

# ADVOCATENKANTOOR

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## **Trained Legal Aid lawyers in protectional and criminal youth procedures and questioning of minors:**

Flemish youth lawyers best practices:

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### **I. Introduction:**

1. How to provide information support and protection to children, which are as such vulnerable victims, suspects and witnesses? And what to do with children that do not speak or understand the language used in court and in legal matters, who are twice as vulnerable?

Professionals who intervene for minors in legal settings, and who intervene on their behalf, do experience that it is not evident to assist minors in the same way as adults seeking justice. Certain questions and doubts arise in the mind of the minors themselves, their parents, social workers, teachers, institutions, magistrates and colleague-lawyers.

Since the coming into effect of the Belgian Act on Judicial Assistance (legal aid) of 23 November 1998, in which minors are included as persons coming under a certain jurisdiction who are irrefutably deemed to be of limited means and who are automatically entitled to legal aid, efforts have been made within the Legal Aid Agencies (BJB: Bureaus voor Juridische Bijstand) in the 14 Flemish Bars and within the OVB (Flemish Bar Association) to find the appropriate arrangements.

2. Within the field of professional rules, one rightly asks the question whether specially trained lawyers (and other professionals as judges, prosecutors, police, interpreters...) for minors, will continue to act in the same way as for adults, bound by the same rules of professional practice and ethics.

If this must necessarily be the case in principle, a number of classical aspects of professional practice and ethics must be further specified for those lawyers who accept the charge to work with and defend minors, and for the professional partners who must associate with the lawyers of minors <sup>1</sup>.

### 3. Training in this field means multidisciplinary training.

We cannot succeed as a professional group on our own. We need all professionals to cooperate, and to learn with and from each other.

We will look hereafter close to the efforts taken by the Flemish Bar Association in order to realise a group of certificated youth lawyers, with special multidisciplinary training. The “best practices” in this field have to be known by our professional partners including interpreters, and can be useful for others.

4. A last remark relates to the fact that all practitioners including interpreters, have to realise that legal aid and assistance for minors by lawyers is relatively new in a number of countries. But it is a fact today, as can be learned from a summary visit to the websites via Google “*jeugdadvocaat.be*”<sup>2</sup>.

In this respect (in Belgium/Flanders) the use of the term “*jeugdadvocaat*” (youth lawyers) is an indication of those lawyers who aim *de facto* at training voluntarily and specifically in the field of juvenile law and related paralegal and communication disciplines to be able to offer assistance to minors on a continuous basis from the first claim, until the cancellation of all sanctions or until majority. This is applicable both in case of facts described as a crime and in matters involving problematic education, as victim, suspect or witness.

Abundant international information can be found under: <http://www.google.com/search>, via the keywords: *avocats de mineurs, youth lawyers, lawyers for children or juvenile lawyers*. From the various locations a large number of links can be consulted directly. The initiatives originated from the various participants within the judicial or extra-judicial youth protection.<sup>3</sup>

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<sup>1</sup> G. RIGO, “L’avocat devant le tribunal de la jeunesse – aspects déontologiques de l’intervention de l’avocat pour assurer la défense des intérêts d’un mineur d’âge”, in: *Regards sur les règles déontologiques et professionnelles de l’avocat*, SBL éditions du jeune barreau de Liège, 249 et ff..

<sup>2</sup> Web site of the UJA ( Unie van Jeugdadvocaten) Union of Youth lawyers in Flanders.

<sup>3</sup> These are sometimes local Bar Associations taking the initiative:

e.g.: France: the Aix-en-Provence Bar Association

[http://barreau-aixenprovence.avocat.fr/services\\_particuliers/serv\\_avocenfant.html](http://barreau-aixenprovence.avocat.fr/services_particuliers/serv_avocenfant.html)

Sometimes a national organisation of lawyers takes the initiatives: e.g.: US: American Bar Association with the National Juvenile Defender Centre

<http://www.abanet.org/crimjust/juvjus/>

Sometimes it is organised by the Public Prosecutor’s Office: e.g.: Canada: Ontario – Ministère du Procureur Général/bureau de l’Avocat de l’enfant:

<http://www.attorneygeneral.jus.gov.on.ca/french/family/ocl/>

Sometimes by national lawyer’s associations: e.g. : Switzerland: Société Suisse de droit pénal des mineurs:

<http://www.julex.ch/php/uebersicht.php?lang=fr>

Sometimes by associations involving part of the working field: e.g. US: Foster Parent Association, New York State Citizens Coalition for Children, Inc.

<http://www.nysccc.org/FCYouth/lawyer.htm>

sometimes by pure private associations: e.g.: US: Lawyers for Children America:

<http://www.lawyersforchildrenamerica.org/matriarch/default.asp>

## **II. Interpreter mediated questioning and defending children in the pre-trial procedure:**

5. A short evaluation of the Flemish and specific Antwerp situation is interesting.

We work with 94 youth lawyers who were the first in Flanders to organise themselves. This group is working and training for 30 years now on consulting and defending children and juvenile suspects, victims and witnesses and on communication with children.

