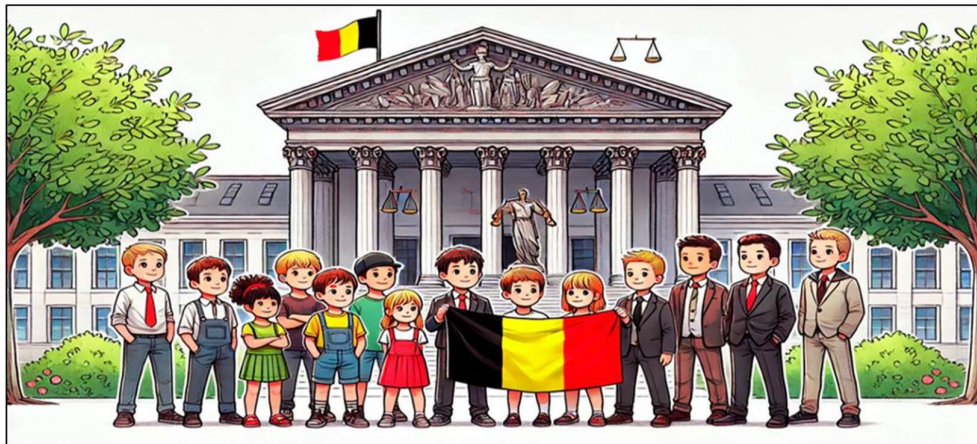




EVALUATION REPORT OF THE PROJECT 'CHILD-FRIENDLY JUSTICE' IN BELGIUM JANUARY 2025

CONCLUSIONS AND RECOMMENDATIONS¹



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¹ A Dutch-language version is available. The recommendations contained in this document reflect the authors' views and are not necessarily shared by the CSJ.

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1. CONTEXT

The High Council of Justice (CSJ) has committed itself as the Belgian contact point for the Council of Europe and European Union's Child-Friendly Justice project.

In this way, the CSJ wishes to contribute to child-friendly justice.

With the assistance of two experts appointed by the Council of Europe², an assessment tool was used to evaluate the extent to which the Council of Europe Guidelines on Child-Friendly Justice have been implemented in Belgium and contribute to child-friendly justice.

This evaluation took place from September 2024 to January 2025. The Belgian report was submitted on 15 January 2025.

The evaluation team emphasised a participatory and qualitative approach, in which it was able to rely on the support and involvement of stakeholders from the various sectors in which the justice system interacts with children. To this end, several focus groups were organised in the fields of family law, juvenile law, asylum and immigration law, and professional training. Interviews were also conducted with certain stakeholders.

You will find below the conclusions and recommendations arising from this evaluation. The full report is currently available only in French.

The intention is now to move on to the next phase, which will focus on raising awareness of children's rights and training professionals who work with children.

² Luisa Maria Aguilar, PhD in Education and Psychology, and Serge Leonard, Lawyer, were appointed as experts by the Council of Europe. Lucia Dreser, President of the High Council of Justice and a family and youth judge, and Myriam de Hemptinne, a youth and family judge at the Court of Appeal and a network judge for international judicial cooperation, were the Belgian coordinators of this project.

2. CONCLUSIONS

The overall assessments of the vast majority of legal and judicial actors, as well as the stakeholders involved in this evaluation, recognise the tangible contribution made by the CFJ Project to the process of consolidating 'child-friendly justice' in Belgium. The Project offered actors in the justice sector the opportunity to strengthen a dynamic of exchange between the various communities and regions of the country engaged in the implementation of children's rights.

