested party, as well as their life context, the severity of their actions, the circumstances under which these were committed, the damages and consequences for the victim, any previous measures taken against the interested party and their behaviour while these were served, the safety of the interested party, public safety, the availability of treatment methods, educational programmes or any other resources envisaged and of the benefits that the measures would provide to the young person.

In theory, the judge must always seek to favour a measure that would allow the young person to remain within their family environment. Therefore, placement measures may only be used in exceptional circumstances, as a last resort, when no alternative solution can be envisaged. This is in application of the rule of subsidiarity, which requires that the least radical measure be favoured above all others: this could be an offer of restorative measures (mediation or restorative group dialogue) before considering a placement. N.B.: it is also possible to combine a number of measures. The juvenile court can also review at any time the measure taken towards the young person (besides the fact that any measure must be necessarily reviewed annually)²¹.

Measures in which the young person remains in the family environment

- ✓ Reprimand
- ✓ Surveillance + conditions (attending school, community service, paid work, educational referral centre or mental health centre, training modules, sporting or cultural activities, not frequenting certain locations or persons, etc.)
- ✓ Intensive educational support
- ✓ Written or oral apologies
- ✓ Reparation of the damages
- ✓ Offer of restorative justice (mediation, community service)
- ✓ Scholastic reinsertion programme
- ✓ Apprenticeships and training projects
- ✓ Outpatient treatment

It is also noted that the young person may issue their own proposal in a **written project**. This proposal may consist of reparation or education measures. As such, they could for example repair the damage in kind or symbolically. The young person submits the written project to the juvenile court judge, on the day of the hearing at the latest. The judge of the juvenile court must verify whether or not the project is feasible. If approved, the judge will request that the relevant social service monitors its execution. The measure of "young person's project" must, in theory, be prioritised over other measures that may be taken, in the sense that it fully ensures that the young person is entitled to take part in decisions that are made in their regard. In practice, it is very infrequently used and when it is, it comes more from the lawyer than from the young person themselves.

Measures of removal from the family environment:

- ✓ Placement with a trustworthy private individual
- ✓ Placement in a private institution
- ✓ Placement in a PCPI, open or closed
- ✓ Placement in a hospital environment, in a psychiatric therapy service (open or closed)
- ✓ other conditions

If the young person has committed an act classed as an offence **under the age of twelve**, they can be subjected only to measures that retain them in their living space: reprimand, intensive educational support, individual supervision or supervision carried out by the relevant social service. The service depends on the communities and is appended to each juvenile court. Children under the age of twelve who have committed offences are effectively presumed to be endangered and require greater protection.

21 Article. 60, law of 8 April 1965 on child protection, on handling of minors who have committed an act classed as an offence and on the reparation of damages caused by this act.

As regards **minors over the age of twelve**, the court may only order the measure of placement in a PCPI with an **open educational programme** if:

- ✓ either they have committed an act classed as an offence that, if committed by an of-age adult, would have been enough to invoke a three-year prison sentence or a more severe sentence;
- ✓ or they have committed an act classed as assault and battery;
- ✓ or they have re-offended following placement in a PCPI;
- ✓ or they have failed to comply with another measure imposed upon them;
- ✓ or they are subject to review and are placed in a PCPI with closed educational programme at the time of this review.

The court may only order the measure of placement in a PCPI with a **closed educational programme** in the case of youths who are **aged fourteen or over** and who have committed acts of a certain nature and severity or who have re-offended.

The court may also order a measure of placement in a PCPI with a **closed educational programme** in the case of **youths aged between twelve and fourteen** who have committed aggravated assault on the life or health of persons and whose behaviour is particularly dangerous.

N.B.: Fortunately, closed educational programmes are accompanied by child-friendly educational measures that share the objective of preparing them for reintegration into society under the best possible conditions²².

The juvenile court may forbid the young person to make contact with certain individuals designated by it (although not the lawyer); it can also authorise them to leave the PCPI.

The young person may submit an appeal; this appeal must be processed within a fortnight.

Exceptional measure: declination of jurisdiction

In exceptional cases, the Belgian system allows a minor to be judged before an adult tribunal or to be given the same punishment as an adult. This system is known as declination of jurisdiction in favour of another court (dessaisissement in French). It is applied to minors aged sixteen or over at the time when the events took place. If the court declines jurisdiction over a minor, the latter will be brought before a specially formed chamber within the Juvenile Court (which will apply the Criminal Code as it applies to of-age adults)²³.

Declination of jurisdiction may be pronounced in situations where the juvenile court judge considers care, protection or education measures to be insufficient, meaning that none of the measures that they are able to propose or impose upon the young person (such as mediation, monitoring, community service, placement, etc.) appear to them to be useful. These minors whose jurisdiction is declined may, upon termination of the proceedings, be placed in a special centre located in Saint-Hubert, where they will be separated from the adults; they may even be required to serve a subsequent prison sentence in which they will not be separated from the adults.

The INCC recently published the provisional result of a study on 210 young offenders whose trajectory following declination of jurisdiction was studied up to ages of between 29 and 39 years. This analysis revealed that the majority of the population studied is still in contact with the criminal justice system. Over the course of the final three years, over half of the individuals concerned were sentenced, and nearly a third were in custody²⁴.

Belgium is regularly the object of finger-pointing as a result of this process of declination of jurisdiction, which is considered contrary to the ICRC and other international conventions. In fact, the message of the ICRC is clear: a child remains a child, which implies that they must be judged according to a specific system, separate from that of adults²⁵.

Specific measures concerning young offenders suffering from psychiatric issues (FOR-K projects)

Minors in conflict with the law suffering from psychiatric issues may be placed in a child psychiatry section to receive intensive treatment there. Care programmes are intended to improve the youths' quality of life, favour social reinsertion (integration in education, improved 'functioning' within the family, etc.), stimulate collaboration with outpatient support structures, justice and PCPIs and prevent repeat offence.

²² However, these special measures are not envisaged for minors detained following a declination of jurisdiction.

²³ It appears that the number of girls over whom jurisdiction is declined and who are in fact incarcerated is so small that, for economic reasons, no particular institution is created for them (A. NUYSIENS, Y. JASPERS AND J. CHRISTIAENS, "Renvoyer les jeunes délinquants vers la justice des majeurs, et après ?", *Justice et Sécurité*, December 2015, available at <https://incc.fgov.be/christiaens-jenneke>).

²⁴ See A. NUYSIENS, Y. JASPERS ET J. CHRISTIAENS, "Renvoyer les jeunes délinquants vers la justice des majeurs, et après ?", *Justice et Sécurité*, December 2015, available at <https://incc.fgov.be/christiaens-jenneke>

²⁵ See B. VAN DER MEERCHEN, "Le dessaisissement est contraire aux obligations internationales de la Belgique", 13 February 2007, <http://www.avoixautre.be/spip.php?article1190>.

In total, five units with eight designated beds have been created for this project to be carried out. These units are housed in the OPZ in Geel and Middelheim Ziekenhuis in Antwerp for Flanders, in the Centre Hospitalier Jean Titeca for the Brussels Capital Region, and, for Wallonia, at the CHU La Citadelle in Liège and the CHR Les Marronniers in Tournai.

II.2 Foreign minors suspected or accused in Belgium

There are no statistics specifically regarding the nationality of minors in conflict with the law in Belgium, either official or unofficial. Even in the hearing logs, which contain all of the details (date of birth, full name, etc.), nationality is not mentioned.

The annual statistics of the juvenile prosecution services concern only the volume and nature of the entry flow of protective cases to the juvenile public prosecutors' offices²⁶.

The interviewees were also unable to provide precise figures in this regard. The coordinating criminologist for the Brussels prosecution service shared with us an observation that the vast majority of minors in conflict with the law in Brussels are of foreign origin, but it is impossible to know whether or not they have Belgian nationality. In Namur, a deputy public prosecutor reported that youths of foreign nationality who are in conflict with the law in her arrondissement represented no more than 1% of all minors in conflict with the law, and that they were essentially either from the MENA region (two to three per month), European (essentially Romani and Bulgarians for acts of theft), or non-European (increasingly, Syrians and Iraqis).

This lack of statistics appears to be deliberate, considering the sensitive nature of the issue and the risk of stigmatisation that could arise from it.

Nonetheless, we do have numbered data concerning juvenile delinquency in general, entry from the MENA region, the origins of the minors whose jurisdiction is declined and the nationality of of-age youths placed in provisional custody.

26 See <http://www.om-mp.be/stat/jeu/f/index.html>

II.2.1 Young offenders in Belgium

Numbered data can be found on the public prosecution service's website regarding the number of cases of acts classed as offences, as well as the number of minors' acts classed as offences per year. Below is a reproduction of these data for the year 2015²⁷.

Number of unique minors investigated in ACO cases between 1 January 2015 and 31 December 2015, according to the number of ACO cases in which the minor was investigated during the period of reference (no. & % in columns)

	no.	%
1 ACO case	25,863	74.54
2 ACO cases	4,675	13.47
3 ACO cases	1,765	5.09
4 ACO cases	814	2.35
5 ACO cases	440	1.27
6–10 ACO cases	823	2.37
more than 10 ACO cases	315	0.91
TOTAL	34,695	100.00

Discussion of the table

The table displays the number of unique minors investigated in an ACO case launched between 1 January 2015 and 31 December 2015 according to the number of ACO cases in which the minors in question were investigated during the same period.

A minor is counted once in the table from the moment when they are referenced, during the reference period, in at least one new notice number created following an act classed as an offence.

The percentage in the right-hand column gives an overview of the proportion of the number of ACO cases in which each unique minor is investigated during the period of reference. From the 6th case on, cases were grouped, so the range of the categories is different from the 6th case on.

N.B.: This table includes data regarding all of Belgium with the exception of the Eupen prosecution service, given that the PJP system (criminal police attached to the prosecution service) was not yet being used for this reference period.

²⁷ <http://www.om-mp.be/stat/jeu/f/index.html>

Number of unique minors investigated in ACO cases launched between 1 January 2015 and 31 December 2015, according to the sex and age of the minor²⁸ (no. & % in columns)

	male		female		unknown/error		TOTAL	
	no.	%	no.	%	no.	%	no.	%
under 6 years	225	0.86	88	1.09	10	1.87	323	0.93
6–12 years	1,442	5.54	394	4.86	21	3.92	1,857	5.35
12–14 years	3,197	12.27	1,236	15.24	34	6.34	4,467	12.88
14–16 years	8,487	32.58	3,038	37.46	67	12.50	11,592	33.41
16–18 years	12,293	47.19	3,265	40.26	89	16.60	15,647	45.10
over 18 years	293	1.12	65	0.80	2	0.37	360	1.04
unknown/error	112	0.43	24	0.30	313	58.40	449	1.29
TOTAL	26,049	100.00	8,110	100.00	536	100.00	34,695	100.0

Discussion of the table

The table displays the number of unique minors investigated in ACO cases launched between 1 January 2015 and 31 December 2015 according to the age (in rows) and sex (in columns) of the minors.

Regarding the sex, we have used three distinct categories: male, female and a residual category including minors whose sex was not recorded in the system of the PJP (criminal police attached to the public prosecutor's office).

A minor is counted once in the table from the moment when they are referenced, during the reference period, in at least one new notice number created following an act classed as an offence. In this case, they are entered based on their age at the time of the events of the first notice number recorded during the reference period.

The age is divided into seven categories: minors under the age of 6, from 6 to 12 years, from 12 to 14 years, from 14 to 16 years, from 16 to 18 years, over 18 years and a residual category.

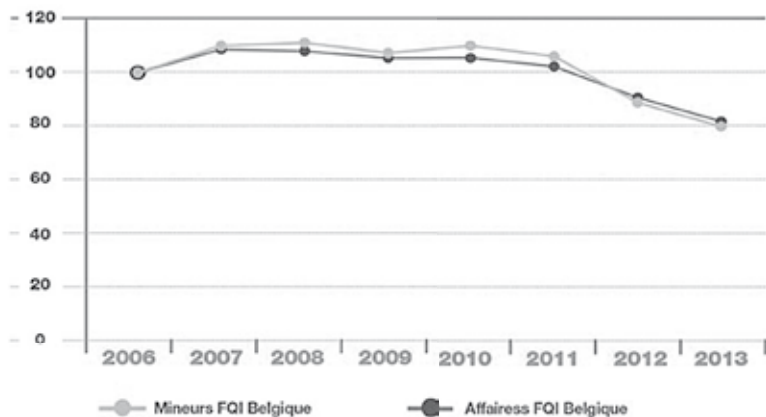
The category of over 18 years includes of-age adults. The 'unknown/error' category covers 'unknown perpetrators', individuals whose date of birth is not precisely known, and incorrect recordings (negative ages).

The percentage column gives an overview of the proportion of the different age categories according to sex. In this regard, the age range covered by each category must be taken into account.

²⁸ This table includes data regarding all of Belgium with the exception of the Eupen prosecution service, given that the PJP system (criminal police attached to the prosecution service) was not yet being used for this reference period.

The INCC also carried out a study based on data from the juvenile prosecution service regarding the years 2006 to 2013²⁹. An examination of these data shows a global reduction in the number of ACO cases between 2006 and 2013 for all arrondissements, both French-speaking and Dutch-speaking, with a more marked decrease beginning in 2011. The number of minors involved follows the same pattern as the number of cases, also displaying a downturn.

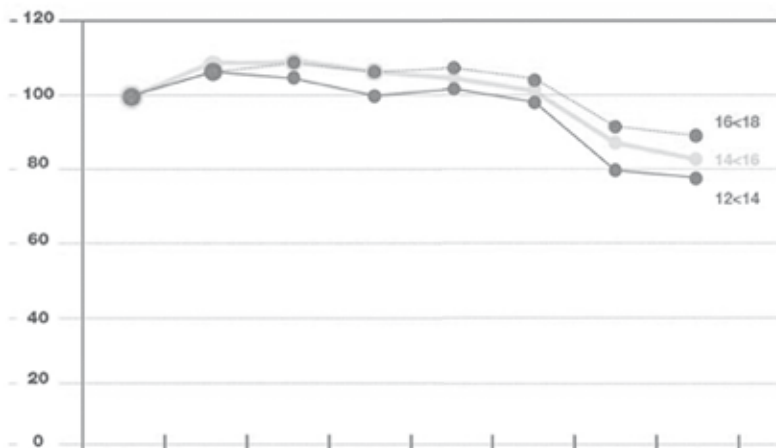
Figure 1 : Evolution des affaires FQI et des mineurs FQI signalés aux parquets de la jeunesse en Belgique 2006-2013 (indice)⁷



Statistical analysts have also shown that the decrease in ACOs is proportionally greater for boys (-19%) than for girls (-7%).

All in all, the proportions of the various age ranges remain somewhat stable over time, and the reduction in the flow of entries is relevant to all age categories. However, the reduction is most noticeable in the youngest age group.

