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Selection Mechanisms of the Decision-Making Process in the Juvenile Court

LLM Paper
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PREFACE

My protracted interest in the Juvenile Court brought me to this topic. I was always intrigued by the way a juvenile judge makes his decisions, but during my internship in MFC Wagenschot this interest increased enormously. I came into contact with juveniles with a VOS- and MOF-statute whereby the juvenile judge decided on their residence. At that moment, I did not understand how a juvenile judge is making his/her decision and why a certain decision is made. This LLM paper gave me the opportunity to gain a clear understanding of the decision-making process in the Juvenile Court and more specifically which selection mechanisms are applied in the viewpoint of juvenile lawyers.

I would like to thank a couple of people who helped me to realize my LLM paper. Firstly, and most importantly, I am grateful for the help, tips, suggestions and encouragements of my Promoter Professor Wim Hardyns. I also would like to show appreciation for Mr Ben Heylen for reading this LLM paper.

Furthermore I wish to acknowledge the effort of the eight participants and thank them therefore. Likewise, thanks to Florence Terryn for reviewing my LLM paper with enthusiasm and correcting it multilingual where necessary. Last but not least, a thank you for my parents, boyfriend and girlfriends for the unconditional support.

10 May 2016,

Inia Delanote
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A. INTRODUCTION

I PROBLEM

Within the past decade demands and imposed measures in the Juvenile Court have increased enormously, both related to adolescents with an alarming parenting situation (VOS-statute)¹ and to those who committed an offence² (MOF-statute)³.⁴ Juvenile judges have to make more and more decisions concerning these adolescents, whereas each adolescent has his own problems, own individual characteristics, own environment, etc.⁵ In order to make these decisions adequately, juvenile judges should have knowledge of the most recent relating policies at international, European and national level. However, these policies are strongly directional and, juvenile judges have the freedom to use their own demand policy.⁶ In practice, juvenile judges have preference for certain selection mechanisms⁷ and decisions whereas the distinction between VOS- and MOF-adolescents is vague.⁸ Furthermore it is not always possible for juvenile judges to impose their preferable measure because of the lack of available vacancies in certain institutions.⁹

This research elaborates the different factors that play a part in the decision-making process of juvenile judges. Through a comprehensive analysis of the relevant policies with a focus on the juvenile justice system in the Dutch speaking part of Belgium, this research tries to obtain insights in the selection mechanisms used by juvenile judges.

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¹ In Dutch: Verontrustende Opvoedingssituatie
² An offence is any behaviour (act or omission) that is punishable by law under the respective legal systems. International Juvenile Justice Observatory, 2 May 2016, available via: www.oijj.org (Hereafter: IJJO).
³ In Dutch: Misdaad Omschreven Feit
⁵ IJJO, supra footnote 2.
⁷ Selection mechanisms are defined as criteria the juvenile judge uses to make a decision concerning a particular adolescent (e.g. the personality of the adolescent, the type of committed crime, etc.). Infra 30-37
Because of the limited existing research concerning selection mechanisms for both juvenile delinquents\textsuperscript{10} and adolescents with an alarming environment, questionnaires with open-ended questions of lawyers employed in the Juvenile Court are used.

\textbf{II PURPOSE AND RESEARCH QUESTIONS}

The purpose of this research is to gain insight in the selection mechanisms used by juvenile judges in several Flemish Juvenile Courts. This research aims to conclude how a juvenile judge decides which measures should be taken in relation to VOS- and MOF-adolescents. It tries to make a distinction between the selection mechanisms used for adolescents with a VOS-statute and for those with a MOF-statute. Moreover, this research elaborates not only the theoretical guidelines for the decision-making process at the Juvenile Court, but also what in practice the juvenile judge uses. It wants to tackle any differences between the selection mechanisms discussed in the literature and those used by the juvenile judge. These aims are operationalized in two main questions and four subquestions:

Question 1: Which selection mechanisms are discussed in the literature?

1. Which selection mechanisms are more important?

2. Are there different selection mechanisms for juveniles with a VOS-statute vs. MOF-statute?

Question 2: Which selection mechanisms are used by juvenile judges?

