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Hearing children in family proceedings: Belgium

1. General Obligation to hear children

- Children's right to express their view in all matters affecting them is guaranteed by the constitution (Art. 22bis(2)). This provision does not have direct effect.
- The Code of Civil Procedure (CCP) provides procedural safeguards in family matters (Art. 1004/1; Senaeve, 2014, p. 178). The views of the child must be given due weight in accordance with their age and maturity (Art. 1004/1(6)(2) CCP).
- Art. 12 CRC is directly applicable in Belgian law (Eeckhout & Desmet, 2005, p. 59), but does not always have direct effect (Vandenhole, 2014).

2. Minimum age

- Minors of 12 years or over must be informed of their right to be heard by the judge. Also, they must be informed that the judge is not obliged to follow these views in his/her decision (Art. 1004/2(3) CCP; Senaeve, 2014, pp. 179-180).
- Children under 12 are only heard in matters of parental authority, residence and personal relationships if this is requested by the child, the public ministry (Crown Procurator), the parents parties to the proceedings, or by decision of the court (Art. 1004/1(2) CCP). Such a request may only be dismissed on the grounds of a well-reasoned decision (CRIN, 2015). A request to hear children below 12 cannot be dismissed when asked by a minor or by the public prosecutor. Still, it is unlikely that children below 12 will be heard in Hague proceedings (Beaumont et al., 2016, p. 14; Autorité Central Belge, 2010, p. 21).
- Children may refuse to be heard (CRIN, 2015).

3. Who hears the child?

The hearing takes place wherever the judge deems appropriate, and minors are heard alone by the judge unless the judge decides that they should be assisted in their own interest (CRIN, 2015; Senaeve, 2014, p. 188; Country Profile, 2012). The hearing



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takes place in a separate room (Autorité Central Belge, 2010, p. 22). The judge can also indirectly hear children through a report prepared by an independent expert (Country profile, 2012).

4. Specific rules for hearing children in child abduction cases

- Objections to a return under Art. 13(2) of the Hague Convention are taken seriously in accordance with the age and maturity of the child, but are not the only element in deciding whether a child is effectively returned or not. Usually, when a child is 14 or 15, forced return is difficult when the child objects (Autorité Central Belge, 2010, p. 21).
- To order the return of an unlawfully abducted child from Belgium to another state, the procedure of Chapter XIIbis of the Belgian Civil Code must be followed. Only the family courts in Brussels, Liege, Mons, Ghent and Antwerp (or for cases in German language: Eupen) can decide about the applicability of the Conventions (Melkebeek, 2013).
- The possibility to appoint a guardian ad litem does not exist in Belgium (Country profile, 2012).

5. Cross-border element (i.e. hearing a child who is abroad in second-chance procedure Brussels IIbis)

It is difficult to access video conferencing facilities for abduction cases (Beaumont et al., 2016, p. 26; interview CA).

6. Other relevant matters

- The hearing of a minor does not confer on him/her the status of party to the proceedings (CRIN, 2015).
- The Concluding Observations of the UNCRC (2010, p. 7) highlight the Committee's concern about the inadequate implementation of the right of children to be heard in judicial and administrative proceedings. Implementation remains largely discretionary. The obligation for judges to hear children above 12 on residence and visitation rights in divorce is not effective in practice.

7. Legal sources on hearing the child

- Constitution Art. 22bis



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- Code of Civil Procedure Art. 1004

8. Sources in literature

- [Autorité Central Belge](#), 2010 + interview Feb 2016
- [Beaumont et al.](#), 2016
- [Ballesteros et al.](#), 2013, pp. 181-192
- [Concluding Observations UNCRC](#), 2010
- [CRIN](#), 2015
- [Hague Convention Country Profile](#) section 10.4 (update December 2012)
- [Melkebeek](#), 2013
- Senaeve, 2014
- Vandenhole, 2014
- Contact person for Belgium: Nele Desmet & Katrien Herbots