Figure 5 : Evolution des signalements de mineurs FQI selon l'âge en Belgique – 2006-2013 (indice)²⁹



29 I. RAVIER, "Les chiffres de la délinquance des mineurs en Belgique", *Justice et Sécurité*, November 2015, available at <https://incc.fgov.be/ravier-isabelle>

II.2.2 UFM's in Belgium

In 2015, 5,047 unaccompanied foreign minors entered Belgian territory³⁰.

Statement from U., programme coordinator for Mentor Escale:

We went from 1430 identifications of UFM's in 2014 to more than 5050 in 2015. Even with the recent agreement between the EU and Turkey, the arrival figures of UFM's in Belgium are still trending downwards.

For its part, the General Commission for Refugees and Stateless Persons recorded 2,370 requests for asylum from UFM's in Belgium in 2015, almost 5 times more than in 2014³¹.

According to UNICEF Belgium, the majority of unaccompanied foreign minors currently arriving in Belgium come from Afghanistan (1376), Syria (436), Iraq (181), Somalia (98) and Guinea (46). Most are boys: 91.5 % compared with 8.5 % girls³². Until now, the UFM's arriving were young adolescents, aged between 16 and 18 years³³, with potential doubt over their age; now, with the set of problems taking place in Iraq and Syria, there are many more youths around the age of 14, and even children of 10 or 12 arriving alone.

Statement from U., programme coordinator for Mentor Escale :

As far as UFM's are concerned, younger and younger ones are arriving. The majority are still between 15 and 18, but since 2014 we have observed an increase in 12- to 14-year-olds. We have also been alerted to a UFM of 6 months. For young people, this can be due to human trafficking networks, or the death of the mother during childbirth, or children being separated from their parents during the migratory journey, as the migratory path is becoming more and more dangerous. There are more disappearances, particularly on the Balkan route; there are also minors being detained in Greece at the moment...

According to the Federal Justice System, over 70% of minors are flagged by the police services. The others present themselves spontaneously before the Immigration Office to submit a request for asylum³⁴.

All non-European UFM's arriving in Belgium are entitled to a designated guardian³⁵. The latter must request the assistance of a lawyer officially and without delay³⁶. UFM guardians are remunerated by the State and receive training³⁷. The Guardianship Service can also have recourse to interpreting services, paid by the State³⁸.

30 "Familles d'accueil pour Mineurs Etrangers Non Accompagnés (MENA)" brochure, Mentor Escale, www.mentorescale.be.

31 Press release from UNICEF Belgium on the migrant and refugee crisis, 16 December 2015, <https://www.unicef.be/fr/enfants-migrants-non-accompagnes-leur-nombre-explose-unicef-belgique-tire-la-sonnette-dalarme/>

32 *Ibid.*

33 Website of the Federal Justice Service: http://justice.belgium.be/fr/themes_et_dossiers/enfants_et_jeunes/mineurs_etrangers_non_accompagne/mineur_etranger_non_accompagne_mena_

34 *Ibid.*

35 Article 5 of Title XIII, Chapter 6 of the programme law of 24 December 2002 on guardianship of unaccompanied foreign minors, modified by article 385 of the programme law of 22 December 2003, and its royal execution order of 22 December 2003 (hereinafter, "the law"). On the mission and role of the guardian, see in particular articles 9 and following of the law.

36 Article 9, § 3, of the law and article 12 of the royal executive order of 22 December 2003.

37 Article 3, § 2, 7°, of the law and articles 15–17 of the royal executive order of 22 December 2003.

38 Article 4 of the royal executive order of 22 December 2003.

The problem is that the number of UFM's arriving on Belgian territory skyrocketed in 2015, and numbers of guardians did not increase in the same proportions. According to the person in charge of the project "Host families for young UFM's" (Familles d'accueil pour jeunes MENA), part of the Mentor Escale association in Brussels, 400 youths are currently awaiting guardians.

As regards European UFM's, they are only entitled to designated guardians if they find themselves in vulnerable circumstances³⁹ (age, exploitation, conflict with the law, etc.): a notion that is not defined by law. The fact that a guardian must not necessarily be designated for European minors is clearly discriminatory. Indeed, they are European, but they are still young people in need of protection. When in confrontation with the justice system, they must all be considered to be in vulnerable circumstances and thus must benefit from a UFM guardian, which is not the case at present.

The interviews we were able to conduct, particularly those with lawyers specialising in the subject as well as guardians, revealed that the difficulties faced by UFM's arriving on Belgian territory arise firstly from the satisfaction of their "primary" needs: housing, food, health, legal representation, etc. The role of the lawyer is most often involved in requests for asylum, obtaining a residence permit, locating families, etc. The proportion of UFM's in conflict with the law for acts of delinquency remains low. According to one lawyer specialising in the defence of UFM's, 95% of them come to her, most often via their guardians, for a request for asylum.

One major difficulty regarding UFM's is determining their age. When a foreign minor claims to be a UFM, the law on UFM's⁴⁰ anticipates that a triple bone test must be carried out to determine their age: clavicle, wrist and teeth. Nonetheless, when the minor is identified on the ground through a first offence, the public prosecutor's office has only 24 hours to find out whether or not the young person must be prepared to appear before the juvenile judge. Due to time constraints, the test used in this case is a single test, not a triple one: the results are based only on the X-ray of the wrist. If this test, which is not very reliable, reveals that the person is of age, the public prosecutor's office is entitled to send them to prison, and the results of this test are difficult to contest.

Table showing the results of age tests available on the FPS Justice website

	2012		2011		2010		2009		2008		2007		2006		2005	
Nbre résultat(s) (en)	953		993		390		441		401		242		238		205	
<18 a/j	234	28%	288	29,0%	66	16,9%	119	27,0%	156	38,4%	88	36,4%	85	35,7%	46	22,4%
>18 a/j	689	72%	705	71,0%	324	83,1%	322	73,0%	245	60,3%	154	63,6%	153	64,3%	159	77,6%

39 Article 5/1 of the law.

40 Article 7 of the law.

Official FPS Justice figures regarding the flagging of UFM's as well as their origin (most recent official figures available)

Titre 2011 JANVIER - NOVEMBRE	Janv	Févr	Mars	Avril	Mai	Juin	Juillet	Aout	Sept.	Oct.	Nov.	Déc	TOTAL
Premier Signalement	243	252	310	264	262	265	241	272	357	275	268	249	3258
TIT : autorité (premier signalement)													
Autorité de police	92	87	96	78	64	93	76	85	108	69	84	62	994
OE - Bureau RMena	126	130	184	146	180	152	139	157	175	173	149	148	1859
OE - Bureau MINTEH	12	10	4	15	10	8	10	16	48	10	10	18	171
OE - SIF	0	0	1	0	0	0	3	1	4	1	2	0	12
OE - CID	1	4	2	0	0	1	1	2	1	2	1	0	15
CGRA	0	1	0	0	1	0	0	0	0	0	0	0	2
Avocat	2	4	2	3	1	1	0	2	3	1	1	1	21
Juge de la jeunesse	0	0	0	0	0	0	0	0	0	1	0	0	1
Service d'aide à la Jeunesse / CBJ	0	0	0	2	0	0	0	0	0	1	0	2	5
ASBL	1	5	6	12	1	5	6	1	6	6	3	9	61
Particulier	1	1	4	0	1	2	0	2	0	0	2	0	13
Autre	7	10	10	8	4	3	6	5	12	11	9	9	94
TIT : tous les signalements	344	361	438	360	350	342	347	338	439	380	373	331	4403
ASBL	1	5	6	13	3	6	8	1	6	6	3	9	67
Autorité de police	185	184	216	164	148	165	168	147	183	166	186	141	2053
Autre	8	13	11	11	5	4	7	5	13	11	12	9	109
Avocat	2	4	2	3	1	1	0	2	3	1	1	1	21
CGRA	0	1	0	0	1	0	0	0	0	0	0	0	2
Juge de la jeunesse	0	0	0	0	0	0	0	0	0	2	0	0	2
OE - Bureau C	1	0	0	0	0	0	0	0	0	0	0	0	1
OE - Bureau MINTEH	12	13	5	15	10	9	10	18	50	10	11	19	182
OE - Bureau RMena	132	133	189	152	180	153	149	159	179	178	153	150	1907
OE - cellule Zaventem	0	0	1	0	0	0	0	1	0	0	2	0	4
OE - CID	2	6	3	0	1	2	1	2	1	2	1	0	21
OE - SIF	0	0	1	0	0	0	4	1	4	2	2	0	14
Particulier	1	2	4	0	1	2	0	2	0	1	2	0	15
Service d'aide à la Jeunesse / CBJ	0	0	0	2	0	0	0	0	0	1	0	2	5
TIT : Genre													
Homme	187	211	267	228	222	211	190	219	295	223	215	207	2675
Femme	56	41	43	36	40	54	51	53	62	52	53	42	583
TIT : Age													3251
0	0	1	0	1	0	1	0	1	0	2	1	2	9
1	1	0	0	0	0	1	2	0	1	0	0	0	5
2	1	2	1	0	0	0	0	1	0	1	0	0	6
3	2	0	0	0	2	2	0	0	0	0	0	0	6
4	3	2	2	0	1	1	1	1	1	0	2	0	14
5	1	0	1	0	0	2	0	3	1	2	1	0	11
6	2	2	1	0	1	0	3	1	2	3	1	1	17
7	1	0	0	1	0	0	3	0	3	0	1	2	11
8	0	0	0	0	1	0	3	1	1	3	2	0	11
9	1	1	1	1	1	3	1	1	1	0	2	2	15
10	1	0	1	1	0	2	1	4	3	1	1	1	16
11	3	6	3	1	4	5	1	2	1	7	1	1	35
12	6	3	5	5	4	6	7	6	9	3	7	6	67
13	13	4	11	8	9	18	8	16	15	11	17	12	142
14	17	13	20	24	21	23	18	17	38	16	17	27	251
15	31	58	91	73	62	57	60	52	87	62	59	60	752
16	90	93	105	96	89	85	81	86	116	77	94	58	1070
17	69	65	66	53	66	59	52	79	78	86	55	77	805
18	1	2	2	0	1	0	0	1	0	1	0	0	8
TIT : PAYS	JANV	FÉVR	MARS	AVR	MAI	JUIN	JUIL	AOÛT	SEPT	OCT	NOV	DÉC	TOTAL
Afghanistan	50	76	124	107	120	105	94	90	122	84	65	84	1121
Guinée	34	23	26	23	25	20	17	28	44	41	29	21	331
Algérie	26	30	31	18	27	19	18	19	31	23	21	15	278
Maroc	10	13	32	19	7	14	12	7	14	17	26	28	199
Congo (Kinshasa) (R.D.C.)	9	13	5	2	5	5	7	6	14	8	8	11	93
Irak	7	9	5	3	2	7	5	17	6	7	4	5	77
Iran	1	16	10	12	3	0	9	7	4	4	1	10	77
Serbie	6	4	8	2	6	12	6	7	8	2	3	6	70
Pakistan	2	3	3	8	10	4	4	4	5	4	4	5	56
Somalie	11	2	2	3	2	9	2	4	7	2	7	4	55
Albanie	4	1	1	1	5	2	3	4	6	12	4	1	44
Ghana	4	1	4	4	0	8	3	4	5	2	3	0	38
Bangladesh	1	0	2	3	5	0	5	1	6	4	10	5	42
Rwanda	4	7	4	3	1	2	5	3	2	3	2	3	39
Tunisie	1	1	5	7	2	4	2	2	6	4	2	1	37
Roumanie	10	2	1	5	2	3	1	2	1	3	5	0	35
Angola	4	3	6	1	3	0	1	6	0	5	2	1	32
Russie	5	1	4	2	1	0	5	1	6	1	4	3	33
Bosnie-Herzégovine	4	2	3	1	0	4	2	2	4	2	5	1	30
Cameroun	1	1	3	3	1	0	3	3	2	6	6	4	33
Croatie	2	2	0	0	1	2	2	4	8	1	6	6	34
Palestine	7	1	0	4	3	3	1	1	4	2	2	0	28
Côte d'Ivoire	4	8	2	3	0	3	2	3	0	0	1	4	30
Yougoslavie	2	2	1	4	4	1	2	3	0	1	3	1	24
Macédoine	3	1	0	1	0	1	5	0	2	6	3	2	24
Lybie	0	0	4	1	1	4	3	1	2	2	2	1	21
Inde	0	2	1	1	0	2	1	3	2	2	5	1	20
Kosovo	2	3	2	0	2	1	1	2	0	0	1	2	16
Vietnam	3	2	2	0	0	2	2	0	3	0	0	0	14
Erythrée	0	1	3	1	4	2	1	1	0	0	0	0	13
Turquie	0	3	2	0	1	0	1	1	1	2	1	0	12
Congo (Brazzaville)	2	0	0	0	1	1	1	1	2	3	0	0	11
Népal	0	2	0	0	1	0	0	3	1	0	4	0	11
Nigéria	1	0	1	3	1	1	1	0	1	0	2	2	13
Arménie	1	0	0	3	1	1	0	1	2	1	0	0	10
Burundi	2	1	1	0	3	0	0	0	3	0	0	0	10
Gambie	1	0	0	0	0	2	0	0	4	1	2	0	10
Indéterminé	1	1	0	2	1	0	0	0	3	0	2	1	11
Mongolie	0	0	0	3	0	0	0	5	0	2	0	1	11
Sénégal	1	0	0	1	0	0	1	3	1	1	2	0	10
Sierra Leone	2	0	0	0	2	0	0	1	1	2	2	0	10
Autre	15	15	12	10	7	16	12	19	22	14	10	11	163