- The evaluation of the CFJ Project has generated strong motivation among stakeholders. **The level and quality of their participation** in the various consultation forums proved to be very positive and relevant. Participants shared a significant amount of documentation and information on the topics under consideration, including studies, research and reports on specific themes and/or issues, which enabled the team to work with up-to-date and diverse information and data. Furthermore, the joint participation of representatives from the country's three linguistic communities facilitated exchanges and cross-analyses of the legal and institutional framework on a range of topics.
- **Several universities are involved in research focused on child-friendly justice**, which has helped to create an inter-university and cross-sectoral dynamic of knowledge-sharing among students, lecturers and faculties.
- The **national legislative and regulatory framework**, including **child protection policies**, exists and is robust. However, in practice, obstacles and barriers to the implementation of human rights are observed, as well as the persistence of situations where children remain vulnerable in terms of the respect for their rights. This demonstrates that, although the legal framework exists and is necessary, it is not sufficient to ensure the effective realisation of children's rights.
- **Positive factors coexist with conflicting perceptions**, linked to various problems encountered today in children's justice: vagueness versus distinctions, consistency versus inconsistencies and contradictions, desires for change versus maintaining the status quo, etc., which could, unintentionally, indicate a still partial and reductionist view of justice tailored to children. This confirms the need to better integrate, both conceptually and in professional practice, the principles of the Convention, guaranteeing children their right to participation. The 'change in the status of the child' established by the Convention also calls for a shift in the relational paradigm between adults and children, hence the need to ensure the training of justice sector professionals who work directly with children.

- **Diverse perspectives:** There is a diversity of interpretations within the juvenile justice system, indicating the need for a more coherent approach and the sharing of interdisciplinary knowledge, in accordance with the principles of the Convention.

3. GENERAL RECOMMENDATIONS

The recommendations listed below have been identified based on the observations and suggestions of stakeholders. They aim to optimise the quality and relevance of Belgium's commitment to child-friendly justice by proposing certain priority lines of action:

- **Listen to and take into account the experiences of children and young people regarding their participation:** incorporate children's experiences and ideas into the development of solutions and policies, ensuring appropriate and accessible support.
- **Consider establishing a mechanism for interaction between the justice sector stakeholders** who participated in this evaluation, in order to strengthen inter-institutional and cross-sectoral collaboration through knowledge-sharing on a broader scale (interdisciplinarity). It could also promote – in addition to existing exchanges of information and initiatives – the development and consolidation of synergies in collectively planned actions across different levels of jurisdiction, and encourage the sharing of results and information. Strengthening the National Commission for the Rights of the Child (CNDE) could play a key role in such an approach on a global scale.
- **Financial resources and means**
It is of the utmost importance to invest sufficient financial resources, through:
 - Ensuring sufficient financial resources for youth services and institutions to reduce waiting times so that children and their families receive the help they need in a timely manner.
 - Extending support to youth protection services and institutions so that every child can receive the help appropriate to their needs and so that parents can be supported in their parenting role and in meeting their needs for a dignified life³.

³ In particular, the practice in the French Community of placing children in hospital without medical need, and the practice of using a pretext offence to pave the way for secure placement in an IPPJ (French Community) or a community institution (gemeenschapsinstelling in Flanders), which would otherwise not be accessible within the youth support system.

- Investing in children's right to be heard, including through training, multidisciplinary approaches and a framework suited to engaging with children.
- Ensuring that there are sufficient places in centres for unaccompanied foreign minors⁴.
- Increasing the budget allocated to the Ombudsmen's services⁵ so that they have sufficient resources, including in terms of human resources, to carry out their duties.

4. RECOMMENDATIONS BY SET OF INDICATORS

These recommendations are organised in relation to the three blocks of indicators in the **Child-Friendly Justice (CFJ) Assessment Tool**:

4.1. KEY NORMATIVE ELEMENTS TO BE STRENGTHENED

4.1.1. Family law

- Ensure that children are informed, in an appropriate language, of the final decision in family cases concerning parental responsibility and its arrangements⁶.
- Consider a legislative framework that could grant minors the right to bring legal proceedings and to intervene as a party in family proceedings, in exceptional circumstances, subject to prior authorisation by the judge, where there is a conflict of interest between the child and their parents or in the event of parental inaction.
- Ensure that legislation guarantees adequate protection for children exposed to and/or victims of domestic violence, or related situations (such as high-conflict divorces). To this end, it is essential to:
 - Ensure that the assessment of situations of violence faced by children is based on the concepts of domestic violence as defined in the Istanbul Convention, which recognises that children are victims of