1. Which selection mechanisms are more important?

2. Are there different selection mechanisms for juveniles with a VOS-statute vs. MOF-statute?

\textbf{III METHODOLOGY}

Because there is little knowledge about selection mechanisms at the highest level of the criminal justice system, an extensive exploration of the perception of juvenile lawyers employed in the Juvenile Court is designated. To acquire an extensive

\textsuperscript{10} Several definitions of a juvenile and juvenile offender exist. The most recent one, set out in a European recommendation (Recommendation CM/Rec (2008) 11) is a person below the age of 18 who is alleged to have or has committed an offence. T. HAMMARBERG, “Children and juvenile justice: proposals for improvements”, \textit{Commissioner for Human Rights, Issue Paper} 2009, 6.
database, qualitative methods are being used in current research. More specifically, due to the exploratory character of this research, the juvenile lawyers are queried via questionnaires with open-ended questions. To make sure several topics are discussed, a topic-list was drafted in advance. The participants were selected through a targeted sample aiming at a relevant number of participants of each Flemish Juvenile Court. Eventually eight female juvenile lawyers were willing to participate.

**IV STRUCTURE**

This research is divided into four chapters:

The first chapter focuses on the existing literature. It starts with an introduction to the different concepts used in this study. Thereafter the international, European and national policies are described. By elaborating the relevant UN rules, conventions, recommendations, charters and national laws the framework for the decision-making process of the juvenile judge is displayed. Subsequently the decision-making process of the Belgian Juvenile Court is discussed. Via a review of the objectives, procedure and possible decisions made by the juvenile judge, the question arises as to how a juvenile judge makes these decisions. Therefore the existing selection mechanisms in the recent literature are examined, in order to define the major limitations in former research. From there, the method of this research is expressed.

The applied method in this research is discussed in the second chapter. The sample, reliability, validity, material, procedure and technique are issued to understand the process used to obtain the results.

Via this qualitative research design the third chapter displays these results in a descriptive way.

The last chapter links the obtained results to the existing literature. It also issues recommendations and shortcomings of this research. The research ends with a brief conclusion of the most interesting results.

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13 *Infra* 81 (Appendix 1: topic list)
B. STATE OF ART

I. INTRODUCTION TO THE DIFFERENT CONCEPTS

For the purpose of an optimal understanding of this research, this section will elaborate the relevant concepts.

1. Adolescents MOF-statute vs. VOS-statute

In Flanders the juvenile judge sentences around 25,000 minors a year. In only 13% of these cases the minor has a MOF-statute and in 84% the minor has a VOS-statute. Adolescents with a MOF-statute are also called juvenile delinquents. This concept includes a wide range of different criminal activities by adolescents under the age of 18. Literally translated, an adolescent with a MOF-statute has committed a ‘crime defined fact’ like robbery, burglary, violence, vandalism, etc. Generally speaking it is not possible to punish minors with a MOF-statute in the same way as an adult. Minors fall within the scope of the juvenile law.

A child younger than 12 years old that commits a ‘crime defined fact’ will not get the MOF-statute but is supposed to fall within an alarming parenting situation. Adolescents or children with an alarming parenting situation can get the VOS-statute. This is the case when the minor is in a state where the physical integrity, the affective, moral, intellectual or social development opportunities are compromised.

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15 Ibid.
19 J. PUT, 2015, supra footnote 16.
20 Infra 22-24
21 J.R. BONNIE et al., Reforming Juvenile Justice, supra footnote 18, 21 p.
23 Ibid.
situations can occur as part of special events, relational problems or the living conditions of the minor.\footnote{24}{Ministerial Circular 2/2007, supra footnote 22.}

Both a MOF-statute and a VOS-statute can be a reason for the adolescent to be referred to the Juvenile Court.\footnote{25}{J. PUT, 2015, supra footnote 16.}

2. Juvenile Court

Each state has special courts – usually called Juvenile Courts – that deal with juveniles\footnote{26}{To be eligible for a Juvenile Court, a young person must be considered a "juvenile" under state law. IJJO, supra footnote 2.} who have been accused of committing a crime as well as adolescents with an alarming parenting situation.\footnote{27}{J.K.D. MICHON, Juvenile Delinquency, supra footnote 4.} The proceedings are civil as opposed to criminal.\footnote{28}{Ibid.} So, for example for MOF-adolescents,\footnote{29}{Ibid.} instead of being formally charged with a crime, juvenile offenders are accused of committing a delinquent act.\footnote{30}{H.N. SNYDER & M. SICKMUND, “Juvenile offenders and victims: 2006 national report”, Office of juvenile justice and delinquency prevention 2006, 104-107 p.}