31-mai-12	Janv	Févr	Mars	Avril	Mai	Total
Premier Signalement	283	270	280	205	238	1276
TIT : autorité (premier signalement)						
Autorité de police	72	83	72	67	83	377
OE - Bureau RMena	171	134	151	103	128	687
OE - Bureau MINTEH	14	11	11	4	7	47
OE - SIF	1	0	0	0	0	1
OE - CID	1	0	0	0	0	1
CGRA	0	3	0	1	0	4
CPRR	0	0	0	0	0	0
Avocat	4	2	1	0	0	7
Juge de la jeunesse	0	0	1	0	0	1
Service d'aide à la Jeunesse / CBJ	0	0	0	0	0	0
ASBL	5	13	7	12	13	50
Particulier	1	3	2	2	1	9
Autre	12	21	35	16	5	89
TIT : tous les signalements	368	334	378	338	348	1766
ASBL	7	13	7	13	15	55
Autorité de police	146	141	167	190	183	827
Autre	16	22	36	21	6	101
Avocat	4	2	1	0	0	7
CGRA	0	3	0	1	0	4
Juge de la jeunesse	0	1	1	0	2	4
OE - Bureau C	1	0	0	0	0	1
OE - Bureau MINTEH	14	11	11	4	8	48
OE - Bureau RMena	176	136	153	107	132	704
OE - cellule Zaventem	1	0	0	0	1	2
OE - CID	1	0	0	0	0	1
OE - SIF	1	0	0	0	0	1
Particulier	1	5	2	2	1	11
TIT : Sexe						
Homme	225	221	228	174	198	1046
Femme	58	49	52	31	40	230
TIT : Age						
0	1	0	0	2	1	4
1	0	1	1	0	0	2
2	0	2	0	0	0	2
3	0	1	2	0	0	3
4	1	0	2	1	1	5
5	1	1	1	0	0	3
6	0	0	0	0	0	0
7	0	0	3	0	3	6
8	3	1	1	1	1	7
9	4	2	2	2	1	11
10	4	1	3	2	1	11
11	4	1	3	1	1	10
12	3	8	1	5	0	17
13	8	8	12	5	15	48
14	25	29	20	17	19	110
15	60	56	74	55	44	289
16	98	93	89	64	82	426
17	71	65	64	48	69	317
18	0	1	2	1	0	4
TIT : Intr. proc. 15 Jours						
Demande d'asile	0	0	0	0	0	0
Décision de refoulement	0	0	0	0	0	0
Indices TEH	0	0	0	0	0	0
TIT : PAYS	283	269	278	203	235	1268
Afghanistan	72	81	93	63	97	406
Maroc	23	39	39	24	29	154
Guinée	34	17	12	24	18	105
Algérie	17	25	24	21	11	98
Congo (Kinshasa) (R.D.C.)	17	14	22	7	5	65
Cameroun	18	11	5	2	4	40
Serbie	12	7	2	9	2	32
Pakistan	6	6	8	3	4	27
Bangladesh	4	5	3	0	5	17
Bosnie-Herzégovine	4	6	0	3	3	16
Angola	2	0	7	3	4	16
Roumanie	4	4	3	1	3	15
Yougoslavie	1	3	6	2	3	15
Somalie	7	2	1	1	3	14
Irak	4	2	1	2	4	13
Croatie	2	5	0	5	0	12
Tunisie	2	2	2	2	4	12
Ghana	2	1	1	2	5	11
Macédoine	2	2	4	1	2	11
Congo (Brazzaville)	7	0	2	0	0	9
Côte d'Ivoire	5	2	0	2	0	9
Inde	1	1	1	5	1	9
Palestine	1	1	6	0	1	9
Iran	2	1	2	0	3	8
Sénégal	2	0	4	2	0	8
Nigéria	1	3	3	0	1	8
Autre	31	29	27	19	23	129

Nationalité	2005	2006	2007	2008	2009	2010	2011
Afghanistan	87	93	152	356	618	482	1121
Algérie	88	97	71	111	304	289	278
Guinée	93	61	68	134	181	282	333
Maroc	109	101	125	124	221	202	200
Inde	106	71	123	263	106	77	20
Roumanie	202	213	66	34	63	56	35
Congo (Kinshasa) (R.D.C.)	106	109	96	70	88	100	94
Irak	113	64	77	119	94	113	77
Yougoslavie	146	156	103	51	61	49	24
Serbie	23	49	46	51	76	56	70
Palestine	38	33	37	45	66	57	28
Rwanda	92	42	33	16	15	28	39
Angola	47	43	33	27	33	26	32
Somalie	55	20	7	22	30	48	56
Cameroun	50	36	26	37	23	20	33
Croatie	23	29	30	22	43	32	34
Iran	10	34	14	17	17	42	77
Russie	20	23	31	32	22	31	33
Congo (Brazzaville)	112	2	28	6	11	5	11
Albanie	39	17	28	19	10	9	44
Pakistan	23	28	22	2	7	22	56
Bosnie-Herzégovine	11	7	22	28	27	12	30
Ghana	10	4	12	18	21	27	38
Vietnam	8	1	11	3	17	74	14
Moldavie	53	47	10	1	3	2	2
Turquie	31	15	10	11	12	16	12
Tunisie	3	13	6	11	22	12	37
Kosovo	1	2	2	14	30	37	16
Chine	26	18	24	21	4	2	3
Indéterminé	17	23	19	5	9	12	11
Côte d'Ivoire	14	14	9	10	5	5	30
Brésil	11	12	18	10	20	5	9
Nigéria	19	13	14	7	8	8	13
Erythrée	5	12	7	19	8	16	13
Burundi	21	13	13	8	3	6	10
Macédoine	0	4	4	4	8	26	24
Arménie	13	5	12	4	12	9	10
Mongolie	7	11	11	6	9	9	11
Togo	12	11	5	7	4	11	9
Sierra Leone	13	10	5	6	3	11	10
Bangladesh	2	2	0	0	3	6	42
Ethiopie	11	19	11	3	3	2	1
Niger	19	3	4	6	10	2	5
Bulgarie	20	14	2	1	3	1	4
Kenya	3	6	10	6	6	7	7
Sénégal	3	1	1	8	3	14	10
Soudan	5	5	7	4	4	11	4
Géorgie	9	6	6	4	2	5	7
Italie	1	1	1	6	15	7	7
Syrie	1	6	5	2	9	6	9
Gambie	3	2	2	9	5	5	10
Mauritanie	3	4	4	2	6	7	7
Equateur	18	6	4	1	2	1	0
Libéria	5	9	3	4	4	2	3
Lybie	1	2	0	2	2	2	21
Sri Lanka	2	2	4	3	9	4	6
Burkina Faso	5	3	2	4	5	4	3
Népal	3	2	2	3	0	5	11
Etats-Unis	1	2	3	6	5	2	5
Bénin	0	1	1	2	6	7	6
Egypte	2	0	2	5	7	1	5
Liban	2	3	8	3	1	1	3
Tsjetsjenië	3	3	4	6	1	1	1
Tanzanie	1	1	0	4	2	3	5
Mali	0	2	1	0	2	3	7
Tchad	4	1	2	1	0	5	2
Ukraine	5	4	2	2	0	0	2
Autre	51	36	32	30	55	43	49

II.2.3 The origin of youths whose jurisdictions were declined

A study carried out in 2005⁴¹ by the INCC traced the profiles of young people whose jurisdictions were declined by analysing the case files of the five Belgian juvenile courts where jurisdictions were most frequently declined over the course of the years 1999, 2000 and 2001 (Antwerp, Mons, Brussels, Charleroi and Mechelen). All case files for juveniles (whose jurisdictions were declined during this period) were analysed. The results of this research demonstrate that the group was essentially composed of young people originating from outside of Europe (primarily Morocco), with only 16.7% of Belgian origin. Most were boys, with only 5.7% girls. The majority of the youths were in vocational education (64.7%), either full- or part-time, but frequently skipped classes (44.1%), were excluded from school (44.8%) or had to repeat a year (29.9%). Nearly one third (30.8%) left school early without having found a job first.

The table below clearly shows that the number of boys (Garçons), the number of young people originating from outside of Europe (Origine non europ.) and the number of young people not in general secondary education (Pas d'ESG) are higher the further they progress into the juvenile judicial system⁴².

Table comparing the population studied (young persons whose jurisdiction is declined, Population étudiée) with the ACO population appearing before the public prosecutor's office (FQI parquet) and the juvenile court (FQI tribunal de la jeunesse):

	FQI parquet	FQI tribunal de la jeunesse	Population étudiée
Garçons	84 %	89 %	94,3 %
Origine non europ.	28 %	44 %	74,9 %
Pas d'ESG	76 %	89 %	99,1 %

This table shows the percentage of children whose jurisdictions are declined at the various stages of the penal chain (referral of the public prosecutor's office; the court and the studied population of youths whose jurisdictions were denied).

II.2.4. Of-age youths of foreign nationality in provisional detention

A study carried out in 2011 by the INCC operational division of criminology on the characteristics of persons placed under arrest warrant and/or on conditional release⁴³ showed that although those incarcerated under an arrest warrant and those on conditional release appear similar (over a third of them are between the ages of 18 and 25) and are mostly composed of males (92% men in both populations), they can be distinguished in terms of nationality. In fact, according to the results of this study, almost half of the population of detained persons (45.8%) did not have Belgian nationality⁴⁴. The most represented nationalities were, in descending order: Moroccan, Algerian, French, Romanian and Dutch. Moreover, while the population of detained persons includes a considerable number of non-Belgian people, those on conditional release (Alternative to Provisional Detention) is mostly composed of triable persons of Belgian nationality (almost 90% and sometimes more).

41 NUYTIENS et al., 2005.

42 Source: A. NUYTIENS, Y. JASPERS AND J. CHRISTIAENS, "Renvoyer les jeunes délinquants vers la justice des majeurs, et après?", *Justice et Sécurité*, December 2015, available at <https://incc.fgov.be/christiaens-jenneke>

43 A. JONCKHEERE AND E. MAES, "Caractéristiques des personnes placées sous mandat d'arrêt et/ou en liberté sous conditions", in *La détention préventive et ses alternatives*, Direction Opérationnelle de Criminologie, Institut National de Criminologie et de Criminologie, SPF Justice, 2011, pp. 35 and on.

44 It bears noting that the proportion of Belgians : non-Belgians varies slightly according to the judicial arrondissement: Brussels, Antwerp and Charleroi record a higher-than-average proportion of citizens of countries outside the EU.

We were able to meet with the person in charge of this research. They drew our attention to the fact that nationality is one variable, but there are other variables hidden behind this one: notably the lack of a foothold, fixed address and income, which lead judges to presuppose repeat offences. Thus, it is not only the nationality in itself that gives rise to this, but everything that goes with it. The trial judges thus recognise that an individual who has no address, is without a fixed abode, who has no ties to Belgium, or who has no income, will be placed in provisional detention as a matter of course.

The results of this study also provide evidence of the striking differences in the duration of the detention according to nationality.

Tableau 2: *Tableau 2 : Répartition de la population des détenus et de celle bénéficiant d'une ADP, en fonction de la nationalité, pour certains arrondissements (année 2008)*

Arrondissement	Nationalité ^a			Total
	Belge	UE	Hors UE	
Bruges				
<i>Détenus</i>	60,6	13,8	25,7	100,1
<i>ADP</i>	96,1	0,0	3,9	100,0
Charleroi				
<i>Détenus</i>	53,5	10,5	36,0	100,0
<i>ADP</i>	83,3	9,2	7,5	100,0
Malines				
<i>Détenus</i>	62,0	10,9	27,1	100,0
<i>ADP</i>	89,1	2,3	8,6	100,0
Louvain				
<i>Détenus</i>	66,8	18,8	14,5	100,1
<i>ADP</i>	94,4	2,8	2,8	100,0
Turnhout				
<i>Détenus</i>	57,4	28,4	14,2	100,0
<i>ADP</i>	89,4	6,6	4,0	100,0

a. Unité de compte = nombre de mandats d'arrêt – de mandats ADP.

Tableau 9: Durée de la détention préventive, selon la nationalité des détenus (la plus représentée : n > 40 ; au maximum jusqu'au règlement de la procédure) (année 2008)

Nationalité	N (si > 40)	Durée				Somme	PJM
		Moyenne	Médiane	Minimum	Maximum		
Albanais	89	116,2	105,0	2	377	10.343	28,3
Irakien	79	96,9	60,0	1	255	7.652	21,0
Turc	159	84,6	62,0	1	499	13.443	36,8
Roumain	356	78,3	62,5	1	294	27.890	76,4
Ex-yougoslave	291	74,0	58,0	1	439	21.537	59,0
Néerlandais	330	72,2	58,5	1	372	23.834	65,3
Marocain	922	72,1	57,0	1	486	66.432	182,0
Italien	200	70,2	57,0	1	423	14.040	38,5
Ex-Union Soviétique	303	69,5	2,0	1	286	21.067	57,7
Tunisien	66	68,9	61,0	1	224	4.544	12,4
Palestinien	80	68,7	45,0	4	224	5.498	15,1
Congolais (Rép. Dém.)	121	67,5	53,0	1	392	8.169	22,4
Allemand	49	59,0	48,0	2	188	2.891	7,9
Algérien	653	55,9	41,0	1	341	36.513	100,0
Belge	6.140	55,9	39,0	1	513	343.292	940,5
Polonais	131	55,4	39,0	2	311	7.255	19,9
Espagnol	47	50,5	33,0	3	215	2.373	6,5
Français	438	50,1	34,0	1	395	21.942	60,1
Total	11.186	61,9	44,0	1	513	692.664	1.897,7
missing values (durée + nationalité)	(43)						

Finally (and this observation is particularly concerning), this research reveals that a series of minors under the age of sixteen also fall under the category of accused persons. Although the arrest warrant sometimes mentions a date of birth that leads to infer the juvenile status of the person in question, it also happens that prison clerks, in the absence of information regarding the date of birth of the person in question, ask when they were born and record this information as is. According to the person in charge of the research, it even seems that certain trial judges in Brussels recognise that they are placing minors in prison, for the "good" of the minor, to allow them to remain close to their family, in violation of the law.

Tableau 1: Catégories d'âge de la population des détenus et de celle bénéficiant d'une ADP, par sexe (année 2008)

Age (cat.)	Sexe des détenus						Sexe des justiciables					
	Hommes		Femmes		Total		Hommes		Femmes		Total	
	N	%	N	%	N	M	N	%	N	%	N	%
De 0 à 15 ans	10	0,1	11	1,4	21	0,2	1	0,0	0	0,0	1	0,0
De 16 à 17 ans	58	0,6	7	0,9	65	0,6	4	0,1	0	0,0	4	0,1
De 18 à 25 ans	3.590	37,1	256	33,4	3.846	36,8	1.584	39,2	101	28,6	1.685	38,4
De 26 à 30 ans	1.856	19,2	137	17,9	1.993	19,1	651	16,1	73	20,7	724	16,5
De 31 à 35 ans	1.469	15,2	115	15,0	1.584	15,2	512	12,7	52	14,7	564	12,8
De 36 à 40 ans	1.078	11,1	81	10,6	1.159	11,1	458	11,3	46	13,0	504	11,5
De 41 à 45 ans	704	7,3	58	7,6	762	7,3	348	8,6	42	11,9	390	8,9
Plus de 45 ans	908	9,4	102	13,3	1.010	9,7	482	11,9	39	11,0	521	11,9
	9.673	100,0	767	100,0	10.440	100,0	4.040	100,0	353	100,0	4.393	100,0

We held interviews with two young people of foreign nationality who had served prison sentences at the ages of sixteen and seventeen, lasting two months and five days for one, and nine months for the other. In the absence of identity documents, an age test had been carried out which had concluded an age of twenty-three years for both youths. Fortunately, a second test led to the inference of these new results. It appears, therefore, that these tests are not completely reliable, and this can have severe consequences.