⁴ Access to housing must be guaranteed for all children. Minors in transit do not always have accommodation and some minors live on the streets. In accordance with the recommendations of the Committee on the Rights of the Child, this issue of the right to housing warrants review. (See the combined 5th and 6th periodic report (CRC/C/BEL/5-6) adopted on 1 February 2019)

⁵ General Delegate for Children's Rights, Kinderrechtencommissariaat and the Ombudsman for the German-speaking Community.

⁶ 'Trusted Person' project of the Family Court of East Flanders, Ghent Division. See Annex 5

physical, sexual and psychological violence, and that children's exposure to domestic violence within the family makes them victims in their own right.

- Guarantee that the necessary measures are taken to implement the Recommendation of the Committee of the Parties to the Istanbul Convention to the Belgian Government⁷ *“to take the necessary measures, whether of a legal nature or through additional training and guidelines, to ensure that, when determining custody and access rights, the competent authorities are required to examine all issues relating to violence against women and its harmful effects on children”*. This would involve, in particular, avoiding the use of the concept of ‘parental alienation syndrome’ (PAS)⁸ as a means of downplaying evidence (including undermining the child's testimony) and the consequences of domestic violence in proceedings concerning arrangements for parental responsibility and accommodation. This is without prejudice to the examination of all the causes that may be at the root of the breakdown in the parent-child relationship.
- Develop effective tools and multidisciplinary methods for proceedings before the family court, and ensure that resources are available to address issues related to high-conflict parental separations, including those characterised by domestic violence, in order to avoid a shift towards a purely protective approach.

4.1.2. Criminal law

- Ensure that a children's lawyer is automatically appointed for child victims of crime as part of the free legal aid scheme.

4.1.3. Youth law

General framework

- Explore ways to improve the exchange and sharing of information between extrajudicial and judicial youth support services, to ensure that the judge receives a greater

⁷ Recommendation of 15 December 2020 on the implementation by Belgium of the Council of Europe Convention on preventing and combating violence against women and domestic violence. See also the report by the Youth Support Observatory, December 2023, observatoire.enfance-jeunesse@cfwb.be.

⁸ Analysis of ‘SAP’ shows that it is an imprecise and contradictory concept: 1) which effectively ‘psychiatrises’ manifestations of family dysfunction (the use of the word ‘syndrome’ suggests that this socio-familial problem is a form of mental pathology); and 2) which gives rise to various prejudices, both about the children and their parents.

amount of information from multiple perspectives, particularly to avoid a child having to recount their story a second time.

- Breaking down sectoral silos and promoting the sharing of information whilst respecting shared professional confidentiality.

Child protection

- Systematise the right to legal assistance and the automatic appointment of a lawyer in out-of-court proceedings involving significant measures, such as placement outside the family home.
- In the French Community: review the decree of 18 January 2018, which allows the Director of Youth Welfare to lift a measure of principle (e.g. removal from the family home) imposed by the Youth Court without informing the court, obtaining the judge's consent or notifying the lawyers.

Juvenile delinquency

- In accordance with the recommendations of the Committee on the Rights of the Child, **remove any possibility of cases being transferred out of the jurisdiction of youth courts.**

4.1.4. Migration and asylum

- Provide legal assistance to children during their initial interviews, which entails not only the presence of a qualified and accredited interpreter, but also that of a lawyer from the outset of the procedure during the first interview at the Immigration Office.
- In accordance with the recommendations of the Committee on the Rights of the Child¹⁰, abolish bone tests as currently practised and take into account that age assessment must allow for the verification of the child's psychological development, bearing in mind the consequences that such a determination will have for their future life. It must therefore be recognised that (a) medical tests (wrist bone test, clavicle X-ray and dental examination) provide indications of biological age but cannot alone