In most states, the maximum age for using Juvenile Court is 18.\footnote{31}{Convention on the Rights of the Child, Article 1; UN Rules for the Protection of Juveniles Deprived of their Liberty, Rule 11.} Some states also set lower age limits for Juvenile Court eligibility.\footnote{32}{H.N. SNYDER & M. SICKMUND, “Juvenile offenders and victims: 2006 national report”, Office of juvenile justice and delinquency prevention 2006, 104-107 p.} Most states consider children under the age of seven to be incapable of determining the difference between right and wrong, or forming a "guilty mind".\footnote{33}{J.K.D. MICHON, Juvenile Delinquency, supra footnote 4.} So, they are usually excused from responsibility for acts they commit.\footnote{34}{Ibid.} Instead, parents may have to pay compensation to anyone victimized by the acts of a very young child.\footnote{35}{Ibid.} In some cases, the court will find a parent unfit to care for a child, whether or not the child has committed wrongdoing, and will place the child with relatives or foster parents.\footnote{36}{Ibid.} Whether children between the ages of seven and 14 can form a guilty mind is usually left up to the juvenile judge.\footnote{37}{Ibid.} If the judge feels that the child was capable of forming criminal
intent, the child will be sent to Juvenile Court. Most states regard children of 14 and older as capable of forming criminal intent, so the majority of cases involving young people from 14 to 18 years of age are adjudicated in Juvenile Court. In certain circumstances, a juvenile can be tried in adult criminal court.

3. Juvenile Judge

Every juvenile judge belongs to a Juvenile Court, which is part of the Court of first instance. Depending on the size of the Court arrondissement, the Juvenile Court counts one or more chambers each with one juvenile judge. For example in the Court arrondissement Antwerp, there are eight chambers in the Juvenile Court and therefore eight juvenile judges. When there are more juvenile judges in the same chamber, the leading is for the longest named juvenile judge. The independency of the juvenile judge is at all times highlighted. Juvenile judges are therefore not bound to the guidelines and rules of the criminal policy. Each juvenile judge exercises his/her legislation in a personal way.

II. POLICIES AT INTERNATIONAL, EUROPEAN AND NATIONAL LEVEL

The objective of this section is to identify the relevant international, European and Belgian standards on juvenile justice that influence the selection mechanisms of the juvenile judge. In the decision-making process of the juvenile judge, he/she always has to take these standards into account. When addressing this issue, there should be kept in mind the fact that a child is defined internationally as anyone under the age of 18 unless the law provides that majority is attained earlier.

40 J.K.D. MICHON, Juvenile Delinquency, supra footnote 4.
41 UNITED NATIONS OFFICE ON DRUGS AND CRIME, Custodial and non-custodial measures: The prison system, Belgium, OSCE, 2006, 26-27 p.
42 Infra 24
47 Ibid.
48 Ibid.
49 Ibid.
50 Ibid.
51 IJJO, supra footnote 2.
1. International Policies

States use different approaches to respond to young offending and juvenile justice systems vary from one country another. Children’s rights standards, based on international and European instruments, take on increased importance amid this diversity. They reflect a common approach that emphasises for example on children’s needs and interests. For this reason, the standards are useful and important as a framework for the juvenile judge that is common for all states in the Council of Europe.

a. United Nations Organizations

Convention on the Rights of the Child

The Convention on the Rights of the Child is the first international treaty to specifically address the legal rights of children, defined as persons up to the age of 18 years old. The Convention establishes in international law that State Parties must ensure that all children – without discrimination in any form – benefit from special protection measures and assistance; have access to services such as education and health care; can develop their personalities, abilities and talents to the fullest potential; grow up in an environment of happiness, love and understanding; and are informed about and participate in, achieving their rights in an accessible and active manner. When this is not the case, a child can fall within the jurisdiction of the Juvenile Court under the VOS-statute.

When a minor comes into conflict with the law, therefore considered as a MOF-adolescent, the rights of that minor should be defended. Articles 37, 38 and 40 of the Convention describe both the adult-like due process rights, and special due process rights that should be available to juveniles. According to article 40 of the

53 EU Guidelines for the Promotion and Protection of the Rights of the Child; Article 2 Convention on the Rights of the Child
54 Preamble Convention on the Rights of the Child
55 Article 24 Convention on the Rights of the Child
56 Article 29 Convention on the Rights of the Child
57 Preamble Convention on the Rights of the Child
58 Article 17 Convention on the Rights of the Child
Convention, State Parties should always promote the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others.\textsuperscript{61} To this end State Parties shall ensure that no child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed.\textsuperscript{62} “Due process” means that, like adults, if the minor is alleged as or accused of having infringed the penal law, the minor has at least the following guarantees: right to legal assistance,\textsuperscript{63} the right to be informed of charges,\textsuperscript{64} and the right to be presumed innocent.\textsuperscript{65} They also have the right to be kept in separate facilities from adults, and to be able to maintain contact with family members.\textsuperscript{66} Of primary importance is that the Convention directs the use of prison or jail as a last resort only, and states that youth should be held in correctional centres for the shortest amount of time possible.\textsuperscript{67} The Convention requires that the emphasis in the juvenile justice system is on providing rehabilitation and reintegration into the community.\textsuperscript{68}