III. The European directives

III.1 Directive 2010/64: the right to interpretation and translation

III.1.1 The contents of the directive

The right to interpretation and translation granted to persons who do not speak or understand the language of the proceedings is provided under article 6 of the ECHR, as interpreted by the case law of the European Court of Human Rights. In order to facilitate the exercise of this right and thus ensure the fairness of the proceedings, directive 2010/64/EU establishes the minimum rules concerning the right to interpretation and translation in criminal proceedings and in European arrest warrant proceedings. The goal of the directive is to ensure that linguistic assistance that is appropriate and free of charge⁴⁵ is guaranteed for any suspected or accused person, either juvenile or adult, as long as they do not speak or understand the language of the criminal proceedings taking place.

Right to an interpreter

The assistance of an interpreter must be offered free of charge to suspects or accused persons who do not speak or do not understand the language of the criminal proceedings in question⁴⁶, particularly during police interviews, important meetings with the lawyer, all hearings and any intermediary hearings required⁴⁷.

It is possible to employ the use of interpreting through videoconferencing, telephone or the Internet, unless the physical presence of the interpreter is required to ensure the fairness of the proceedings⁴⁸.

In particular, the directive calls for the implementation of a procedure or mechanism allowing it to be verified whether the suspects or accused persons speak and understand the language of the criminal procedure and if they require the assistance of an interpreter. Moreover, suspects or accused persons must be able to contest a ruling that interpreting is not necessary and, when this service has been offered, have the option of lodging a complaint that the quality of the interpretation is insufficient to ensure the fairness of the proceedings.

Right to translation of essential documents

Suspects or accused persons who do not speak or who do not understand the language of the proceedings must be allowed to benefit from the written translation of all documents essential to their defence within a reasonable period of time. In particular, this includes any custodial sentence, all charges and all accusations as well as any ruling. As regards other documents, it is for the relevant authorities to decide, on a case-by-case basis, whether a translation is necessary. In addition, suspects, accused persons or their lawyers may also request the translation of other essential documents. An appeals system is also provided: suspects or accused persons must have the right to appeal the decision concluding that the translation of documents or passages of these documents is not useful and, where a translation is provided, they must have the option of lodging a complaint that the quality of the translation does not allow the fairness of the proceedings to be ensured.

⁴⁵ The interpreting and translation fees must be assumed by the State (article 4 of the directive).

⁴⁶ The right to interpretation also covers the appropriate assistance provided for persons presenting hearing or speech difficulties (article 2.3 of the directive).

⁴⁷ This right is recognised for persons "from the time that they are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence until the conclusion of the proceedings, which is understood to mean the final determination of the question whether they have committed the offence, including, where applicable, sentencing and the resolution of any appeal" (article 1.2 of the directive).

⁴⁸ Article 2.6 of the directive.

On an exceptional basis, an oral translation or oral summary of essential documents may be provided in place of a written translation, on the condition that this does not endanger the fairness of the proceedings.

Suspects or accused persons may renounce their right to translation, but only after receiving legal counsel or being fully informed of the consequences of this renunciation; the renunciation must also be unequivocal and formulated voluntarily.

Quality of the interpreting and translation

The translation and interpreting must be of sufficient quality to ensure the fairness of the proceedings, with particular care to ensure that the persons involved are aware of the acts of which they are accused and are able to exercise their rights in their defence. To this end, the Member States have the obligation to establish one or several registers of independent translators and interpreters who have the required qualifications, to be placed at the disposal of the lawyers and authorities involved.

The interpreters and translators must, of course, respect the confidentiality of the interpreting and the translations.

Training

Member States must be vigilant to ensure that those responsible for the training of judges, prosecutors and other justice personnel involved in criminal cases pay particular attention to the specific characteristics of interpreter-aided communication, in order to ensure efficient and effective communication.

Obligation to register

When a suspect or accused person has been questioned with the assistance of an interpreter, benefited from an oral translation or oral summary of the essential documents or renounced their right to translation, these events must be officially registered.

III.1.2 The transposition of the directive into Belgian law

Directive 2010/64 has not yet been implemented in Belgium. However, this directive has a direct effect and must be respected by Belgium now that the transposition deadline (20 October 2013) has been reached.

III.1.3 Relevant national provisions

Despite the lack of implementation of directive 2010/64 in Belgian law, several provisions of the Code of Criminal Procedure (CCP) ensure the right to interpreting and translation.

For hearings, article 47bis of the CCP, § 1, 5°, provides that if the person being questioned wishes to express themselves in a language different from that of the proceedings, either a sworn interpreter is called, or their declarations are noted in their language, or they are asked to note the declaration themselves. If the questioning takes place with the assistance of an interpreter, the identity and role of the latter are mentioned.

For public hearings, article 184bis of the CCP specifies that if the suspect does not speak any of the national languages, they must be assisted by a lawyer who speaks their language or another language that the suspect understands. If this is not possible, an interpreter will be designated by the legal aid office to assist the lawyer in preparing the defence of the accused or suspected party. This interpreter will be paid by the State up to a maximum duration of three hours.

For assizes proceedings, article 282 of the CCP mentions the obligation, on pain of annulment, for the President of the Court of Assizes to provide an interpreter if the accused person, the civil party, the witnesses or one of the foregoing does/do not speak the same language or the same language variant. The accused person, the civil party or the public prosecutor may withdraw the interpreter if motivation for this withdrawal is provided. It bears noting that the interpreter may not be selected from among the witnesses and jurors, on pain of annulment and even with the consent of the accused person, the civil party or the public prosecutor. In virtue of article 283 of the CCP, if the accused person is deaf-mute and is not able to write, the president must officially designate as interpreter the person who is most accustomed to communicating with them.

III.1.4 Information arising from the interviews

The professionals' perspective

The choice of interpreter is conditioned by the lists possessed by the police and the public prosecutor's office (in this case, they are sworn interpreters who have taken the oath before the magistrates) and by the availability of the interpreters on this list. There is no "juvenile" specialism.

Statement from B., police official in Molenbeek since 1993, in the juvenile division since 1997:

We have a list of interpreters. Our choice is made according to language and proximity. It is very difficult to find interpreters for the right language, for example for deaf-mutes, or people who speak a Syrian dialect. It is also sometimes difficult to determine which language the child speaks. The quality in terms of reactivity of the interpreters is variable. At the same time, you can't be sure of the quality of the interpretation. Sometimes you realise that it's not necessarily good. But we have no guarantee of the quality of the interpreting work. One of the recurring problems is that the interpreters often don't have legal knowledge, or knowledge of juvenile issues.

What is more, there is a real problem with payment for the experts, which is pushing the interpreters towards not coming to us. You sometimes find yourself with a shortage of interpreters.

Statement from B., lawyer specialised in juvenile law:

Personally, I find that there are very few interpreters, which means that you can't choose the quality but you can choose the efficiency. The first one available will be chosen. In general, they do not have any awareness training regarding children. We need more professional interpreters and for children, interpreters more sensitive to children (simpler words, not a linear interpretation but a true explanation). In my experience, minors, foreign or not, are not usually aware that they have not understood, or they are aware but they want to be left in peace so they do not mention it. This is very bad for them because this impedes the lawyer in working through the fuzzy areas with them. This lack of understanding can also have repercussions later on. There is a risk of saying things that would be detrimental to them. More fundamentally, they lack confidence in the adults surrounding them.

There is no official procedure to determine whether or not the person questioned needs an interpreter. Within police stations, this is decided by gut feeling.

Statement from B., police official in Molenbeek since 1993, in the juvenile division since 1997:

There is no formal process aimed at determining whether the child needs an interpreter. We do that by gut feeling. Sometimes, however, to save time, at the front line we ask the person accompanying the child to translate. It does have to be an of-age adult, though. It's an issue of the reality on the ground: it's done on a case-by-case basis according to the circumstances.

In public hearings, the judges do not usually take the case if they observe that the minor does not understand. There are also no processes allowing the reliability of the translation or correct adherence to the code of ethics for interpreters to be verified. The guarantee of impartiality is somewhat difficult to verify.

Statement from U., programme coordinator for Mentor Escale:

There are many problems with regards to quality, particularly those linked to ethnicity and religion, for example oppositions between Shiites and Sunnis, or even if the person is from Rwanda, it will depend on whether they are Hutu or Tutsi... As social interveners, how can we know what is true out of the interpreter's words? Unfortunately, there is no code of ethics.

Statement from S., magistrate for the public prosecutor's office

The choice is limited to the lists we have at the public prosecutor's office or the police, and to the availability of the interpreters: most of the time, it's the same ones; it has happened before that interpreters have been struck off the list when a breach is detected. It's rarely the person being heard at the hearing who makes complaints about the quality.

Currently, the problem is that there are not enough interpreters available, for some languages in particular (such as Syrian and Iraqi) or dialects (for example Pashto, which is different from the classic Afghani language). Moreover, the State pays interpreters with an enormous delay, and not enough, which does not improve things because many interpreters no longer attend.

Statement from U., programme coordinator for Mentor Escale:

Availability is the main issue, especially for Afghan languages: it can take weeks before an interpreter is available. It is particularly difficult to find a French-speaking interpreter for Afghan languages because for a very long time the asylum procedures for Afghan people were in Dutch. So the interpreters mostly speak Dutch, not French.

Statement from F., coordinating criminologist for the Brussels general public prosecutor's office:

There are languages for which it is very difficult to find interpreters, such as Syrian: it's very complicated, because there are more or fewer Syrians arriving at this moment, and also because of the dialects of Syria or Iraq. Sometimes we manage to find an interpreter for a common language or country but it's not the native dialect of the young person. This is a problem because there is a risk of losing information and the young person is not really in the best possible circumstances. There is also a shortage of interpreters at police stations. There are huge delays in paying interpreters as experts as well. Suddenly, they are refusing to come.

Statement from B., general delegate for the rights of the child:

I know that in all cases in general, interpreting is becoming a problem in all domains (justice, first reception of foreigners, etc.). There are not enough interpreters to meet the demands that we might have in certain languages, they are paid much too late and not enough. So it must be the same thing for foreign minors.

The lawyer can also request the assistance of an interpreter under legal aid. Nonetheless, interpreters who appear on the public prosecutor's office list do not all work with legal aid. The shortage of interpreters is even more pronounced for lawyers. The lawyers interviewed indicated, for example, that the shortage is significant for Fula (a Guinean language): there is only one interpreter and he is never available. In Somali, there is nobody available. Lawyers therefore work with associations such as SETIS⁴⁹, but in this case the State is not involved and it falls to the family or fellow citizens to fund it.

49 SETIS is a translation and interpreting service operating in the social sector in Brussels: <http://www.setisbxl.be>

Another problem is that the interpreters do not have specific legal training, particularly in juvenile law, which sometimes complicates things.

Another observation made by the professionals interviewed is that it can make minors nervous to find themselves with an adult who speaks their language and who can therefore exert authority over them; they can feel judged. The interpreter can also say things to the minor that the police cannot understand.

Statement from B., police official in Molenbeek since 1993, in the juvenile division since 1997:

And there is also the cultural problem: that can sometimes pose problems, the accused person is nervous, they can feel judged... Sometimes, the interpreter can even say things to them that we cannot understand. They don't have any ethical contract, so it's difficult to ensure impartiality. But we don't have the choice with interpreters, except by being careful not to contact them again the next time.

Statement from B., lawyer specialising in juvenile law:

A recurring problem, which we also have with adults, is the interpreter interfering in the discussions, giving their own opinions.

Statement from B., general delegate for the rights of the child:

There are no processes that allow the reliability of the translation to be verified. For example, it has happened before that what the young person had said to the interpreter was not what had turned up in the transcript. What's more, for a minor to find themselves with an adult who speaks their language, and who can therefore exert authority over them, makes the minor feel less at ease.

Sometimes, there are also cultural and ideological problems, such as with Romani for example, who do not understand when they see the interpreter having a drink with "the head of the Romani" who is none other than the person working at the foreign office. The independence of the interpreters does not always seem to be ensured. There can also be religious problems, such as with Muslims, when the interpreter is a man who has to translate the statements of a young Muslim girl placed in a PCPI. One researcher, writing her thesis on police interviews with young suspects, also reported having attended the interrogation of a young Romany girl and having noticed that the interpreter did not adopt a very "neutral" role towards the minor (judgement, mockeries, etc.).

It should also be mentioned that the notification of rights is translated into the 27 EU languages. If the specific language is not available, the rights declaration is given in English.

The youths' perspective

We were able to meet with twenty youths of foreign nationality, all placed in institutions:

- a young man from Cameroon, aged 17, who arrived in Belgium at the age of 8;
- a young man from Mauritania, aged 18, who arrived in Belgium at the age of 7;
- a young Guinean man, aged 16, who arrived in Belgium at the age of 8;
- a young Moroccan man, aged 15, who arrived in Belgium at the age of 6;
- a young Serbo-Italian man, aged 19, who arrived in Belgium at the age of 12;
- a young stateless man whose parents are Macedonian, aged 20, who arrived in Belgium from Italy 3 months before his placement;
- a young man from Burundi, aged 16, who arrived in Belgium at the age of 12;
- a young Congolese man, aged 17;
- a young Gabonese man, aged 17, who arrived in Belgium at the age of 8;
- a young Romanian woman, aged 16, who arrived in Belgium at the age of 14;
- a young Angolan woman, aged 16, who arrived in Belgium around the age of 7/8;
- a young Italo-Egyptian man, aged 16, who has always lived in Belgium;
- a young Tunisian man, aged 17, who arrived in Belgium at the age of 14;
- a young Spanish man, aged 15, who arrived in Belgium at the age of 11;
- a young man from Chechnya, aged 17, who arrived in Belgium at the age of 3;

- a young man from Kosovo, aged 16, who arrived in Belgium at the age of 6;
- a young man from Haiti, aged 15, who arrived in Belgium as a new-born and was adopted;
- a young Dutch man, aged 17, who was arrested in Belgium but is resident in Holland;
- a young German man, aged 15, who arrived in Belgium at the age of 10;
- a young Algerian man, aged 16, who had lived in France since the age of 3 and arrived in Belgium at the age of 14.

With the exception of one young Dutch man arrested for drug-related activities on Belgian territory, all of the young people we met spoke fluent French at the time of the interview. For some, French was their native language; the others all told us that they had learned French “as they went” after arriving in Belgium.

We met a young Cameroonian who joined his mother in Belgium at the age of 8. He did not speak French at his arrival. This youth ended up in hospital after having been ill-treated by his mother. He stayed there nine months and learned French during his stay at the hospital. Before that, he had already been in contact with police services because he often ran away due to his mother’s violence. He told us he has never had an interpreter because he knew a few words in French like “yes”, “no”, “hello”, “good evening”. No one ever told him that he had right to an interpreter. The first time someone told him about his rights it was a police officer and it was in French, but at this time he understood more or less the language.

A young Burundian told us that he spoke a little French when he arrived in Belgium at the age of 12 and then he learned French at school. The first time he was questioned by the police, he had a good understanding of what they said.

A young Angolan reported to us that she did not speak French when she arrived in Belgium. But when she was arrested for the first time at the age of 12, she could manage in French.