Unparalleled in Flanders and Belgium all legal aid lawyers in Antwerp are registered and work exclusively in 7 sections at this moment where training and quality is the first intention. The youth law section covers the 94 specialised and registered youth lawyers in Antwerp.

Typical is that a big number of children and parents who came to Belgium earlier, do not yet speak or understand Flemish. Today Syrian refugee families are coming in and a shortage of Arabic speaking interpreters is real.

For court purposes free interpreting is possible but at school there are no interpreters free available to assist children.

In the Antwerp court area we are lucky to dispose of a good body of local registered, trained, examined and sworn interpreters. In other court districts in Belgium legal interpreters have to swear the oath, but they are not screened on languages, knowledge of legal deontological and interpreting skills, and they are not registered.

6. How do we manage interaction with children that do not speak Dutch?

Interaction between lawyers and these child-clients in consultation is not too difficult, because children are learning quickly the local language at school. And when they speak a well-known language, in Antwerp some lawyers can communicate in French, English, German and sometimes Spanish, Italian, Norwegian, Swedish, Hebrew, Jiddish, Turkish, Arabic....

Youth lawyers are appointed taking into account their knowledge of foreign languages, to be effective in consultation with their legal aid clients. This is a good basis but only to be able to start up consultation and defence.

The lawyer will insist upon interpreting assistance in the mother language to the language of procedure, if he hears that using and understanding of the language of procedure is not effective for the child. Even for interpreting assistance in the client-lawyer consultation this is possible and foreseen in the Belgian legal aid legislation.

It has to be mentioned that many children, even going to school for a certain period, are not able to speak and stand in police hearings, pre trial and trial situations, without interpreting assistance.

7. Problems rise in a serious way, when children just arrived in Belgium, do not go to school, or have learning problems.

Another difficult situation rises with children whose parents very often are not able at all to understand and speak the language of procedure.

When these children are in consultation with the lawyer, evidently without parents, they can speak open and confidential. But in police hearing (sometimes with parents) and always in pre-trial youth court procedure with parents, they will waive their rights on interpreting and wish to be interrogated in Dutch. This happens because they do not like that their parents (who do not admit not to understand Dutch) will hear what happened. Not only minors try to hide the truth, but often simply they are ashamed about what happened to them, in their group of friends as suspect or victim.

8. Sometimes minors in this situation insist to appoint brothers or sisters as interpreters for their parents, and not the regular interpreters, in order to avoid that all what will be said, will be translated exactly and complete for the parents that are present, in order to avoid that they will hear for the first time what happened.

Violent reactions of parents against children in camera in the youth court are frequent, when they hear for the first time what happened. Reactions follow as well as parents or family members do not know or understand what happened in reality, and arrest or another measure is taken by the police or the youth court.

Besides the language choice issue (mother language is required), the problem that police and judges intend to press children to waive interpreting rights (when children are a period in school learning Dutch), and the social problem that children like to see brothers or sisters appointed as interpreter (to avoid that the parents will understand what happened), interpreter mediated questioning of children works well in Antwerp. The registered and trained Antwerp interpreters give good support in court and in consultation.

9. A number of problems still exists and could be solved in the future by cooperation and additional training of the legal actors and interpreters.

In police hearings we heard about registered and sworn interpreters called on duty from personal lists of a policeman (even being colleague of the interrogating officer), or court clerk.

Sometimes police is calling so called “ad hoc” interpreters who are not registered and without being sworn, without language screening, training in language and legal skills, and without examination. (To swear the oath as an interpreter is not possible before the police, it has to be done before a judge)

These problems are not only affecting the quality of the interpreting, but even the legal value of the interpretation and of the complete hearing.

After registration, examination, training, respect of deontological rules and swearing the oath as interpreter, it should be a positive and important element that children and juveniles could choose and rely on the same interpreter all over the complete procedure, as they can rely in the Belgian youth lawyers system on the same lawyer from the first moment, till the end of procedure.

This would be an element of trust for children and youth lawyers.

10. A last element that is not existing today, is a training with all active legal practitioners in the pre-trial procedure, and focussed on interpreting and translating issues together with the registered interpreters.<sup>4</sup>

We need theoretical presentations at the same moment and together with judges, prosecutors, lawyers, social assistants and interpreters, presented by the same group of legal and interpreting specialists, in each court district, to make clear in the same way and to everyone involved, how to continue in the right direction and to become aware of the interpreters needs in the pre trial settings.

In the practical field we need today the introduction and role plays with interpreters, as a training in the pre-trial setting. This training has to be conceived and started as soon as possible. We need role plays with at the same time lawyers, judges (policeman, prosecutor, social worker...), minors (ev. Actor) suspect/victims or witnesses , and interpreters.

