



ECBA Children in Criminal Procedures Youth lawyers best practices

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Youth lawyers best practices

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- III. The cornerstone: “best interest of children”, for children in the legal framework
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- VI. Initiatives within the OVB (Association of Flemish bar Associations)
- VII. Final considerations
- Annex: OVB youth lawyers training program 2013-14

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➤ I. Introduction

- automatic legal aid
- questions and doubts
- professional practice and ethics
- multidisciplinary training
- recent international change: “Youth lawyers / Avocats de mineurs”

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- **II. Questioning and defending children in the pre-trial procedure**

- **Flemish/Antwerp situation**
 - registered and trained youth lawyers
 - registered interpreters
 - children learn easy Dutch at school(basic contact only)
 - youth lawyers with good knowledge of foreign languages (basic contact only!)

- **Problems**
 - recent arrival in Belgium/no school/learning problems
 - parents without language knowledge
 - interpreters to the child mothertongue are needed
 - trust: the same interpreter following the complete pre-trial procedure

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- ▶ **III. The cornerstone “best interest of children” and interpreting for children in the legal framework**
- ▶ COE – Guidelines “Child Friendly Justice” (Memorandum p.4)
- ▶ 1° **views and opinions**
- ▶ 2° **dignity, liberty and equal treatment**
- ▶ 3° **psychological and physical well-being and legal, social and economic** interest of children

- ▶ Court district Antwerp: (50x50 km)
- ▶ 94 registered , trained and OVB-certificated youth advocates
- ▶ 3000 appointments/year + more then 10 Salduz consultations and hearings per 24 hours

- ▶ OVB training and the “best interest of children”?

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- **IV. The OVB youth lawyer training and best interest of children**
- IV/1 the **views of minors and opinions** shall be given due weight:
- Youth lawyers have to work in the same way as for adult clients, they use:
- the “defending advocate model” (including confidential advise)
 - not to fill in the point of view one self
 - passing the point of view very clearly to police/pre-trial court
- the “guardian at litem model”: for children without power of discernment and judgment

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- ▶ IV.2 All other rights of the child such as **dignity, liberty and equal treatment** shall be respected
 - ▶ Historical violation of children rights in the Belgian law
 - ▶ Napoleons "code civile" = 200 years absence of children in civil procedures
 - ▶ 1912: Child protection act = 100 years absence of children in criminal procedures
 - ▶ Actual child protection act Belgium
 - ▶ 1965: Lawyers became compulsory (only) in final court hearings
 - ▶ 1994: idem in cabinet meetings (24hours after police hearing)
 - ▶ 2012: idem in police hearing, but only: "*to be present and silent*"
 - ▶ Actual police hearings in Belgium: violation of ECtHR
 - ▶ Lawyers react in police hearings, cfr. the recent Belgian Constitutional Court arrest that admitted the complaints of OVB and OBFG, and cfr art. 5-6 ECHR.

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IV/3

A comprehensive **approach taking in account off all interests** at stake

- ▶ **Psychological and physical well-being**
 - ▶ Creating trust and continuity for the minor
 - ▶ by appointment a youth lawyer
 - ▶ to present and know the point of view of children
 - ▶ By:
 - ▶ Compulsary appointment of a legal aid youth lawyer
 - ▶ Immediately at first contact with justice
 - ▶ The same lawyer for follow up the concrete file
 - ▶ The same lawyer later in case of a new file or problem

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- **Legal interest of children**
- Evolution in the way justice thinks about the “incapacity to conduct proceedings” of minors
 - Before civil youth court
 - In (adult) civil court in personal matters
 - In (adult) criminal court (as a victim, witness))
- Belgian children of 0 to 18 years old are always independent as process party (acting with their compulsory added youth lawyer)
 - In criminal related procedures (subject, victim, witness)
 - In protection related procedures (subject, witness)

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- **Social interest of children**
- Growing personal rights
 - medical field
 - legal field
- Minors act independent from third parties
 - If needed with ad hoc tutor
- Unexpected consequences
 - Professional secrecy rules for Youth lawyers
(even towards parents, family and social service)
 - Professional practice rules: quality training and obligation for interpreting the same minors

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- **Economic interest for children**
- Non existing financial possibilities
 - Ex officio legal aid appointment
 - Remuneration by government
- Deontology
 - No payment by parents or other parties

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- **V. Local Bar actions and first trainings of youth lawyers**
- 1985: 20 pro bono volunteers
 - without training and
 - without legal aid payment from the government
- 2000: 40 legal aid volunteers
 - + BUBA training 2 hours youth law
 - Small remuneration - Legal aid payment
 - + 2005 compulsory OVB 80 hours training (cost:500 EUR/candidate)
- 2015: 110 legal aid volunteers
 - + 5 two-hour compulsory trainings per year in youth section
 - + 2 hour compulsory SALDUZ training

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- ▶ **VI. OVB RULES**

- ▶ Recommendation of the OVB General Meeting (7-12-05)
 - ▶ List with certified and registered youth lawyers
 - ▶ Quality by training (80 hours)
 - ▶ Free to step in for all lawyers
 - ▶ Refusal possible

- ▶ Compulsory OVB 80 hours training program (since 2005)
 - ▶ Multidisciplinary: Legal and paralegal
 - ▶ Communication training: role plays ("veto")
 - ▶ Paper on 5 cases / on 20 hours observation.

 - ▶ (see annex)

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- **VII. Final considerations**
- Interpreters and lawyers are central in the fair trial issue
- Similar elements of best practices to realise for youth lawyers and interpreters:
 - Training, accreditation, register, oath
 - Accepting legal aid work, on call
 - Accepting confidentiality/deontology as for adult clients
 - Accepting calls from the same minor/youth lawyer
- Theoretical training together with other legal practitioners
- Practical training / role plays together with other legal practitioners

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► Thank you!



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