They therefore rarely needed interpreters. Even if they had not fully mastered the language when they were first questioned, most of them got by well enough that there was no need to call an interpreter (according to them).

We interviewed a young Serbo-Italian man who did not speak French during his proceedings and he told us that he was not assisted by an interpreter or a lawyer. The problem was that this young man had given false documents to the police to make them think that he was of age. The first age test indicated that he was twenty-three years old although he was in fact only sixteen. As a result, he went to prison. A second test finally demonstrated that he was a minor. In total, this youth spent nine months in prison with adults.

Another young person, stateless, indicated exactly the same problem: when he was questioned, he did not speak French and was involved with an adult gang. As he didn’t have any identity documents, an age test was carried out and concluded that he was twenty-three, while he was in fact only seventeen. Finally, the young man was able to show the judge his birth certificate and he was removed from prison. He was there for two months and five days. Although this young man was assisted by an interpreter, he told us that he still didn’t really understand everything, particularly why he was in prison even though he was a minor.

The young Romanian woman we interviewed did not speak any French at all when she arrived in Belgium. She told us that she had had an interpreter every time. Most of the time, she was satisfied with the interpreter, except one time when she had the impression that the interpreter was saying the opposite of what she was expressing, and that she “was really racist”. She was provided with a declaration of her rights in Romanian.

III.1.5 Facilitating factors and obstacles

If the right to an interpreter is recognised in the law and as well the public prosecutor’s office as the police dispose of official lists of interpreters, real gaps remain.

First of all, there is no official procedure to determine whether a young person needs an interpreter. Everything is done by “gut feeling” and there are no guarantees regarding this matter. Yet, it often happens that the youth manages enough to say/understand a few words or sentences in French while not perceiving that he misses a lot of subtleties, which risks to damage the respect of his rights of defence.

Another problem is that the independence and impartiality of the interpreters is not ensured, and there is no process for checking the quality of the translation. This is compounded by cultural or religious problems in the relationship between the young person and the interpreter from their community.

These gaps can compromise the respect of the right of the youth to a fair trial and have potentially dramatic consequences for the concerned child.

Statement of B., lawyer specialised in juvenile law:

My experience shows that most of the time the minor, whether foreign or not, is not aware of the fact that he did not understand; or he knows that he did not understand but wants to be left in peace so he does not say so. This is very harmful to him because it prevents the lawyer to work on the "grey areas" with him. On the other hand, this incomprehension can have repercussions on future developments. The youth could risk saying something that could prejudice him. More fundamentally, he lacks confidence in the adults who surround him.

In order to breach these gaps, a re-evaluation and re-financing of the role, combined with an improved training for interpreters in juvenile law, appears to be necessary.

It would also be useful to implement an approval system with annual evaluation, as well as creating a code of ethics for the profession.

Finally, a process aiming at objectively verifying whether the young person requires an interpreter, as well as a quality check for the translation, should be implemented.

III.2 Directive 2012/13: the right to information

III.2.1 The contents of the directive

Directive 2012/13/EU sets common minimum rules to be applied regarding information for persons suspected or accused of a criminal offence on their rights and on the accusation made against them. It is based on the rights set forth in the Charter of Fundamental Rights of the European Union (particularly articles 6, 47 and 48) and develops upon articles 5 and 6 of the ECHR as they are interpreted by the European Court of Human Rights. It applies from the moment when the persons are informed by the competent authorities that they are suspected or accused of committing a criminal offence until the conclusion of the proceedings⁵⁰.

The right to be informed of one's rights⁵¹

Suspects and accused persons must receive quickly, either orally or in writing, in simple and accessible language that takes into account any specific needs of vulnerable suspects or accused persons, information regarding, at a minimum, the following procedural rights:

- a) the right to be assisted by a lawyer;
- b) the right to benefit from legal counsel free of charge and the conditions for obtaining such counsel;
- c) the right to be informed of the accusation made against them;
- d) the right to interpretation and translation;
- e) the right to remain silent.

Right to receive a written declaration of rights during arrest⁵²

Suspects or accused persons who are arrested or detained must quickly receive a written declaration of their rights, drafted in simple and accessible language that they are able to understand. Where the rights declaration is not available in the appropriate language, suspects or accused persons must be informed of their rights orally, in a language that they understand. A version of the rights declaration in a language that they understand must then be provided to them as soon as possible.

In addition to the information provided above (a) through e)), the rights declaration contains:

- a) the right to access documents from the case file;
- b) the right to inform the consular authorities and a third party;
- c) the right to access emergency medical assistance;
- d) the maximum number of hours or days for which suspects or accused persons can be deprived of liberty before appearing before a judicial authority;
- e) basic information on all possibilities provided under national law for contesting the legality of the arrest, obtaining a re-examination of the detention or requesting interim release.

Interested parties must be able to keep this declaration in their possession for as long as they are deprived of liberty.

Right to be informed of the accusation made against them⁵³

Suspects or accused persons must be informed of the criminally punishable act which they are suspected or accused of having committed. This information must be communicated rapidly and in sufficient detail to ensure the fairness of the proceedings and to allow effective exercise of the rights of the defence. Interested parties must also be informed of the reasons for their arrest or detention, including the criminally punishable act which they are suspected or accused of having committed. Detailed information on the accusation, including the nature and legal classification of the criminal offence, as well as on the nature of the accused person's participation, should be communicated, at the latest, at the time when the court is called upon to hand down a sentence on the merits of the accusation.

⁵⁰ The conclusion of the proceedings is understood to mean "the final determination of the question whether the suspect or accused person has committed the criminal offence, including, where applicable, sentencing and the resolution of any appeal" (article 2.1 in fine of the directive).

⁵¹ Article 3 of the directive.

⁵² Article 4 of the directive.

⁵³ Article 6 of the directive.

Right to access documents from the case file⁵⁴

When a person is arrested and detained, regardless of the stage of criminal proceedings, documents regarding the case that are essential to effectively contest the legality of the arrest or detention must be made available, free of charge, to the arrested person or their lawyer.

Suspects, accused persons or their lawyers must have access to, at a minimum, all material inculpatory and exculpatory evidence in the possession of the competent authorities in order to guarantee the fairness of the proceedings and to prepare their defence. This access must be granted within an appropriate period to allow the defence's rights to be exercised effectively and, at the latest, when a court is called upon to hand down a ruling on the merits of the accusation. If the competent authorities enter into possession of other material evidence, they must authorise access to this material evidence within an appropriate period to allow this to be taken into consideration.

On an exceptional basis and insofar as the right to fair proceedings is not affected, access to certain documents may be refused when this access may constitute a severe threat to the life or fundamental rights of a third party or where the refusal of access is strictly necessary with a view to preserving a significant public interest, for example in cases where this access risks compromising an on-going inquiry or causing severe damage to the national security of the Member State in which the criminal procedure is being carried out. This decision must be taken by a judicial authority or, at the very least, must be subject to monitoring by the court.

Right to appeal⁵⁵

Suspects, accused persons or their lawyers must be able to launch an appeal in the event that the competent authorities fail or refuse to provide information in accordance with the directive.

Training⁵⁶

States must request that the individuals responsible for the training of judges, public prosecutors, police officers and justice personnel involved in criminal proceedings provide appropriate training on the contents of the directive.

III.2.2 The transposition of the directive into Belgian law

Directive 2012/13/EU has not yet been implemented under Belgian law. However, this directive has a direct effect and must be respected by Belgium now that the transposition deadline (2 June 2014) has been reached⁵⁷.

III.2.3 Relevant national provisions

Despite the lack of official implementation of directive 2012/13, several provisions are in place to guarantee the right to information. Most of these are found in the Code of Criminal Procedure (CCP), in the law on child protection (LPJ), in the Law on Provisional Detention (LDP) and in circular 12/2011 of the College of Public Prosecutors (COL 12/2011).

The Code of Criminal Procedure

Regarding the right to information, article 47bis of the CCP is the key article and contains the basic principles to be applied during a person's hearing and while deprived of liberty⁵⁸.

By virtue of this article, before proceeding to the hearing of a person on the offences of which they may be accused, this person is informed:

- of the events for which they are to be tried;
- that they have the right not to incriminate themselves (right to remain silent);

⁵⁴ Article 7 of the directive.

⁵⁵ Article 8 of the directive.

⁵⁶ Article 9 of the directive.

⁵⁷ The Court of Justice of the European Union has in fact established in its case law that a directive has a direct effect if it is clear, precise, unconditional and if the EU country has not transposed the directive by the deadline (ruling of 4 December 1974, Van Duyn).

⁵⁸ The concept of a hearing includes the interview carried out by the person or by the authorised legal authorities with a person concerning misdeeds or offences that may be attributed to them, the sentence for which may give rise to an arrest warrant and/or for which the suspect has been deprived of their liberty. See circular 8/2011 of 23 September 2011 of the College of Public Prosecutors on the application of the Salduz law.

- of their right to be assisted by a lawyer (right of access to a lawyer) and to meet with them in private before the hearing. They must be informed that they may choose their lawyer and that if they do not have the means, they have the right to be assisted by a lawyer without the requirement to pay (right to free legal aid). **Minors may not waive this right.**

If the first hearing takes place following written summons, this information may already be provided in the summons, a copy of which will be attached to the hearing transcript. In such a case, the person concerned is presumed to have consulted a lawyer before their appearance at the hearing.

If the hearing does not take place following summons or if the summons does not mention the right to consult a lawyer before the hearing, this hearing may be postponed once only upon the demand of the person to be tried in order to give them the option of consulting a lawyer.

All of these elements are recorded with precision in a transcript.

Persons deprived of their liberty benefit from the same rights, but must also be informed of their entitlement to the rights set forth under articles 2bis, 15bis and 16 of the LDP, i.e.:

- the right to consult in private with a lawyer;
- the right to have a trusted person informed of their arrest, by the person leading the interview or a person designated by the latter, through the most appropriate means of communication. In certain specific cases linked to the protection of the interests of the inquiry, this communication can be postponed.
- the right to medical assistance;
- the right to consult in private with a lawyer during the renewed 24-hour period, when the arrest warrant is extended;
- the right to be assisted by a lawyer during the questioning by the trial judge in the event of issuance of an arrest warrant; the trial judge must also inform the accused person of the possibility of an arrest warrant being issued against them and to receive their observations in this regard and, where applicable, those of their lawyer. If the accused person does not yet have a lawyer, the trial judge must remind them that they have the right to choose a lawyer and informs the Chairperson of the Bar or their delegate of this.

If, during the course of the hearing of a person who was not initially considered a suspect, it is revealed that certain elements allow it to be presumed that acts may be attributed to them, this person is informed of the rights to which they are entitled and provided with the written declaration of their rights.

The person also has the right to speak in another language. In this case, an interpreter must be called or their declaration will be written. They may also ask to write their own declaration.

Before the hearing of a person (suspected or deprived of liberty), the latter must receive a written declaration of their rights.

Circular 12/2011

While article 47bis of the CCP concerns both adults and minors, the College of Public Prosecutors adopted a circular concerning children in particular⁵⁹.

Three principles apply to the situation of minors:

- ✓ the minor must enjoy the same rights as of-age persons, as recognised by the CCP and the LDP (right to information, right not to incriminate themselves, right to remain silent, right to be assisted by a lawyer, etc.);
- ✓ given the presumption of vulnerability linked to their juvenile status, they may not validly renounce these rights (particularly their right to a lawyer);
- ✓ they must always benefit from the additional rights provided under the law on child protection.

Moreover, the information must be communicated to the young person in a precise way, in language adapted to them, taking care to ensure that they understand the implications. The circular also insists upon the importance of avoiding any suggestiveness in the manner of presenting the facts.

⁵⁹ Circular 12/2011 of 23 November 2011: Addendum 2 to circular COL 8/2011.

The law on child protection

Although this is not a procedural law, it contains some articles concerning procedure and procedural rights. In its preliminary title, the law recalls that children benefit from the rights recognised under the Belgian Constitution and the International Convention on the Rights of the Child, particularly the right to be informed of their rights. It is also specified that young people have the right, each time the law is apt to damaging certain rights and liberties, to be informed of the contents of these rights and liberties.

By virtue of article 37bis of the LPJ, when the judge or court makes a restorative offer of mediation or dialogue, the interested parties must be informed of their right to be counselled by their lawyer before accepting the restorative offer, and of their right to be assisted by a lawyer at the time when the agreement reached by the parties concerned is set. Article 45quater of the LPJ guarantees the same rights when an offer of mediation is made by the public prosecutor.

Article 48bis of the LPJ also provides that when a minor is deprived of their liberty following arrest, or is released upon promise of appearing or signing a commitment, the police official responsible for the deprivation of liberty must, without undue delay, give or have given to the father and mother of the minor, to their guardian or to the persons with legal or de facto custody of them, oral or written notification of the arrest, of the reasons for the arrest and of the place where the minor is detained. If the minor is married, the notification must be given to their spouse rather than the abovementioned persons. By virtue of article 51 of the LPJ, once they are arrested for an act classed as an offence, the court must also inform the persons exercising parental authority over the interested party and, where applicable, the persons with legal or de facto custody over them with a view to allowing them to be present.

Article 55 of the LPJ mentions the right of access to the case file. It provides that the parties and their lawyers must be informed by the court clerk's office of the file with which they may acquaint themselves from the notification of the citation. They can also acquaint themselves with the file when the public prosecutor's office requires a provisional detention measure, as well as during the course of an appeal against the orders imposing such measures. Still, documents concerning the character of the interested party and their living environment may not be communicated to either the interested party or the civil party. The complete file, including these documents, must be made available to the lawyer of the interested party when the latter is party to the process.

Moreover, all decisions taken by the juvenile court judge or the juvenile court, whether relating to a provisional measure or a measure on the merits, in the first instance or in an appeals procedure, is communicated on the same day to the minor's lawyer. One copy of judgements and orders handed down in a public hearing is transmitted directly, upon pronouncement of these decisions, to young persons aged twelve or over and to their father and mother, guardians or persons who have legal or de facto custody of the interested party, if they are present at the hearing. In the event that this remittance is not possible, the notification of the decision is made by summons. The copy of the rulings and orders indicates the possible routes of appeal against them, as well as the methods and timeframes to be respected.

The PCPI rules also contain a specific provision regarding consultation of the file:

Extract from the PCPI rules: Consulting your file

You have the right to consult, either with your lawyer or with an educator, all of the decisions concerning you, like: your placement order, the judge's decisions regarding limiting your exits, prohibition of contacting certain people, decisions regarding sanctions and decisions of placing you in isolation.

If you wish to consult your file, you issue a written demand to a member of the educational team. You will be able to consult your file within 72 hours of the request.