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<sup>4</sup> A general moment of study concerning the implementation of the SALDUZ jurisprudence, was a rare moment of study together with politicians, police, lawyers, judges and interpreters, organized by the POLITEIA on 18-9-2012 in Brussels, and with attention for interpreting and translation problems, but not with exclusive attention for these problems. One of the subjects was presented by Yolanda VANDEN BOSCH: "EU Directive concerning the right on interpreting and translation in criminal matters";

### **III. The cornerstone "best interest of children" in the legal framework:**

11. Interpreting for adults and certainly for vulnerable persons as children is a fundamental right International and European legislation <sup>5</sup>.

In the Victims Directive is foreseen under commitment 19 that "the best interest of children" should be primary objective in all legal procedures. In all efforts this principle has to show up, as to guarantee all children their fundamental rights on fair trial.

The Juvenile Justice Observatory<sup>6</sup> determines 3 subjects in these "best interest of children":

- *the views of minors and opinions shall be given due weight,*
- *all other rights of the child such as dignity, liberty and equal treatment shall be respected,*
- *a comprehensive approach shall be adopted by all relevant authorities so as to take due account of all interests at stake, including psychological and physical well-being and legal, social and economic interests of the child;*

12. In Antwerp we are happy to rely on 105 specialised trained and certificated youth lawyers to assist and advise in more than 3000 appointments for youth advise and assistance in cases, and a still growing number of SALDUZ police hearings.

The principles and the organisation of the Flemish youth lawyers training could inspire other legal practitioners and interpreters to organise similar multidisciplinary and communication trainings.

As all legal practitioners, as well interpreters should study and be trained in communication with children and juvenile victims, suspects and witnesses. Training of Interpreters should contain as well, as for legal practitioners, elements and courses on interdisciplinary items and on communication with children.

Hereafter we look to the way followed by the Flemish Bar Association since 2005, organising a Youth Lawyers group of 750 specialised youth lawyers in all 14 jurisdictions in Flanders.

We will indicate how the elements set out as the "best interest of children" were included in this training, in order to guarantee this fundamental rights in the legal contacts and procedures.

### **IV. Youth Lawyer training and the "best interest of children".**

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<sup>5</sup>ECHR art. 5&6; ICCPR art. 14 §3 a-f; ICRC art. 40.2; EU Directive 2010/64/EU 20-10-2010 for suspects, the right on Quality and Training:art.2&6; Directive 2012/29/EU 25/10/2012 for victims/witnesses, the right on Quality and Training: art.7& 25;

<sup>6</sup>Juvenile Justice Observatory "towards a European strategy in juvenile Justice", Draft Guidelines of the Committee of Ministers of the Council of Europe on "child friendly justice", Strasbourg 30-6-2010, II.B

IV/1- the views of minors and opinions shall be given due weight.

13. If one decides to offer assistance and advice to the minor as a lawyer, one must be careful not to fill in the point of view oneself concretely. On the contrary, one should see to it that the point of view of the minor is passed on very clearly and is discussed in the debate, at least in so far the minor has sufficient judgment.

In the French-speaking part of the country too, assistance by a lawyer for this purpose is considered to be appropriate.<sup>7</sup> For assignments within the framework of *ex officio* appointments e.g. before Court this point of view is acquired.<sup>8</sup> The situation used to be quite different.<sup>9</sup>

In another article that outlines a pedagogical approach of this role problem for the youth advocate, the author gives a rough sketch of the three current opinions<sup>10</sup>:

The author of the first draft bill in Belgian parliament on “youth lawyers” in Belgium, clearly distinguishes the task of the youth advocate<sup>11</sup>, as the task to look for the personal interest of the minor. And in this respect he quotes the text of the bill itself: “*It is not the task of the youth advocate to think in lieu of the child, but to assist the child to formulate its opinion and make it known.*”

This means that in a confidential discussion other (lawyers, legal issues) points of view and solutions can be brought up as well as problems that may be of a consequence for opinions and ideas of the minor. Imitation or servile rattling off will be also out of the question.

14. Not only in Belgium this is the prevailing opinion.<sup>12</sup> A clear point of view along these lines can be found on the Internet under: US-Youth Imperative.Inc.: <http://youthimperative.us/gpage7.htm>.

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<sup>7</sup> A. DE TERWAGNE: Proposition de loi instituant les avocats des mineurs- Un texte Perfectible; *Journal du Droit des Jeunes*, nr.200, p.1;

<sup>8</sup> Rép. Prat. de Droit Belge, tw. Avocat, nr.456: “Il doit se borner à exposer la prétention du client, sans l’appuyer de ses propres convictions, sans la déconsidérer aux yeux des juges.”<sup>8</sup>[He must restrict himself to submit the expectations of the client, without adding his own believes, without discrediting it in the eyes of the judges].