⁹ In line with the Committee on the Rights of the Child's recommendation to Belgium to 'eliminate any possibility that a child may be tried by an adult court or detained with adults', expressing concern at the failure to take its previous observations into account. (United Nations Committee on the Rights of the Child, Concluding Observations of the Committee on the Rights of the Child: Belgium, CRC/C/15/add 178, 13 June 2022, paras. 31–32)

¹⁰ The Committee considered the combined fifth and sixth periodic reports of Belgium (CRC/C/BEL/5-6) at its 2358th and 2359th meetings (see CRC/C/SR.2358 and 2359), held on 24 and 25 January 2019, and adopted the present concluding observations at its 2370th meeting, held on 1 February 2019.

assess age, and (b) a multidisciplinary approach is essential, centred on a neuropsychological assessment carried out by professionals who are fluent in the child's language or who are assisted by a qualified interpreter.¹¹

4.2. ESSENTIAL INSTITUTIONS AND MECHANISMS

4.2.1. Develop mechanisms to promote information and awareness-raising on children's rights

- Improve the accessibility of legal texts and produce practical information on institutional mechanisms, in particular children's rights ombudsmen (General Delegate for Children's Rights, Kinderrechtencommissariaat and the Ombudsman of the German-speaking Community).
- Incorporate lessons on children's rights and information on the various existing procedures involving children into school curricula, so that children are aware of their rights.
- Raise awareness among the media regarding the promotion of information based on an anthropological approach to the child as a 'subject of law'.
- The right to information on the rights available to children before, during and after judicial and extrajudicial proceedings must encompass all sectors directly or indirectly linked to children (parents, schools, teacher training colleges, the voluntary sector, the Ministry of Justice and other federal and community administrations, etc.).
- Support the development and operation of services and bodies responsible for raising awareness and supporting parents in fully assuming their parental responsibilities during separations, prioritising the best interests of the children.

4.2.2. Ad hoc guardians for children

- Establish a standard procedure for appointing an ad hoc guardian in family, child protection and criminal proceedings. Ensure that the guardian is always a youth lawyer and that their services are legally remunerated from public funds.

¹¹ See Chapter 4, 4.2.3.

4.2.3. Institutions and ombudsmen for children's rights

- **Federal level:**
 - Strengthen the role of the National Commission for the Rights of the Child, particularly with regard to its coordinating function between all stakeholders and levels of jurisdiction in the implementation of children's rights.

- **French Community:**
 - Guarantee the independence of ombudsmen, notably by attaching the institution of the General Delegate for Children's Rights to the Parliament of the French Community and by drawing inspiration from the fundamental principles set out in General Comment No. 2 of the Committee on the Rights of the Child, the Venice Principles and the Paris Principles.¹²
 - Extend the remit of the General Delegate for Children's Rights to other areas, as is the case with the Kinderrechtencommissaris in the Flemish Community.

- **German-speaking Community:**
 - Establish an ombudsman service specifically for children's rights.

4.2.4. Approach and training programmes

- To address the issues and needs identified throughout the evaluation, as set out in particular in the previous chapter concerning the critical and qualitative analysis, **the training of legal professionals** should incorporate the following objectives:
 - To work with a shared anthropological understanding of the child that ensures consistency with the principles of the Convention on the Rights of the Child and which is carefully considered and shared by the various stakeholders without hindering progress.
 - To have a hypothesis regarding the child's psychological development and the stages of their development (see Chapter 4).