The law regarding provisional detention

By virtue of article 20bis of the LDP, if the public prosecutor requires an arrest warrant with a view to immediate appearance⁶⁰, they must inform the accused person that they have the right to choose a lawyer. If the accused person has not chosen or does not choose a lawyer, the public prosecutor immediately notifies the Chairperson of the Bar Association or their delegate, who will designate one. If the accused person shows that they do not have the means, the public prosecutor immediately submits the application for legal aid to the representative of the legal aid office. By virtue of article 20bis, § 2 of the LDP, the file is made available to the accused person and their lawyer as soon as the arrest warrant is requisitioned with a view to immediate appearance. This provision of the file may be in the form of certified copies.

⁶⁰ Article 216quinquies of the CCP.

III.2.4 Information arising from the interviews

The professionals' perspective

As previously noted, the rights declaration has been translated into the 27 languages of the EU. When the specific language is not available, the declaration is provided in English.

Statement from B., police official in Molenbeek since 1993, in the juvenile division since 1997:

With the Salduz procedure, foreign minors are placed in the same situation as Belgian minors, except that they actually receive their summons in French. But rights declarations are available in all languages at the police headquarters.

Although objectively the law applies to all minors without making distinctions based on nationality, subjectively there are inevitable differences. Young people of foreign nationality may find themselves in more vulnerable circumstances and have fewer resources, both financial and human. Access to information on their rights may be more complicated in the absence of an adviser, hence the importance of providing proper training for guardians and interpreters on this subject, as well as police officers.

Statement from U., programme coordinator for Mentor Escale:

A UFM is entitled to a lawyer pro bono; it is for the guardian to make the request for the lawyer. In fact, everything related to the right to information and the right to a lawyer passes through the guardian. The right to information is strongly dependent on the guardian.

It also bears noting that the rights declaration does not mention the right to receive legal counsel free of charge, nor that it is possible to contest the legality of the deprivation of liberty.

Statement from C., researcher and doctoral candidate involved in a research project concerning police interviews with young suspects (minors and of-age adults between the ages of 18 and 25). Over the course of three years, C. spent several months in youth services, observing police interviews with young suspects. She was able to attend 44 interviews with young suspects. During these observations, she was able to see several interviews with foreign children suspected of ACOs.

In practice in Belgium, the police will generally give the written rights declaration but this does not mention the fact that they have the right to free legal counsel (it only mentions the fact that they have the right to the assistance of a lawyer if deprived of liberty and to a confidential meeting if invited to a hearing, but that the lawyer must be consulted beforehand), nor that it is possible to contest the legality of the deprivation of liberty. Access to material proof in Belgium is also not mentioned.

The foreign children I saw in interviews were aware of the rights mentioned in the Belgian letter of rights because of the provision of this declaration, except the youngest of them (a 10-year-old boy). The declaration was given to the mum and the questioning officer considered that he did not understand his rights and that he would frighten him more than anything if he started to read them. Afterwards, in general, the police ask the question of whether or not the young person has understood their rights and if they would like them to be re-explained.

In the 4 cases observed, the method was the same as for Belgian children: giving the written rights declaration, then asking if the young person has understood. In 3 cases, there was an interpreter to assist the young person in understanding their rights. In the case where there was no interpreter, the questioning officer took care to ask the young person if he had understood his rights.

The youths' perspective

Some youths told us that they had been well informed of their rights at the police headquarters and that they had received "a piece of paper" with their rights.

The young Romanian woman we interviewed received a declaration of her rights in Romanian.

The young stateless man originating from Italy also received a translated version of his rights in Italian.

The young Serbo-Italian, on the other hand, told us that nobody had explained his rights to him and that because he didn't speak French and didn't have an interpreter, he had understood none of what was happening.

Most of the young people remembered having been given "a sheet" or "a piece of paper" with their rights at the police headquarters. Some told us that they had been read their rights.

Nonetheless, it is appropriate to distinguish between information on the one hand and understanding of this information on the other. In this regard, we had the impression that the youths were not always aware of the content and the precise scope of the information that had been given to them. Sometimes, they did not even remember if they had received this famous "rights declaration" from the police or not. In addition, the procedure is complex and the youths sometimes had trouble orienting themselves within it. As an example, the young Romanian woman we interviewed had on several occasions been warned that jurisdiction over her case was at risk of being declined, or rather, in her terms, that she risked going to a "public hearing" if she continued to commit offences. She had clearly not understood what that would have meant for her in practice.

We also met with a 15-year-old youth who, during his arrest, had been informed of his right to have a lawyer but who had refused because he "couldn't care less". He was not informed that, as a minor, he was unable to renounce this right.

Children's misunderstanding of their rights can have important consequences: not reacting in case of illegal decisions or decisions contrary to their interest, not being able to direct the defence by giving instructions to their lawyer (who is then brought to decide alone of the interest of the child), not knowing what to do to ask for a revision of the measures, etc.

Regarding this matter, the situation of this young Rumanian is particularly striking. Nobody had informed her that a condemnation by a jurisdiction for adults could not only lead to a police record (which is likely to compromise seriously her efforts of reintegration by limiting her access to trainings or professions) but also to a measure of ban of long-term stay.

The absence of information and knowledge of the rights exceeds thus widely the procedure and the measure taken by the judge and has long-term consequences on the life and future of the child.

III.2.5 Facilitating factors and obstacles

The right to information is guaranteed in the same way for Belgian and foreign nationalities. Although the rights declaration has been translated into the 27 languages of the EU, the fact remains that in many cases the rights declaration cannot be provided in the native language. In the absence of availability of the specific language of the interested party, the document will be provided in English.

The first of the facilitating factors seems to be proper training for professionals brought into contact with the young person from the first intervention. Information is in fact most often provided by police officers, with the assistance of an interpreter where applicable, with the latter not being equipped with any particular training, as we have seen.

Secondly, lawyers are clearly in the best position to inform their clients of their rights. The presence of the lawyer during the police interview in the event of deprivation of liberty appears to present a real added value and it is therefore regrettable that this presence, although formally guaranteed, is not always ensured.

Improved training of UFM guardians regarding juvenile law, criminal procedure and the rights of foreigners appears to be another course of action to be prioritised.

Statement from U., programme coordinator for Mentor Escalé:

For UFM's, there is basic training that is given to all guardians, but nothing related to criminal procedure. We have lots of young people facing criminal proceedings but there is no training at all about it, either in the guardians' basic training or their on-going training.

Statement from S., magistrate for the public prosecutor's office:

- The difficulty is contacting the guardians, who have a role to play and who don't always do enough for UFM's: this function is in need of re-evaluation.

Finally, it would also be useful to achieve greater awareness among young people of the importance of paying attention to their rights.

Statement from B., lawyer specialising in juvenile law:

We need to raise awareness among young people of the importance of paying attention to their rights.

Training the professionals is ineffective without raising awareness among adolescents.

Admittedly, these youths are most of the time in a logic of survival and do not always perceive the impact that legal procedures can have on them, this impact seems very abstract to them. Regarding this matter, a raising-awareness approach based on tangible realities or experiences of other youths could be an interesting solution. It could be done through capsules videos subtitled in several languages.

III.3 Directive 2013/48: right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

III.3.1 The contents of the directive

Directive 2013/48/EU establishes the minimum rules concerning the right of access to a lawyer in criminal proceedings and European arrest warrant proceedings, and the right to have a third party informed upon deprivation of liberty, as well as the right, for persons deprived of liberty, to communicate with third persons and with the consular authorities. In doing so, it favours the application of the Charter of Fundamental Rights of the European Union and, particularly, its articles 4, 6, 7, 47 and 48, resting upon articles 3, 5, 6 and 8 of the ECHR as they are interpreted by the European Court of Human Rights.

Directive 2013/48/EU applies to suspects or accused persons in criminal proceedings from the point at which they are informed by the competent authorities of a Member State, by official notification or by any other means, that they are suspected or accused of having committed a criminal offence, regardless of whether or not they are deprived of their liberty. It also applies to persons who are not suspected or accused but who, while being questioned by police or by a suppressive authority, become suspects or accused persons. The rights guaranteed by directive 2013/48/EU apply until the termination of the proceedings, which is understood to mean the definitive determination of the question if they have committed the criminal offence, including, where applicable, the judgement and the decision handed down during any appeal⁶¹.

The directive also applies to persons who are subject to European arrest warrant proceedings from the point of their arrest in the Member State of execution⁶².

It is noted that directive 2013/48/EU, like directives 2010/64 and 2012/13, is applicable to both minors and of-age adults. In its preamble, it is also specified that the directive is intended to favour the rights of children and that it takes into account the Council of Europe guidelines on child-friendly justice, particularly the provisions relating to information and advice to be communicated to children. The preamble of the directive also insists that suspects and accused persons, including children, must receive adapted information that allows them to understand the consequences of renouncing a right guaranteed by the directive, and that any renunciation is made unequivocally and of their own free will.

61 Article 2 of the directive.

62 Article 2.2 of the directive.

Furthermore, when the suspect or accused person is a child, the directive provides that the holder of parental authority must be informed as soon as possible of the child's deprivation of liberty and the motives for this deprivation of liberty. If the communication of this information to the holder of parental authority opposes the greater interests of the child, another appropriate adult, such as a family member, must be informed instead.

The right of access to a lawyer⁶³

Member States must be vigilant in ensuring that suspects and accused persons have access to a lawyer within a period and according to methods that allow them to exercise the rights of the defence in a concrete and effective way. This access must be given quickly and, in any case, before they are questioned by police or by another suppressive or judicial authority; where the competent authorities proceed to investigative measures; without undue delay after the deprivation of liberty⁶⁴ and when they have been cited to appear before a competent criminal court, and in reasonable time prior to their appearance before said court. General information must be provided to allow suspects or accused persons to be assisted in finding a lawyer.

The right of access to a lawyer includes the following elements⁶⁵:

- a) suspects or accused persons have the right to meet in private with the lawyer representing them, and to communicate with the latter, including before being questioned by the police or by another suppressive or judicial authority;
- b) suspects or accused persons are entitled to the presence of their lawyer and to the latter's effective participation in their interview. This participation takes place in accordance with the procedures set forth under national law, on the condition that these procedures do not present a threat to the effective exercise and to the very essence of the rights concerned. In the event that the lawyer is involved in the interview, this participation must be noted;
- c) suspects or accused persons are entitled to the presence of their lawyer during, at a minimum, suspect identification meetings, confrontations and recreations of the scene of a crime, where these measures are provided under national law and if the suspect or accused person is bound or authorised to attend them.

Meetings, correspondence, telephone conversations and all other forms of communication between the suspect or accused person and their lawyer must be confidential⁶⁶.

The right to have a third party informed of the deprivation of liberty⁶⁷

Suspects or accused persons deprived of liberty have the right to inform without delay at least one person of their choice, such as a family member or employer.

If the suspect or accused person is a child, the holder of parental authority over the child must be informed as soon as possible of the deprivation of liberty and the reasons for it, as long as this does not oppose the greater interests of the child, in which case the information is communicated to another appropriate adult.

Temporary non-compliance with the application of these rights is possible where there is an urgent need to prevent a severe assault on the life, liberty or physical integrity of a person or where there is an urgent need to prevent a situation that could seriously compromise criminal proceedings⁶⁸. Where a minor is under investigation, it is appropriate to be vigilant in ensuring that a competent child protection authority is informed without undue delay of the deprivation of the child's liberty.

The right to communicate with third persons⁶⁹

Suspects or accused persons who are deprived of liberty must be able to communicate, without undue delay, with at least one third party of their choice, for example a member of their family. This right can only be denied in the name of imperative commensurate operational demands or needs.

63 Article 3 of the directive.

64 In exceptional circumstances and only during the stage prior to the criminal process, Member States may temporarily break with this obligation where, as a result of the geographical distance of a suspect or accused person, it is impossible to ensure the right of access to a lawyer without undue delay after deprivation of liberty.

65 In exceptional circumstances and only during the stage prior to the criminal process, Member States may temporarily break with this the application of this right insofar as this is justified considering the specific circumstances of the case at hand:

a) where there is an urgent need to prevent severe assault upon the life, liberty or physical integrity of a person;

b) where it is imperative that the authorities proceeding to the inquiry act immediately to avoid seriously compromising criminal proceedings.

66 Article 4 of the directive.

67 Article 5 of the directive.

68 On the conditions of application of these exemptions, see article 8 of the directive.

69 Article 6 of the directive.

The right to communicate with the consular authorities⁷⁰

Suspects or accused persons from outside of the State in which they are deprived of liberty must be able to have the consular authorities of their State of origin informed of their deprivation of liberty without undue delay, and to communicate with said authorities. Where the suspects or accused persons have more than one nationality, they may choose the consular authorities to be informed, where applicable, of their deprivation of liberty and with which they wish to communicate. Suspects and accused persons also have the right to receive visits from their consular authorities, the right to receive and correspond with them and the right to have their legal representation organised by these consular authorities, as long as said authorities are in agreement and in accordance with the wishes of the suspects or accused persons.

Appeals procedures

Member States must be vigilant in ensuring that suspects or accused persons in criminal proceedings, as well as persons whose delivery is requested under a European arrest warrant, have access to an effective course of appeal in accordance with national law in case of violation of their rights as set forth in the directive.

III.3.2 The transposition of the directive into Belgian law

Unfortunately, directive 2010/64 has not yet been implemented in Belgium. However, this directive will have a direct effect and must be respected by Belgium once the transposition deadline (27 November 2016) is reached⁷¹.

III.3.3 Relevant national provisions

Despite the absence of adequate implementation of directive 2013/48, Belgian law already includes provisions that guarantee the rights it provides. These will be discussed below.

The right of access to a lawyer

Directive 2013/48/EU stipulates that the right of access to legal counsel and representation must be ensured within a reasonable period and as soon as possible.

On 13 August 2011, Belgium adopted a law known as the “Salduz Law”, which partially modified the Code of Criminal Procedure, as well as the 1990 law on provisional detention. The Salduz Law concentrates on one particular point in criminal proceedings: the hearing. This point is crucial and influences the progress of criminal proceedings.

This law provides that all persons questioned by the police services or by the public prosecutor’s office or trial judge, have the right to be assisted by a lawyer, but only if they are being deprived of liberty.

The rules presented under this law are applicable to adults and children alike. The fact that the legislation did not sufficiently develop the hypothesis of application of this law to children is highly regrettable. The only specific adjustment for children in this law concerns the fact that minors cannot renounce their right to be assisted by a lawyer.

The Code of Criminal Procedure

We have seen that by virtue of article 47bis of the CCP, before proceeding to the hearing of a person on the offences that may be attributed to them, the person to be questioned must, in particular, be informed that they have the right to meet in confidence with a lawyer of their choice or with a lawyer that is designated to them, insofar as the acts of which they may be accused involve an offence whose sentence may give rise to the issuance of an arrest warrant (the most severe offences).

If the first hearing takes place upon written summons, this right may already have been stated in the summons, a copy of which is attached to the transcript for the hearing. In such a case, the person concerned is presumed to have consulted a lawyer before their appearance at the hearing.