<sup>9</sup> L. GARDENAT, *Traité de la profession d’avocat*, Parijs, 1931. “il est des cas où l’avocat (des mineurs) devra solliciter du tribunal l’internement dans une maison de correction, s’il voit que là seulement est le salut.[There are cases where the youth lawyer will have to request the court to intern the minor in a remand home, if he considers that this is his only salvation].

<sup>10</sup> J. VAN DORPE, “De rol van de jeugdadvocaat: een pedagogische benadering”, *TJK*, 2004/3, 156. – De “*guardian ad litem*” who is looking for the best possible solution for the minor, but does not restrict himself to his request,  
– De “*amicus curiae*” who does what the first one did and moreover plays a part of informer and intermediary between all the parties involved and the judge, to protect the latter against false factual information.  
– “*L’avocat défenseur*” who like for clients of age, safeguards the rights of the minor and is his spokesperson, but not necessarily shares the opinion of the minor. With regard to the other intervening parties he says what the minor considers to be important and helps to use the rights words for it.

<sup>11</sup> Wetsvoorstel LINDEKENS tot instelling van jeugdadvocaten voor minderjarigen, 22 december 1999, *Parl. St.* Senaat 1999-2000, nr. 2-256/1.

<sup>12</sup> A. DE TERWAGNE: o.c.; p.2

And a more articulated point of view which also takes into consideration those minors who do not have power of discernment and judgment can be found in the NACC Recommendations for Representation of Children in Abuse and Neglect Cases<sup>13</sup> in which the “Child’s Attorney ABA/NACC-model” is elaborated because in marginal cases the strict model of the “avocat défenseur” or ‘defending advocate/attorney’ does not allow to intervene.

VI/2- all other rights of the child such as **dignity, liberty and equal treatment** shall be respected:

15. This means that all stadia of legal action against and for children have to include tools in order to guarantee these principles. While lawyers are able to inform assist and defend minors, for 200 years they did not intervene for minors in most European countries.

Since 200 years the provisions of Napoleons “Civil Code” denied access of minors to the civil court, allegedly because of incapacity to conduct proceedings of the minor. This argument is challenged today both by legal doctrine and administration of justice.<sup>14</sup>

The classical possibility to prosecute minors under 16 personally and under criminal law provided they had reached the “age of reason” was still provided in the Criminal Codes of 1810<sup>15</sup>, but was cancelled by the Child Protection Act of 15 April 1912, after the Criminal Code of 1867 already included a first element of protection for minors and several corrections had been made to the prosecution and detention systems for minors<sup>16</sup>.

16. After 1912 followed an evolution via all sorts of discussions between more or less criminally-oriented policymakers towards the still actual Child Protection Act of 8 April 1965.<sup>17</sup>

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<sup>13</sup> D. KATNER , Ph. McCARTHY, Jr., M. ROLLIN , M. VENTRELL, NACC Recommendations for Representation of Children in Abuse and Neglect Cases, document adopted by a unanimous vote of the NACC Board of Directors on April 28, 2001, 14: “*This child’s attorney model places the attorney in the role of traditional attorney and addresses the needs of the young child through the application of best interest evaluation in limited situations.*”

<sup>14</sup> D.REYNAERT Van een rechtspositioneel vertoog naar een relationeel vertoog over bekwaamheid; TJK,2007/1, p.9, and also in the issue Arbitragehof 27/2006 2-3-06 including explanatory note and Hof Gent 20-6-06 including explanatory note.

<sup>15</sup> J. SMETS, *Jeugdbeschermingsrecht*, 6, nr. 7-25.

<sup>16</sup> J. CHRISTIAENS, *o.c.*, 21. This is how there was a different regime for minors under 18 in case of vagrancy. A whole range of initiatives afterwards materialised to allow the creation of “a protective system for children”. J. Christiaens in this respect mentions as main basic factors: the rise of statistics and development of criminal statistics , social research, the Criminal Code and the prosecution policy in the first half of the 19th century as well as prison reforms from 1830.

<sup>17</sup>Minors are no longer governed by the Criminal Code. However, in the newly designed protection procedure the personal authority to act and entitlement to bring action of the minor, as it existed in the earlier criminal procedure, is maintained for the “hearings” and for the sessions in camera. The minor was therefore indeed considered as a party in matters involving facts described as a crime and problematic educational situations (as far as the latter are concerned in so far measures are demanded against him), but there was no question of effective defence since the actual main point of the procedures was not the eventual court hearing but the sessions in camera which preceded the actual court hearing (sometimes one, two years or longer) where no defence by a counsel was allowed.

Exceptionally the juvenile court judges requested the then BCV (today’s Legal Aid Agency) were asked to appoint a youth lawyer, although the law itself did not provide it (some 35 times in Antwerp in 1984 according to the figures of the Legal Aid Agency).