¹² General Comment No. 2 of the Committee on the Rights of the Child: The role of independent national human rights institutions in the protection and the promotion of rights of children, 13 – 31 January 2003:

https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsiQql8gX5Zxh0cQgSR_zx6ZcNR3YdFwaRoLFkDFvNRIVot8QcY%2Bji7XudijXpmxWA2KY8MrGRrZGh6T6N%2BEdiYQtu3hSvCRcTF2EUM6CHRC%2_B

Principles on the Protection and Promotion of the Ombudsman, November 2019, Venice Principles, November 2019, printed by the Council of Europe. https://www.venice.coe.int/files/Publications/Venice_Principles_fra.pdf

The Paris Principles concerning the status and functioning of national institutions for the protection and promotion of human rights: https://www.aomf-ombudsmans-francophonie.org/wp-content/uploads/2017/10/Principes-de-Paris_14169958400.pdf

- Regularly offer multidisciplinary training sessions where professionals from different backgrounds and sectors can meet and exchange ideas. Organising such meetings can help improve mutual understanding, allowing different perspectives on the concept of the child to be expressed, whilst discussing the primacy of the child's best interests. This can help improve mutual understanding and the criteria for decision-making.
- With regard to the **training programmes to be prioritised in relation to the profiles of the beneficiary stakeholders**, participants highlighted the need to:
 - Evaluate training programmes for judges and legal professionals in terms of their actual contribution to improving their professional practice.
 - In addition to the compulsory initial training for family and youth magistrates, provide at least one compulsory annual high-quality continuing professional development course, including the sharing of experiences and practices.
 - Promote standardised initial training for youth lawyers, as well as continuing professional development across all bar associations.
 - Train mediators to incorporate children's participation in matters directly affecting them into their practice and to implement General Comment No. 12 of the Committee on the Rights of the Child. Furthermore, it is important that mediators remind parents of the consequences the child may face if they are not involved.
 - Train mediators to identify the signs of domestic violence.
 - Establish police units specialising in dealing with young people and children, and require specific training in police intervention when dealing with children and in interviewing children.
 - Invest in multidisciplinary training for all professionals in contact with children (judges, lawyers, mediators, the police and other professionals such as psychologists and interpreters, etc.) in order to broaden their knowledge:
 - As regards their understanding of children and young people, and to encourage them to critically question their own perceptions of children, drawing on studies in developmental psychology and children's rights
 - On children's rights and international obligations in this area.
 - On procedural practices, such as those found in mediation chambers and those that aim for parental consensus and adopt participatory models, and to include exchanges of experiences
 - And in order to exchange knowledge and experiences, in the best interests of children and for a better understanding of everyone's role.

4.2.5. International cooperation

- To ensure that children are guaranteed a swift and effective procedure that does not get lost in the technicalities and intricacies of private international law, or in the complexity and variety of sovereign national systems, to strengthen the bodies for international cooperation that assist family and youth judges and youth protection institutions dealing with proceedings involving cross-border elements, and to this end:
 - Provide an appropriate legal framework for network judges, in order to ensure the sustainability of the role whilst providing the necessary capacity in view of the workload,
 - Strengthen the capacity of the central authority,
 - Support, in particular, the international social services.

4.3. FUNDAMENTAL APPROACHES AND TIMEFRAMES FOR PROCEEDINGS

4.3.1. General framework

Regarding **the child's entry into the justice system**:

- Ensure the presence of a lawyer (or a trusted person) at all stages of the proceedings, from the moment the child enters the justice system.
- Ensure that hearing practices take into account the child's age and maturity and that these factors are also considered in decision-making, given that the child is a developing individual.
- Improve conditions in courtrooms, premises and reception areas within the courts to foster a climate of trust conducive to interaction and better communication between the judge and the child.

4.3.2. Family law

- Generally provide for the possibility for children in family matters to be assisted by a trusted person before, during and after legal proceedings, and ensure that the trusted person offers guarantees of independence, impartiality and respect for professional secrecy, and is trained in children's rights¹³.

¹³ Consideration should be given to the distinction between the role of the trusted person as currently provided for in family law at the time of the hearing, which does not guarantee neutrality in their presence alongside the child,

- Improving children's participation in out-of-court procedures such as mediation.
- Identify the obstacles to children's participation that mediators face in their out-of-court practice (lack of training in interviewing children, ethical issues regarding lawyer-mediators, inclusion of a trusted person).
- Guarantee to all children, without discrimination, the right to be heard by a family court judge who will ensure a genuine meeting and that the child is listened to as a subject of law, in a manner appropriate to their age, the duration of the interview and the setting. With this anthropological perspective and this objective of non-discrimination, it is necessary to harmonise practices across the different districts.