⁷⁰ Article 7 of the directive.

⁷¹ The Court of Justice of the European Union has in fact established in its case law that a directive has a direct effect if it is clear, precise, unconditional and if the EU country has not transposed the directive by the deadline (ruling of 4 December 1974, Van Duyn).

If the hearing does not take place upon written summons or if the summons does not mention the right to a lawyer, the hearing may be postponed once only upon the request of the person to be questioned, in order to give them the option of consulting a lawyer.

This same right is granted to persons deprived of liberty.

The law on provisional detention

Article 2bis of the LDP ensures the right of all persons deprived of their liberty to consult in confidence with a lawyer of their choice prior to the first interview with the police services or with the public prosecution service or the trial judge, as well as the right to have a trusted person informed of their arrest, by the person questioning them or a person designated by the latter, through the most appropriate means of communication. Still, if there are valid reasons to fear that attempts are being made to make evidence disappear, that there is collusion between the interested party and third persons, or that the interested party may evade legal action, the public prosecutor or trial judge for the case may postpone this communication for the duration necessary to protect the interests of the inquiry, providing justification for this decision. The person deprived of liberty also has the right to medical assistance. They can also ask to be examined by a doctor of their choice, but in this case the cost of this examination will fall to them.

If they have not chosen a lawyer or if the lawyer is unavailable, contact is made with the on-call service organised by the French- and German-speaking Bar Associations and the 'Orde van Vlaamse balies' or, failing this, by the Chairperson of the Bar Association or their delegate. If the person to be questioned does not have sufficient resources, they will be entitled to a lawyer provided under legal aid. From the moment when contact is made with the chosen lawyer or the on-call service, the confidential consultation with the lawyer must take place within two hours. Once the confidential consultation, the duration of which must not exceed thirty minutes, has ended, the hearing may commence. If the confidential consultation provided has not taken place within two hours, a confidential consultation by telephone nonetheless takes place with the on-call service, after which the hearing may begin. It is only after having had confidential contact over the telephone with the on-call service that the of-age person concerned may, after deprivation of liberty, renounce their right to confidential consultation with a lawyer voluntarily and after due consideration. The person to be questioned proceeds to renounce this right in writing in a document dated and signed by them. Minors may not renounce this right. All of these elements are noted with precision in the transcript.

The assistance of the lawyer has the single objective of allowing verification:

- 1) that the questioned person's right not to incriminate themselves is respected, as well as their freedom to choose to make a declaration, to respond to questions put to them or to remain silent;
- 2) of the treatment that should be given to the person questioned during the hearing, particularly regarding the blatant use of pressure or illicit constraints;
- 3) of the notification of the rights of the defence set forth in article 47bis of the CCP and of the propriety of the hearing.

The lawyer may, without delay, have a note made in the transcript of the hearing of any rights violations they believe they have observed.

The hearing may be interrupted for fifteen minutes at a maximum for the purposes of an additional confidential consultation, either once upon request of the person questioned or upon the request of their lawyer, or in the event of new offences being revealed that are unrelated to the events that had been brought to their attention in accordance with article 47bis, § 2, paragraph 1, of the CCP.

Only of-age persons being questioned may, voluntarily and upon consideration, renounce the assistance of a lawyer during the hearing.

The law on child protection

By virtue of articles 49 and 52ter of the LPJ, minors must be assisted by a lawyer during all appearances before the trial judge⁷² as well as before the juvenile court judge⁷³. This principle applies not only for public hearings, but also to private hearings that take place in the judge's office.

Article 54bis of the LPJ provides that when a minor is party to the cause and does not have a lawyer, one must be officially designated to them. The President of the Bar or the Consultation and Defence Office ensures, where a conflict of interests exists, that the interested party is assisted by a lawyer other than the one that their parents, guardians, or persons with custody over or interest in a thing in action would have called upon.

⁷² Article 49bis of the LPJ however provides that the trial judge may decide to meet with the minor alone.

⁷³ Article 52ter of the LPJ however provides that the juvenile court judge may hold an individual interview with the minor.

Independently of the rights that are bestowed upon them under the LPJ, young offenders benefit from the provisions of the "Salduz" law, including the right to consult a lawyer and to be assisted by the latter during the hearing or deprivation of liberty.

Therefore, for further clarity, we have resumed hereafter the rights bestowed upon suspected minors or those deprived of their liberty.

Particular circumstances of minors: summary

The rights bestowed upon minors during their hearing vary according to whether or not they are deprived of liberty.

✓ Hearing of a suspected child who is not deprived of liberty

Suspected children have the right to consult with the lawyer representing them before the first interview carried out by the police or by any other authority, either police or judicial. This right is provided once only, which means that if the child is interviewed again during the proceedings, a prior meeting with their lawyer is no longer obligatory, although it may be authorised by the authority charged with the interview.

Belgian law limits the scope of this right to the events that may lead to the most serious offences, i.e. those for which the sanctions may give rise to an arrest warrant (although there are exceptions).

The legislator concluded that the condition of fragility linked to minor status implies that the child may not renounce their right to communicate in private with their lawyer. This prior consultation is a right, but also a measure of protection for minors.

When the minor is summoned in writing by the police or by the public prosecutor, the summons must mention the various rights granted to the minor, including the existence of a right to consult a lawyer. If the first hearing takes place following written summons, the minor is presumed to have consulted a lawyer before their appearance at the hearing. In most cases, however, the minor assigned to be summoned will not have consulted a lawyer. This contradicts the general philosophy of the law.

It must be borne in mind that the law does not provide children who are not deprived of their liberty with the right to be assisted by a lawyer during hearings. Nonetheless, there is nothing to prohibit the child's lawyer from being present during the hearing.

✓ Hearing of a suspected child who is deprived of liberty

In addition to the right to consult in confidence with their lawyer prior to the first hearing, children deprived of liberty have the right to be assisted by a lawyer during all hearings. The rights for children deprived of liberty are thus strengthened, to the point that children may not renounce this right. Belgian law thus goes further than the directive in this regard.

The choice of a lawyer belongs to the persons exercising parental authority (in principle the parents, and in the absence of these, the guardian or representative). Still, given the urgency involved, it is not very often possible to wait for such a choice to be expressed. In this case, all that is necessary will immediately be done to have a lawyer's office designated by contacting the office hours organised by the arrondissement in which the hearing will take place by the French and German Bar Associations or the *Ordre van Vlaamse Balies* or, failing this, by the Chairperson of the Bar Association of the arrondissement in which the hearing will take place. However, the minor will still be asked if they already have a lawyer (potentially designated based on article 54bis of the LPJ) to assist them in proceedings before the juvenile court, and whether they wish to have this lawyer called. If so, this lawyer will be contacted. In the event that this lawyer is unavailable (particularly if they belong to the bar association of another arrondissement), contact will be made with the bar's office hours service.

Prior confidential consultation between the child and the lawyer must take place within two hours. The maximum duration of this consultation is thirty minutes, after which time the hearing may begin.

The law establishes the guidelines regarding the role of the lawyer. The lawyer's involvement is reduced to the monitoring of the following three points:

- 1) The accused person's right to remain silent and the right not to incriminate themselves;
- 2) The treatment provided for the person being questioned, particularly any illegal pressure or constraints;
- 3) The notification of the rights of the defence and the propriety of the procedure.

The child's lawyer may have any violation of these rights noted in the interview transcript.

The EU directive provides that the lawyer must be able to participate effectively in the hearing. Circular COL 8/2011

(13/06/2013) of the College of Public Prosecutors establishes clearly, however, that the assistance provided by the lawyer fulfils the effectiveness criteria when they limit themselves to monitoring the three points mentioned above. Moreover, according to the same circular, the lawyer is not authorised to interrupt or to end the hearing; neither may they speak to the suspect; they may not even communicate with them (through the use of gestures, for example); they are not authorised to form objections to any questions posed; and they must show restraint and remain to the side. Their role is merely passive, while the EU directive requires the active participation of the lawyer during the hearing. Nonetheless, the child and their lawyer do have the option of interrupting the hearing once for a period of fifteen minutes, with the objective of benefiting from a further lawyer-client consultation. This option is also provided when new offences arise during the course of the hearing.

The right to have a third person informed of the deprivation of liberty

The right to inform a trusted person, named by the suspected person, is only granted to persons deprived of liberty (article 2bis, § 3 of the LDP). A circular from the College of Public Prosecutors specifies that the police services are bound to an obligation of means, and not one of results.

In addition, if, as a result of the communication of this information, there are serious reasons to believe that an attempt is being made to make evidence disappear, that there is collusion between the interested party and third persons, or that they are attempting to evade justice, the public prosecutor or the trial judge responsible for the case may postpone this communication for the duration necessary to protect the interests of the inquiry, providing justification of this decision. The police services are not authorised to make this decision.

By virtue of article 48bis of the LPJ, when a minor is deprived of their liberty following arrest, or has been released against the promise of appearing before court or the signing of an agreement, the police official responsible for the deprivation of liberty must, as soon as possible, give or have given to the father and mother of the minor, or to their guardian or those who have legal or de facto custody, oral or written notification of the arrest, the reasons for it and the place where the minor is being held. The spirit of this provision lies in the will to involve the parents in the proceedings as soon as possible. It should be mentioned, however, that if the minor is married, the notification should be given to their spouse rather than the legal representatives. This right is provided only for minors at the time of deprivation of liberty. It is a supplementary right that minors must be able to continue to enjoy and whose application must be harmonised with the new legal provision on provisional detention. In principle, the trusted person will be the person envisaged under article 48bis, §1, of the LPJ, but it can be conceived of that the minor may ask to notify another person, for example an authority within the institution in which they are staying. Article 48bis, §1, of the LPJ does not allow the public prosecutor or the trial judge to postpone communication with the trusted person for the duration necessary for the protection of the interests of the inquiry. It follows that the persons envisaged under article 48bis, §1 of the LPJ must always be informed of the minor's arrest.

The right to communicate with third persons while deprived of liberty

In addition to the lawyer, the child may communicate with other persons while deprived of liberty.

Article 12 of the French Community decree of 4 March 1991 on child welfare provides that all young persons housed by virtue of a measure of legal protection have, in principle, the right to communicate with any person they choose. Nonetheless, the juvenile court judge may prohibit the young person from communicating with certain individuals, providing justification for this decision. However, this restriction can in no case apply to the young person's interaction with their lawyer.

The right to communicate with others includes the right to write, telephone and receive visits (for the latter two, it goes without saying that the establishment rules may set the visiting hours, location and frequency).

The PCPI must also facilitate contact for the young person with all persons and institutions that may allow them to work towards their reinsertion.

The PCPI may request limitation or prohibition of contact before the juvenile court if they consider the contact to be apt to damaging the young person or to having a negative influence on the educational work being carried out with them. The PCPI must provide justification for its request and specify the type of contact it would like to limit or prohibit. While awaiting the decision of the juvenile court, the PCPI may prohibit or limit the contact. The juvenile court's decision is issued to the young person.

The young person has the right to correspond free of charge with any person of their choice. To this end, the PCPI must provide them with paper, something to write with, envelopes and stamps. The secrecy of the correspondence is guaranteed. However, deliveries and courier messages containing anything other than letters may be subject to checks by the management team. In this case, the young person is invited to open the package in the presence of a member of the management team who, depending on the risk incurred from a security perspective, may require the handing over of objects or substances accompanying the letter.

The young person also has the right to receive visits from persons of their choice at the times set by each PCPI. If the young person is entitled to leave, they must be allowed to benefit from at least one hour of visitation per week in accordance with the terms and conditions defined by the PCPI. If the young person is not entitled to leave, they must be allowed to receive at least two hours of visitation per week in accordance with the terms and conditions defined by the PCPI. The possibility of a supplementary visit by appointment is guaranteed. For at least half of the duration of the visit, confidentiality is assured and no checks other than visual ones may be carried out by members of staff.

In the event of risks to security or the maintenance of the order of the institution, the director may prohibit the entry of a visitor, impose the continuous presence of a member of staff during the visit or limit the number of persons admitted at the same time before the young person. For the same reasons, they may require visitors to present their identity documents and to deposit their effects in a secured location. In addition, they may end a visit prematurely if the visitor or young person commit acts that are contrary to public order or morality.

Visits from the following persons are not limited either in number or in duration:

- the juvenile court judge;
- the young person's lawyer;
- the young person's guardian in the case of unaccompanied foreign minors;
- members of parliament;
- consular and diplomatic agents of the country from which the young person originates;
- the youth welfare counsellor or their delegate;
- the director of youth welfare or their delegate;
- the general children's rights delegate for the French Community or their representative;
- approved child welfare services, including children's rights services.

These must be announced to the management.

The young person has the right to make at least three 10-minute telephone calls per week, free of charge, to persons of their choice, at the times defined by each PCPI. Moreover, the young person may make telephone calls of an unlimited duration, free of charge and as many times as necessary, as long as these calls do not disturb the progress of an activity, to the following persons:

- their lawyer;
- their guardian in the case of unaccompanied foreign minors;
- the juvenile court judge;
- consular and diplomatic agents of the country from which the young person originates;
- the general directorate for child welfare or its delegate;
- the youth welfare counsellor or their delegate;
- the director of youth welfare or their delegate;
- the general children's rights delegate or their representative;
- approved child welfare services, including children's rights services.

If one of the persons set forth in this list calls the PCPI to speak with the young person, the request is complied with. If the young person is not immediately available, the institution ensures that they are able to return the call as soon as possible.

All of the young person's telephone calls are private and confidential. They may not be listened to.

The right to communicate with consular authorities

Belgium has signed and ratified the 1963 Vienna Convention on consular relations (Moniteur Belge, 14 November 1970).

Article 36 of this Convention concerns communication and contact with the sending State and provides that:

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody

pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;

(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

2. The rights referred to in paragraph 1 of this article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this article are intended.

It goes without saying that in order to apply this provision, the sending State must be party to this Convention.

We have seen that minors in placement may telephone consular and diplomatic agents of their country of origin, free of charge, for an unlimited duration and as many times as necessary, on the condition that these calls do not interfere with the conduction of an activity. In addition, consular and diplomatic agents from the young person's country of origin may visit the child, and these visits are not restricted either in number or in duration.

III.3.4 Information arising from the interviews

The professionals' perspective

The interviews we were able to carry out with the professionals revealed that the problem of accessing a specialised and competent lawyer is the same for all young people, regardless of their nationality.

By law, the lawyer must be present within two hours. Nonetheless, lawyers generally do not attend due to availability issues (they must be on-call 24 hours a day) or mobility issues (they would have to be able to move around urgently), but also due to the fact that they receive only two points in legal aid for services to the police⁷⁴. Conversely, they will usually be present during office hearings, as this service entitles them to six points. The remuneration that the lawyer will receive for services to the police is thus entirely disproportionate to the lawyer's investment. According to the statement of a lawyer specialising in juvenile law, the remuneration he receives from the State for attending, sometimes in the middle of the night, to assist the young person during questioning, which can sometimes last several hours, will be of an absolute maximum of 150-200 Euros. Some lawyers thus have the impression that they are operating at a loss.