Lawyers became compulsory and were provided *ex officio* from 1965 for legal assistance to minors during proceedings but only during the “judicial proceedings” and not during the cabinet meetings. Nevertheless important decisions were taken in the cabinet during which appeals, revisions etc. were possible. This was the situation until early 1980.

17. Belgian juvenile legislation was adjusted after that<sup>18</sup>, and provided compulsory legal aid by lawyers in the cabinets (in camera) immediately after arrest so that problems arose in those districts where no permanent legal aid provided by lawyers was available. Under those conditions the most important decision (i.e. the first provisional measure after arrest) had to be taken in the absence of a counsel, which was no longer legal after the change in law.

This problem was finally solved by organising a permanent legal aid system operated by lawyers in all districts.

18. The final challenge was the realisation of SALDUZ assistance by youth lawyers for all subjects, victims and witnesses in criminal pre trial procedures, even from the first contact with police;<sup>19</sup>

**IV/3- A comprehensive approach shall be adopted by all relevant authorities so as to take due account of all interests at stake, including psychological and physical well-being and legal, social and economic interests of the child;**

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<sup>18</sup> Art. 16 and 21 Wijzigingswet 2 February 1994, B.S. 17 September 1994. Now an arrested minor (in most cases involving facts described as a crime ) also in case of provisional measures must be given immediate assistance by a lawyer if one wishes to comply simultaneously with Article 52ter (Legal Aid Act, WJB) and Article 12 of the Constitution (notification of a provisional measure within 24 hours after imprisonment) . All other minors under 18 who are a party involved in proceedings and who are not necessarily arrested (e.g.) those appearing as a result of a problematic educational situation) must be supplied a counsel who will be appointed within two working days if they have not appointed one themselves (Article 54bis §1 Legal Aid Act).

<sup>19</sup> The SALDUZ doctrine of the ECHR was realized in Belgium in the law of 13-8-2011, as one of the last counties in Europe, but in violation of art. 10,11,12,14 of the Constitution, art. 5,6 of the European Human Rights Treaty, 14 of the BUPO Treaty and 40 of the International Children Rights Treaty;

The Belgian Constitutional Court declared on 14-2-2013 parts of Belgian SALDUZ-law illegal and in violation of the SALDUZ fair trial rules, on request of the 2 Belgian Barr Associations: OVB and OBFG, and gave the government a delay for legislative adjustment in these matters;

*Psychological and physical well-being:*

19. The work of youth lawyers is organised to present and know the point of view of a child, as soon as possible. The appointment of a lawyer has to take place immediately at the moment of the first contact with justice. To guarantee a very personal and comprehensive approach, a follow-up of the file and continuity of the legal aid is offered to the minor, by one and the same counsel for the first and all eventual later problems.

Appointment of the same interpreter could possibly confirm this continuity and trust of the minor.

*Legal interest of children:*

20. Since 200 years the provisions of Napoleons "Civil Code" denied access of minors to the civil court, allegedly because of incapacity to conduct proceedings of the minor. This argument is challenged today both by legal doctrine and administration of justice.<sup>20</sup>

Belgian children represented by their youth lawyer, from 0 till 18 (sometimes 21) years old, as made possible in youth law, take individual positions in the procedures starting from police hearing over pre-trial stage, to trial. This is the rule in protection cases as well in crime related cases, and as well for suspects, victims as for witnesses.

Interpreters should be aware of this child-trial position that leads often to opposition against the parents.

*Social interest of children:*

21. All actions by youth lawyers should take place, fully independent from other intervening third parties and parents, in compliance with the professional secret rules and rules of ethics for lawyers and as well of intervening interpreters.

The social reality is that minors are individual persons with growing personal rights, contacts and proper interests. In the legal and medical field minors from 12 and 16 years old are able, in Belgium and in some other member states, to act as an independent individual, and if needed even without their parents.

Under 12 years old an "ad hoc tutor" can be appointed if parents do not act, or act against the interest of their children.

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<sup>20</sup>D.REYNAERT Van een rechtspositioneel vertoog naar een relationeel vertoog over bekwaamheid; TJK,2007/1, p.9, and also in the issue Arbitragehof 27/2006 2-3-06 including explanatory note and Hof Gent 20-6-06 including explanatory note.

Interpreters assisting minors and lawyers have to be aware of this social evolution and the sometimes unexpected consequences, in the area of rules of professional secrecy.

These rules bind lawyers and interpreters of the minor not only towards police, prosecutors, and judges but at the same time towards parents, family, social workers and all other persons surrounding the minor.

#### *Economic interest of children:*

22. The non-existent financial possibilities of a child are no problem as *Ex officio* assistance by lawyers appointed and controlled by the Bar are (in Belgium and some other member states) free of charge for the persons and minors seeking assistance. These lawyers are remunerated by the government. (In Belgium we still have a minimal compensation for *pro deo* work, compared with other European countries)

Lawyers (and why not interpreters) are not allowed even to accept payments of parents and third persons, to avoid interventions by and information to these persons.