4.3.3. Youth law

Child protection

- Ensure that no pressure is exerted during the voluntary (extrajudicial) youth support process, whilst respecting the right of children and their families to refuse the proposed measures. It is essential that children and their families are fully informed of the transition to judicial proceedings and the consequences that may arise.
- Ensure that children are sufficiently informed of the content of social services' opinions and reports, whether in the context of voluntary (extrajudicial) assistance or in compulsory (judicial) assistance proceedings. Always use language appropriate for children.
- In the French Community, improve the arrangements for minors, their parents and/or relatives regarding their right of access to the file concerning them in extrajudicial assistance.
- In the Flemish Community, ensure that private establishments in Flanders offering secure accommodation (veilig verblijf) as part of measures restricting liberty operate in a way that is individualised and tailored to the young person, rather than through general rules imposed on all residents.

the role of a professional trusted person who works with the child prior to the hearing, to inform them of their rights and the course of the proceedings, to help them clarify whether or not they wish to be heard by the judge, and to convey the child's views to the judge, to keep the child informed throughout the proceedings and of the final outcome, and of how the judge took their views into account, as currently provided for in the pilot project of the Family Court of East Flanders (Ghent division), details of which are set out in the annex and in Chapter 3.

Juvenile delinquency

- Always ensure the presence of a youth lawyer when the prosecutor is considering diversionary measures.

4.3.4. Migration and asylum

- **With particular regard to administrative procedures (asylum and migration):**
 - Ensure that the unaccompanied minor is always assisted by a qualified social interpreter during all contacts and interviews with the lawyer, the guardian, and officials from the Immigration Office, the General Commission for Refugees and Stateless Persons, and the Council for Immigration Litigation.
- **Improve the support provided by the appointed guardian** for unaccompanied minors:
 - To prepare for the interview at the General Commission for Refugees and Stateless Persons.
 - During travel related to the procedure.
 - With regard to communication: the child should receive regular updates from the guardian and see them more often.
 - By strengthening the possibility of obtaining a different guardian if the current one fails to maintain regular contact with the young person, or when trust has been lost.
 - By improving the efficiency of the practice of appointing guardians for unaccompanied foreign minors, in accordance with the recommendations of the Committee on the Rights of the Child¹⁴.
- **Improving the support provided by a lawyer** during interviews, in particular by:
 - Ensuring a lawyer is present from the very first interview at the Immigration Office.
 - Ensuring that the minor is informed of any changes of lawyer and the reasons for such changes.
 - Guaranteeing that the minor receives comprehensive information on the various procedures upon arrival and is kept regularly informed of decisions taken.
- Ensure **better support for young people** approaching the age of 18; review 'aging out' practices so that young people turning 18 do not immediately lose their lawyer and/or guardian, their accommodation and their protection.

¹⁴ The Committee considered the combined fifth and sixth periodic reports of Belgium (CRC/C/BEL/5-6) at its 2358th and 2359th meetings (see CRC/C/SR.2358 and 2359), held on 24 and 25 January 2019, and adopted the present concluding observations at its 2370th meeting, held on 1 February 2019.

- **Duration of proceedings:** proceedings must be time-limited and benefit from better support from the guardian and the lawyer.
- **Improve the asylum procedure for children:** enhance the framework and environment of current courtrooms (in asylum matters), with a view to fostering a climate of trust and better communication between the judge and the child, as well as the quality of decision-making in the asylum appeal procedure, centred on the best interests of the child.¹⁵

¹⁵ The Belgian experience with the development of a new courtroom within the Council for Alien Law Litigation shows that co-creative design projects involving young people and judges can contribute to feasible solutions, even with a very limited budget, and can enable the implementation of a more child-friendly experience in the courtroom (experience to be implemented from November 2024).

