

Survival of the Protection Model? Competing Goals in Belgian Juvenile Justice

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INTRODUCTION

Belgium is a small (with a surface of 32.545 km²) but well-situated country in the northwest of Europe. It consists of over 10 million citizens (10,396,421 on 1 January 2004) of whom 6 million live in the Northern, Dutch-speaking part (Flanders), almost 3.4 million in the Southern, mostly French-speaking part and close to 1 million in the region of Brussels (bilingual). As in other European countries, families in Belgium are becoming smaller and smaller. The fertility rate is 1.56 children per woman. So Belgium is faced with an aging population, 15% of whom are older than 65. The portion of juveniles (0–19 years) has diminished from 24.6% in 1990 to 22.4% in 2003 and the prognosis is a further decrease to 20.2% in 2021 (VRIND, 2003). On 1 January 2004 Belgium consisted of approximately 875,000 juveniles aged 12–17,¹ almost half a million of them live in the Flemish region, more than 300,000 in the Walloon part and over 75,000 in the region of Brussels.²

Due to a federalization process (1970–1988) Belgium has been transformed into a Federal State consisting of three communities (French, Dutch, and German) (De Vroede and Gorus, 1997). This metamorphosis resulted in the reorganization of the competencies concerning juvenile delinquency. The judicial reaction to youth delinquency remained a federal matter, while the execution of the educational measures ordered by the youth court has become a community matter.

This means that each community has its own regulation concerning the execution of measures ordered by the youth court. The judicial response on criminal offences committed by minors however is still based upon the federal Youth Protection Act of 1965 and therefore remains equal for all communities (Eliaerts, 1999). Despite fierce criticism on the rehabilitative orientation of this Act and

¹We give the statistics for the 12- to 17-year-old youths since this is the most relevant age group with respect to the topic of juvenile delinquency. Juvenile jurisdiction is operative under the age of 12 as well, however the judicial interventions will be more regarding educational and familial problems than about youth crime. Exceptionally, juvenile jurisdiction can be prolonged after the juvenile's 18th birthday (up until 20).

²See <http://statbel.fgov.be>; <http://www.Belgium.be> (dd. 26/04/2005).

ongoing theoretical debate between adherents of different paradigms, the legal situation remains – aside from a few minor changes – unchanged until today.

In Belgium, juveniles under the age of 18 years have no *criminal responsibility* (with some exceptions as from the age of 16, see Section 5). There exists no lower age limit to the jurisdiction of juvenile law.

In this contribution we will first briefly go over some Belgian figures on juvenile delinquency. Statistics on this topic are however scarce and unreliable. The Section 2 elaborates on the Belgian prevention policy with regard to youth crime. The interventions on the level of the police and Public Prosecutor are discussed in paragraphs 3 and 4, with specific attention for diversion experiments and the fundamental legal safeguards of juveniles. Section 5 initiates the basic principles of sentencing in Belgian juvenile law. Juveniles are still tried according to the Act of 1965, but a new Bill has been submitted by the Minister of Justice Onkelinx and is being discussed in the Chamber of Representatives.³ Finally, a great deal of attention is being paid to the variety of sanctions that juvenile judges can impose during the preliminary and the trial phase (paragraph 6). In the past years academics and practitioners have been searching for alternatives for the traditional, residential treatment of juveniles and its protective, rehabilitative philosophy. We elaborate on the experiments with community service, educational training, victim-offender-mediation and Family Group Conferences and discuss their implications for the minor's legal rights. Notwithstanding these alternatives, a significant amount of juveniles still end up in juvenile institutions: we go in to some figures and to the juveniles' rights during detention. To close we also focus on the evaluation of judicial interventions, with regard to recidivism as well as regarding the experiences of the juveniles themselves.

1. GLOBAL OVERVIEW OF DELINQUENCY TRENDS

An accurate quantitative picture of the actual practice with regard to youth crime in Belgium appears difficult to obtain. The lack of reliable figures concerning the different aspects of juvenile justice is a major bottleneck.

1.1. Availability and Reliability of Belgian Figures on Juvenile Crime

The systematic gathering of data on crime and crime control has been a problem in Belgium for decades. This situation – despite increasing computerisation – is dramatic, especially regarding juvenile delinquency. Figures, if available, are scattered over several federal, regional and local agencies and hence neither reliable nor

³“Bill considering the modification of the youth protection act and the supervision of minors that have committed acts of delinquency.” November 29th 2004, Parliamentarian Document 51K1467, <http://www.dekamer.be> (dd. 28/04/2005).