That not only lawyers but as well interpreters services have to be free of costs is mentioned in the Interpreters and Translator Directive art.4, and in the Victim Directive art. 13, as an obligation for member states.

Legal aid youth lawyers and interpreters make minors more immune for the reality that they are without financial means. They will feel free if they have need to stand for their own *views and opinions, without losing dignity, liberty and respect for equal treatment.*

#### **V. Actions in the local Bar and the first initiatives for training youth lawyers:**

23. The need for training became tangible, from the first initiatives of volunteers youth lawyers in 1985. They acted “*pro bono*”, as a legal aid law and financial compensation for lawyers did not exist at the time.

From the year 2000, in the trainee period (BUBA – Bar exam) of candidate lawyers, an additional and optional theoretical training of 2 hours was provided on juvenile law, for trainees that chose to work in this area. Even today Belgian university law programs, do not include as an obligation a minimum Youth law program.

This means that it was and still is possible in Belgium that jurists, after University and even after the trainee period and Bar-exam, can continue their work as a lawyer or a prosecutor or judge without knowledge of youth law, youth procedures, psychology and communicating skills with minors.

24. Local Bars were facing the same training and organisation problems, at different times, though.

As soon as it became a legal obligation to call upon additionally trained legal aid volunteers (as moreover is made compulsory in the recent legal aid legislation in the Judicial Code)<sup>21</sup>, it was decided from January 2000 on to entrust the *ex officio* legal aid to minors exclusively to a the group of youth lawyers.

These are both trainee lawyers and Bar members who have specialised in the subject.

27. In Antwerp the number of juvenile cases called for 1571 cases *in camera* and 1414 at court hearings in the

course of 2003-2004. That year there were 5 appointments for Hergo and 122 for restorative mediation<sup>22</sup>. The members of the juvenile lawyers on call were active with 65 volunteers (Bar members and trainees). Today the youth lawyers in Antwerp are with 94 specialised volunteers, and besides the more than 3000 cases in a year they intervene since January 2012 night and day and in the weekends, to provide SALDUZ assistance and advise in ca. 10 police hearings every 24 hours.

Because of this Salduz duty contacts between youth lawyers and interpreters are increasing, not only for the minors themselves (they learn rather easy Dutch at school) but mostly for the contacts with parents.

This situation of youth lawyer and interpreter is difficult because some parents, who did not receive answer on their questions from the personal pro deo youth lawyer of their child, try to get information from the interpreter.

28. In the mean time all 14 Flemish Bar Associations have taken the initiative of legal aid services on call exclusively working with volunteers youth lawyers, after compulsory additional training, and if possible ranging from the first contact with legal problems until the end of the measure.

In Antwerp the youth section organises minimum 5 trainings of 2 hours, every year.

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<sup>21</sup> Within the framework of legal aid Art. 508/7 of the Judicial Code obliges the Bar Association to (par. 2) organise “legal aid on call” (such as permanent services on duty) and to draw up lists with lawyers who “wish” to perform services (par. 3 – voluntary service is therefore provided) stating “preferential subject matters” (par.4) which the lawyers indicate and “prove”, or for which they commit themselves to follow a training course to be organised by the Bar Association or the “authorities”.

<sup>22</sup> BJB-Antwerp: Annual Report of the Legal Aid Agency 2003-04. The enormous increase in new pro bono cases results in an increase in the number of cases in which secondary assistance is offered has increased to over 16,703 cases in 2003-2004, only for Antwerp. The number of cases closed nationally amounted to 89.661 for Belgium in 2002-2003), and 434 Bar members and 250 trainees participated in the legal aid, on the whole almost 50% of all Bar members.

In 2012 a first lecture about legal interpreting and translating for minor suspects victims and witnesses was presented for the group, focussing on the lawyers responsibility in this matter, and on how to work with interpreters and translators.<sup>23</sup>

In addition in 2012 in Antwerp in the local Bar, a 2 day program with training for SALDUZ-Police interventions by youth lawyers was initiated with Gent University, that focussed as well on legal as on communication items, and worked on the basis of role plays.<sup>24</sup>

## VI. Initiatives within the OVB (Association of Flemish Bar Associations)

29. After the very first changes in the Antwerp and Brussels Bars in 1985, there was recently an initiative of the OVB (the Association of Flemish Bars) to provide for youth lawyers in cooperation with university, a program of 80 hours courses in as well legal as paralegal disciplines. In 2005 this training was materialised.<sup>25</sup>

Besides the theory, 1 day practical communication training is included with e.g. role plays under professional guidance. For the trainer Prof Dr. Peter Adriaensen and his team exists even the possibility to refuse training to and qualification as “youth lawyer”, when the candidate lawyer gives no guarantees on the communication level, for this kind of work with minors.

Since the foundation of the OVB (Association of Flemish Bar Associations) it was first in the BJB (legal aid) Commission and recently in the Youth Lawyer’s Commission that the realisation of an effective legal aid system for minors was undertaken.