Statement from B., lawyer specialised in juvenile law

- Lawyers are underpaid. The service is generally long and few lawyers can allow themselves to dedicate so much time for free.

Another recurring problem is the lack of training among lawyers in juvenile matters. When a lawyer is present, they are not necessarily specialised in juvenile law.

Statement from F., coordinating criminologist for the Brussels general public prosecutor's office:

It makes no difference if the minor is foreign or not. Being a foreign minor does not pose a problem in itself because the lawyer is designated for all minors. The designation of the lawyer has to be done quickly. The young person must be assisted during the police interview and before the juvenile court judge. The recriminations regarding the minor's lawyer are for all lawyers, not specifically for the lawyers of foreign minors.

⁷⁴ Legal aid or BAJ points are set at €24.76 for the year 2015 (i.e. down 4% from 2014 when each point was worth €25.76).

The youths' perspective

Of the 20 young people interviewed, all had a lawyer.

Despite the fact that Belgian law requires the presence of a lawyer during deprivation of liberty ("Salduz" law), approximately one third of the young people we interviewed were not assisted by a lawyer during their police interview. This is the same for all young people and does not concern young people of foreign nationality in particular.

On the other hand, they were all entitled to a lawyer during the hearing with the judge. The Salduz on-call lawyer (where one exists) is usually not the same one who was present during the hearing. Most often, these are lawyers that the youths have not chosen, who are on call when the hearing takes place. The young person and the lawyer thus meet several minutes before the hearing.

Statement from E., 16, female, from Romania:

I had lawyers but I never had my lawyer with me before the judge, it was always changing, so it was difficult to understand.

Statement from S., 16, female, from Angola:

I was able to talk to the lawyer before my hearing, a little. I had the impression that she wasn't defending me, that she didn't agree with me.

The young people we interviewed all knew that they could contact their lawyer. Although most of the lawyers responded to the youths' requests, it was rare for them to come out to see them.

There are rooms specifically designed for visits (with family or lawyers) that allow confidentiality.

The vast majority of youths did not choose their lawyer. Often, they had had several during their proceedings. Many youths were not content with their lawyers. They often had the impression that the lawyer was not truly defending them, that they were siding with the judge, that they served no purpose, etc.

Statement from R., male, 17, from Gabon:

For us young people, we often say here that the pro bono lawyers are no use to us because they often share the opinions of the judge, it's not as though they are defending us or telling the judge what needs to be made better for us. They always agree with what the judge is going to say.

Statement from E., 17, male, from Tunisia:

I had a lawyer but he didn't do me any good. It was a pro bono lawyer. I met with ten or so lawyers, it was always a different one.

Statement from G., 15, male, from Spain:

I had a lawyer but only when I was going to the judge. He didn't speak. He didn't even try to defend me for my actions. The last time for the hearing, my lawyer arrived just before the hearing and we hardly spoke. Plus, she never comes to see me. I want to change lawyers.

Statement from P.-L., 15, male, from Haiti:

I'm not really very happy with my lawyer. She hasn't done me much good. (...) I've switched at least four or five times. Every time the case changes, I need a new lawyer who knows my case file well...

Statement from X., 16, male, from Kosovo:

The first lawyer I had didn't really defend me, she agreed with the judge. Plus, I pay her. The first placement I had was at Saint-Hubert. Back then my father had paid 1000 Euros and the lawyer didn't even reply to me. The lawyer I have now is the same, she doesn't come to see me, she doesn't defend me well. I want to change lawyers.

III.3.5 Facilitating factors and obstacles

The lack of information on children's rights appears to be an additional obstacle to young people in exercising their rights. The professionals' training, university-level or otherwise, does not incorporate this dimension at all. All of the professionals interviewed were clear on the need to implement training that is not limited to the mere acquisition of a diploma, but that is also more specialised and continuous in nature. In any case, improved training for lawyers in juvenile law and the rights of foreigners seems to be indispensable for ensuring that minors of foreign nationality who find themselves in conflict with the law are defended properly.

Better training for lawyers must go hand in hand with a refinancing of legal aid in order to truly motivate lawyers to be invested in defending minors. Without "fair" remuneration, it is difficult to ask lawyers to mobilise. The presence of the lawyer at the time of deprivation of liberty surely represents added value for the defence of the minor's rights and the guarantee of a reduction on the detention. One of the specialised lawyers we were able to interview also spoke in favour of implementing an on-call service for lawyers, who could benefit from a higher rate and who would be certain of being able to receive payment. Legal aid can only function if the system is adequately financed and if lawyers can obtain fair remuneration for their services.

The issue of the role of the lawyer is also problematic. Unfortunately, some lawyers do demonstrate a lack of involvement; some of them do not know the young person or even the case file for the young person they are sent to defend. Moreover, their role is not always clear. Sometimes it seems more like appearing as the lawyer in the interests of the young person's representation than as the young person's lawyer (their "spokesperson") in itself. Furthermore, child protection is often considered to be a "secondary branch" of law. Few lawyers are specialised in the subject, which can be detrimental to young people. The functioning of the juvenile departments differs from one arrondissement to another (thus, in Brussels, a large number of lawyers specialise in child protection and frequent training sessions are organised, while in Dinant, the juvenile department comprises only three lawyers plus trainees).

Including the list of on-call lawyers in the summons addressed to the minor could also be considered, on the proviso of true collaboration with the police and a sufficient budget.

Finally, it seems to be necessary to provide a true central thread, one person to follow up with each young person to avoid the complexity of an excess of services, particularly in order to allow the young person not to be faced with irregular presence of their lawyer, who should be the same one for each stage. In addition, there is no text providing, alongside assistance from a lawyer, the child's right to general, psychological and behavioural assistance throughout the entire procedure, by their parents, tutor or any other trusted adult, despite the fact that this is recognised by international treaties and non-binding acts⁷⁵.

⁷⁵ See in particular: art. 40 b, paragraphs ii and iii, of the ICRC; art. 15.1 of the Beijing Rules; art. 28 and 30 of the Council of Europe Guidelines on Child-Friendly Justice.

IV. Conclusions and Recommendations

One observation must be made upon completion of this research: the lack of official statistics. Greater transparency with regards to the data available seems to be a prerequisite for any research into the topic.

Despite the lack of official statistics, various conclusions can still be drawn from the interviews carried out with professionals and young people.

First of all, it is noted that a foreign youths, whether or not they are in conflict with the law, are more vulnerable than Belgian children, particularly for the following reasons:

- Foreign children will not master, at least not as well, the language of the proceedings in which they are involved. This means that their understanding may be reduced if they do not have access to an interpreter;
- Foreign children may have trouble handling cultural differences;
- Foreign children may have more difficulty in relying upon their parents to explain the procedure in the same way as a Belgian child can (either because they are not there, or because of the same problem regarding language);
- These difficulties are compounded by the potential trauma of the migratory journey or other pre-existing traumas (genocide, armed conflict, use of child soldiers, etc.) as well as the risk of being manipulated by adults (members of the family or community) and to undergo pressures to commit unlawful facts.

These factors surely restrict the minor in exercising their rights in the same way as a Belgian child could. Thus, it is not a question of providing the same rights to foreign children as to Belgian children: it is a question of how to offer greater protection to foreign youths. Increasing protection for foreign youths calls for the creation of higher standards of protection than those in place for national children, given the particular nature of their needs.

To increase the protection of the rights of foreign minors in conflict with the law, various courses of action have emerged as solutions over the course of our research and the interviews we were able to carry out.

Adequate training is of course a major key. It must be improved on all levels: police officers, guardians, interpreters, lawyers, magistrates, educators, etc.

Police officers who have a high degree of contact with foreign minors should, ideally, undergo intercultural training, providing them with tools to enable them to react better. The interviews we were able to conduct with specialists revealed that intercultural training allows:

- a better notion of the frame of reference itself
- reflection on ethnic profiling
- more ideas to be obtained on certain cultural characteristics and their meanings
- a more open mind towards other viewpoints/perspectives
- a view of the human being in all of its facets: not only culture but all roles (man/woman, young/old, etc.)
- a focus on similarities rather than differences (often there are many shared values).

With regards to the right to an interpreter, it would be useful to call upon sworn interpreters only, and preferably those with knowledge of criminal law and training in juvenile issues as well as child psychology and cultural dimensions. These interpreters must be re-evaluated periodically. A coordination mechanism, particularly for the creation of a methodology as well as a code of ethics, also seems necessary. The absence of impartiality occasionally indicated could without a doubt be improved by the existence of a code of ethics and better training for interpreters. It is also necessary to be attentive to the set of ideological, religious and philosophical aspects that may exist in certain situations. It is also useful to ensure that the shortage of interpreters in languages such as Syrian, Iraqi and Somali is rectified urgently, and to try, insofar as it is possible, to find or train interpreters for certain dialects such as Pashto or Fula, for which there are few interpreters. Above all, it is imperative to provide these interpreters with immediate and reasonable remuneration in order to increase their availability. It will not be possible to improve the mobilisation of these interpreters without making this financial effort.

Concerning the right to information, we consider the written declaration of the rights to be in need of review. Simplified models in layman's terms suitable for children must be available and adapted to their age brackets. A young person does not know what the public prosecution service is, or the judge's office, or the public prosecutor, etc..

This statement could be made using videos subtitles in several languages.

Although access to a lawyer appears to function during hearings before the juvenile court judge, the same cannot be said for the police interview. In any event, the assistance of a lawyer is only obligatory in the event of deprivation of liberty. Even in this context, this right is not always respected. The issue of funding is crucial in this regard. Above all, the funding system for “Salduz” on-call lawyers must be reviewed, and immediate and reasonable remuneration provided, as for interpreters, without which it will also be impossible to mobilise these professionals. Providing fair remuneration for lawyers and improving their training, specifically on the issues of interculturality, are the sine qua non requirements in order to ensure that young people are able to effectively enjoy the rights assured to them by the European directives. In addition, lists of office hours for lawyers specialising in juvenile law must also be available in all police headquarters. Regarding UFM's arriving on Belgian territory, it is frequently the case that these UFM's move between reception centres several times, which can involve a change of linguistic system, change of schools, etc. Care should be taken to find out which linguistic system is most appropriate for them: will it be easier for them to learn French or Dutch? It is sometimes forgotten that they must also be allowed to settle somewhere; they need stability.

It would also be useful to provide support for those children who have experienced severe trauma, such as those arriving from Syria who have lived through war, child soldiers, etc. They cannot be left to fend for themselves without support to help them settle and digest what they have gone through.

For Romany UFM's, the involvement of a cultural mediator, such as the one in place in Brussels, surely seems to be a good practice to encourage. There is in fact a problem of incompatibility of our system with their way of life and their culture, which makes any educational work problematic.

Improved training for UFM guardians, particularly from a legal perspective, would also be necessary and must be accompanied by a re-evaluation of the function.

The problem regarding the single test is also recurring. Too often, the single test wrongly concludes of-age status and the young person goes to prison with no possible recourse. The only solution is if the young person has a lawyer who writes to the Guardianship Service to alert them to the fact that an “of-age adult” is in prison but claims to be a minor. The Guardianship Service can then succeed in removing the young person with the authorisation of the trial judge to have the triple test conducted. This process should be systematic.

Finally, faced with all of these issues in terms of procedural rights, there are currently other urgent fundamental actions required to assist foreign minors, UFM's above all: they must have a place to sleep, a roof over their heads, food to eat, etc. Respect for these basic rights must be the primary concern before speaking to them about their procedural rights if they have committed an offence: these rights are often far from being a primary, vital concern for them. We must not lose sight of the fact that most of them are in survival mode. With this in mind, the development of the project “host families for UFM's” is surely one way of assuring this stability and, at the same time, playing a preventive role.

V. Bibliography

BEYS, M., *Quels droits face à la police : manuel juridique et pratique*, Mons, Couleur livres, 2014, pp. 284–318.

CLAEYS, C., “L’audition policière des suspects mineurs : adaptée aux enfants?”, *Journal du Droit et des Jeunes*, November 2014, pp. 10–22.

JONCKHEERE, A. and MAES, E., “Caractéristiques des personnes placées sous mandat d’arrêt et/ou en liberté sous conditions”, in *La détention préventive et ses alternatives*, Direction Opérationnelle de Criminologie, Institut National de Criminologie et de Criminologie, FPS Justice, 2011, pp. 35 on.

DE TERWANGNE, A., “L’assistance du mineur lors de son audition par la police, le parquet ou le juge : guide pratique de la loi du 13 août 2011, dite ‘Loi Salduz’”, *Journal du Droit et des Jeunes*, December 2011, pp. 15–34.

FRANCOISE, C., “Chronique de criminologie – La comparution des mineurs devant le juge de la jeunesse”, *Revue de Droit Pénal et de Criminologie*, 2014/1, pp. 49–76.

GYURKÓ, Sz. (ed) - NEMETH, B.: Comparative situation analysis of juvenile justice systems in 20 CEE countries in accordance with the four relevant Terre des hommes scopes, Budapest, Tdh. 2016 (not published yet)

KENNES, L., “La loi du 13 août 2011 conférant des droits à toute personne auditionnée et à toute personne privée de liberté”, *Revue de Droit Pénal et de Criminologie*, 2012, pp. 5–67.

MOUTON, A., Barbara De Naeyer, head of the youth and family service for the West Brussels police catchment area: “Si nous voulons appliquer Salduz à la lettre, il faudra un avocat pendant toutes les heures d’ouverture du commissariat”, *Journal du Droit et des Jeunes*, December 2011, pp. 12–14.

NUYTIENS, A., JASPERS, Y. and CHRISTIAENS, J., “Renvoyer les jeunes délinquants vers la justice des majeurs, et après?”, *Justice et Sécurité*, December 2015, available at <https://incc.fgov.be/christiaens-jenneke>

PHILIPS, C., « Lutte contre le terrorisme : le législateur renforce le cadre légal », *Bulletin juridique et social*, juin 2016, n° 566, p. 1.

PHILIPS, C., « Lutte contre le terrorisme : durcissement du cadre législatif », *Bulletin juridique et social*, septembre 2015, n° 547, p. 1.

PREUMONT, M., *Memento du droit de la jeunesse*, Waterloo, Kluwer, 2012.

RAVIER, I., “Les chiffres de la délinquance des mineurs en Belgique”, *Justice et Sécurité*, November 2015, available at <https://incc.fgov.be/ravier-isabelle>

RIZZO, C., “Les jeunes face à la police”, *Journal du Droit et des Jeunes*, December 2007, pp. 42–45.

S. GOLUB et A. GRANDJEAN, Promoting equitable access to justice for all children, UNICEF Insights, Issue 1/2014 (2014).



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