30. In this respect the General meeting of the OVB has approved the following recommendation on 7 December 2005:

The text of the 4 action points from the recommendation of the OVB reads as follows:

1. *The Supervisory Council, upon having obtained the advice of the Legal Aid Office and of the persons in charge of the legal aid service on call, annually draws up a list of lawyers, that is necessary to represent all appointments or legal aid assignments within the framework of legal aid for minors.*

*It also determines, depending on its supervisory action on the quality of the services provided to minors by the lawyers, the minimum number of lawyers needed to meet these appointments.*

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<sup>23</sup> The training was presented by the Antwerp advocate Yolanda VANDEN BOSCH, specialized in legal interpreting and translating issues, associated with and teaching on Lessius/ KU Leuven: “working with legal interpreters and translators in the pre-trial stage, legal and practical items from the lawyers point of view”. In 2011 Yolanda VANDEN BOSCH presented a lecture to the members of the Antwerp Bar and criminal lawyers: “working with legal interpreters”.

<sup>24</sup> Under supervision and leading by Prof Lotte SMETS, taking part in the round table for psychology this afternoon.

<sup>25</sup> Complete program in annex.

2. *The list includes the lawyers who have followed the training for youth lawyers accredited by the Association of Flemish Bars and possibly those lawyers that appear on the list of Article 508/7 fourth paragraph of the Judicial Code and who have committed themselves to following a training..*

3. *Every member of the Bar can submit his candidature accompanied by a motivated request.*

4. *The Supervisory Council takes a motivated decision in case of refusal to register a candidate on the list.*

*(Approved at the General Meeting of the Association of Flemish Bar Associations of 7 December 2005).*

31. These elements could be useful to reach a similar regulation for youth interpreters, within a general register of interpreters and translators. The same elements can be used:

1. An annual list is to drawn up, of sworn interpreters necessary to be assigned for minors, a minimum number of interpreters is needed, and supervision of quality.
2. Only after training, accreditation for youth-interpreting is to be granted.
3. Every interpreter can submit his candidature.
4. Refusal to register needs a motivated decision.

32. To give a concrete idea of the multidisciplinary character of the OVB 80 hours training and the communication focussing principles and aims, the content and elements of this youth lawyers course are presented hereafter as annex to this presentation.

Elements of this course could be useful to start a training for youth interpreters, or could be organised for both interpreters and lawyers together. The role plays could work with the interpreters following courses, together with the candidate youth lawyers.

## **VI. Final Considerations :**

33. Legal practitioners and interpreters and authorities themselves have to find out how legal assistance including interpreting services for foreign minors can be organised in Europe.

The main concern has to be the “**best interest of children**” .

We have to think about:

- Quality training through theoretical presentations about children in criminal procedures, organised at the same moment and together with judges, prosecutors, lawyers, social assistants and interpreters.

- Quality training through practical introductions and role plays, in the pre-trial settings, in cooperation with lawyers, judges (policeman, prosecutor, social worker...), minors (ev. actor) suspect/victims or witnesses , and interpreters.

Luxemburg, 3 october 2015

**Eric Van der Mussele**

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## **ANNEX: Best practices material:**

OVB BIJZONDERE OPLEIDING JEUGDRECHT 2013 - 2014 voor 100 Kandidaten jeugdadvocaten.  
**OVB special training: youth law 2013-14. for 100 candidates Youth lawyers**

### **I. THEORETICAL SESSIONS:**

#### **DAG 1**

Het recht van de kinderrechten

***The Right of the children's rights.***

(De heer Bruno VANOBBERGEN, Kinderrechtencommissaris)

(Prof. dr. Wouter VANDENHOLE, Faculteit Rechten Universiteit Antwerpen)

#### **DAG 2**

“Moeilijke jongeren” of “jongeren die het moeilijk hebben”? Een ontwikkelingspsycho(patho)logische situering.

***Difficult children, or children with difficulties?***

(Prof. dr. Patricia BIJTTEBIER, Faculteit Psychologie en Pedagogische Wetenschappen KU Leuven) pagina | 2

#### **DAG 3**

Problematiek van het ouderlijk gezag, het verblijf en de financiële regeling: vanuit juridisch standpunt

***Problems of parental authority, custody and alimony: from a jurist point of view.***

(Mr. Steven BROUWERS, balie Antwerpen)

#### **DAG 4**

1 Problematiek van het ouderlijk gezag, het verblijf en de financiële regeling: psychologische en pedagogische benadering

***Problems of parental authority, custody and alimony: psychological and pedagogical approach***

(Dr. Daniëlle Van de Merwe, ZNA Universitaire Kinder- en Jeugdpsychiatrie)

(Dr. Joke Wellens, ZNA Universitaire Kinder- en Jeugdpsychiatrie)

2 Jeugd in context: jeugddelinquentie vanuit psychologisch en sociologisch perspectief

***Youth in context: juvenile delinquency in psychological and social perspective***

(Prof. dr. Johan DEKLERCK, Faculteit Rechtsgeleerdheid KU Leuven)

#### **DAG 5**

1 Jeugdsubculturen

***Youth sub cultures***

(De heer Peter VAN MULLEM, Opleiding Sociaal Werk Arteveldehogeschool Gent)

2 Deskundigenonderzoek en rapportage

***Forensic experts and reports***

(Prof. em. Hans VERTOMMEN, Faculteit Psychologie en Pedagogische Wetenschappen KU Leuven)

- voordracht zal 2 uur duren pagina | 3

#### **DAG 6**

Personen- en familierecht: de voogdij en de erkenning, de adoptie en adoptiegeschiktheid + problematiek, pleegouders, voogdij ad hoc

***Person and family law: custody, adoption, foster parents and children, etc...***

(Mr. Koen VAN PUT, balie Antwerpen)

2 Burgerlijke procedure voor de jeugdrechtbank

***Civil procedures in Youth Court***

(Prof. dr. Patrick SENAËVE, buitengewoon hoogleraar Faculteit Rechtsgeleerdheid KU Leuven, Kamervoorzitter in het Hof van Beroep te Brussel)

#### **DAG 7**

Jeugdrecht, deel 1: jeugdbijstandsrecht/jeugdhulprecht? (*welke benaming?*)

***Youth law, part 1: Crime related youth protection***

(Mr. Geert DECOCK, balie Gent)

#### **DAG 8**

Jeugdrecht, deel 2: jeugdbeschermingsrecht

***Youth law – part 2: child and juvenile protection***

(Prof. dr. Johan PUT, Faculteit Rechtsgeleerdheid KU Leuven)

(De heer Christian DENOYELLE, jeugdrechter Antwerpen)

#### **DAG 9**

1 Afhandeling van schade

##### **Settlement of damages**

(vervanger van prof. dr. Britt WEYTS, Faculteit Rechten Universiteit Antwerpen)

2 Herstelrechtelijke en constructieve afhandeling

##### **Rehabilitation and constructive settlements**

(Mevrouw Lieve BALCAEN, Steunpunt Jeugdhulp)

#### **DAG 10**

1 De jeugdadvocatuur: stand van zaken

##### **Youth lawyers: actual problems. (including language court rules and interpreting and translation problems)**

(Mr. Eric VAN DER MUSSELE, balie Antwerpen)

2 Beroepsuitoefening en deontologie

##### **Youth lawyers : Professional duty and deontology**

(Mr. Eric VAN DER MUSSELE balie Antwerpen en

Stafhouder Edgar BOYDENS, balie Brussel-NL, bestuurder OVB)

#### **DAG 11**

1 Opvoedingsmodellen in de jeugdzorg

##### **Education models in the youth care**

(Mevrouw Sabine BOURGEOIS, directeur Oranjehuis Heule)

- voordracht zal 1,5 uur duren

2 Drugsproblematiek

##### **Drugs problems**

(Prof. dr. Tom DECORTE, Faculteit Rechtsgeleerdheid Universiteit Gent) /

Gerechtigd Commissaris Eric BROECKX)

- voordracht van Tom DECORTE zal 2 uur duren

- voordracht van Eric BROECKX zal 1 uur duren

#### **DAG 12**

Communicatie met kinderen en jongeren (theorie)

##### **Communication with children and juveniles.**

(Prof. dr. Peter ADRIAENSSENS, Afdeling Kinderpsychiatrie KU Leuven)

#### **DAG 13**

Omgaan met allochtone jongeren

##### **Working with non autochton juveniles**

(Mevrouw Ann HUYBRECHS, intercultureel (conflict)bemiddelaar binnen BJB en docent interculturele hulpverlening en groepswerk)

#### **DAG 14**

**Film 'JAGTEN'-'Cel Intrafamiliaal Geweld'**

## **2. PRACTICAL SESSIONS:**

#### **DAG 15**

Praktische oefeningen: communicatie met kinderen

##### **Practical exercises: communication with children**

(Prof. dr. Peter ADRIAENSSENS, KU Leuven / Mevrouw Liesbet SMEYERS, Vertrouwenscentrum Kindermishandeling Vlaams-Brabant)

*Practical exercises in groups of max. 10 persons, from 9u30 till 16u30*

#### **DAG 16, 17 en 18**

**local organization of the judicial district and youth problems:**

*-Lecture and information by a local Youth judge, prosecutor and member of the social service-Visit to a closed institution for minors -Visit to a local observation and psychological/social institution for minors.*

## **3. REPORTS about youth cases:**

**Candidate youth lawyers report about 5 youth cases they handled, from consultation till judgment.**

**Or candidates report about 20 hours observation in youth court or youth mediation sessions.**