\textit{United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Bejing Rules)}

The Beijing rules were adopted in 1985 and reflect mainly the objectives and the spirit of juvenile justice as well as expose suitable principles and practices for the management of juvenile justice.\textsuperscript{69} These rules represent the minimum conditions, which have been accepted on international level for the treatment of adolescents in conflict with the law.\textsuperscript{70} The aims of juvenile justice include promoting the adolescents’ welfare and assuring that each response towards juvenile delinquents will always be in proportion to the circumstances of the adolescent as well as the crime.\textsuperscript{71} In case of an arrest, detention or imprisonment of an adolescent, this shall be in

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\textsuperscript{61} IJJO, supra footnote 2.
\textsuperscript{62} Ibid.
\textsuperscript{63} Article 40 paragraph 2b (iii), (iv), (v), (vi), (vii) Convention on the Rights of the Child
\textsuperscript{64} Article 40 paragraph 2b (ii) Convention on the Rights of the Child
\textsuperscript{65} K. COVELL, The Rights of the Child Part Five, supra footnote 60.
\textsuperscript{66} Ibid.
\textsuperscript{67} Ibid.
\textsuperscript{70} IJJO, supra footnote 2.
\textsuperscript{71} Rule 26.1 untill 26.6 Bejing Rules
In the Beijing rules, two legal selection mechanisms are reflected: (a) the emotional, mental and intellectual maturity of the minor and (b) whether the minor, by virtue of his/her individual discernment and understanding, can be held responsible for his/her committed crime. In addition, the age, sex and personality of the juvenile should be taken into account.

*United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules)*

Due to the particularly harmful effects of detention and imprisonment on juveniles, numerous international instruments rule that they should be kept out of prison, and that offences committed by juveniles should be dealt with in the community, as far as possible. The Havana Rules are intended to counteract the detrimental effects of deprivation of liberty by ensuring respect for children’s rights.

Deprivation of liberty is defined as any form of detention or imprisonment or the placement in a public or private custodial setting as a result of the penal law. As the Convention on the Rights of the Child emphasizes, the Havana rules main principle also is that deprivation of liberty should be a disposition of last resort and for the minimum period. The Havana rules add to this obligation that deprivation of liberty should be limited to exceptional circumstances.


The Tokyo rules are one of the most important international measures, adopted in 1990. These rules provide a set of basic principles to promote the use of non-
custodial measures, and minimum safeguards for persons subject to alternatives to imprisonment.\textsuperscript{82} Furthermore, these rules are intended to promote greater community involvement in the management of criminal justice, specifically in the treatment of offenders, as well as to stimulate among offenders a sense of responsibility towards society.\textsuperscript{83} Member States shall endeavour to ensure a proper balance between the rights of individual offenders, the rights of victims, and the concern of society for public safety and crime prevention.\textsuperscript{84} The objective of the implementation of these rules is to reduce the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender.\textsuperscript{85} The present rules shall be applied to all persons subject to prosecution, trial or the execution of a sentence, at all stages of the administration of criminal justice.\textsuperscript{86}

To sum up, the displayed selection mechanisms in these rules are: the rehabilitative needs of the offender, the protection of society and the interests of the victim.\textsuperscript{87}

\textit{b. Council of Europe}

Considering the common action at European level needed in order to better protect the rights and well-being of juveniles who enter in conflict with the law and to develop a child-friendly justice system in its member states, different recommendations were elaborated.\textsuperscript{88} These recommendations are not binding, but are nevertheless an important guidance for the completion of the juvenile justice system in European countries.\textsuperscript{89}

\textsuperscript{83} Rule 1 (2), Tokyo Rules
\textsuperscript{84} IJJO, \textit{supra} footnote 2.
\textsuperscript{85} \textit{Ibid}.
\textsuperscript{86} \textit{Ibid}.
\textsuperscript{87} \textit{Ibid}.
\textsuperscript{88} Recommendation CM/Rec (2008) 11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures.
\textsuperscript{89} Council of Europe, available via: \url{https://wcd.coe.int/ViewDoc.jsp?id=1460021#P73_7158} (Hereafter: Council of Europe)
Recommendation CM/Rec (2008) on the European Rules for Juvenile Offenders subject to Sanctions or Measures

The European Rules for juvenile offenders subject to sanctions or measures are qua content comparable with the Havana Rules. The aim of the present rules is to uphold the rights and safety of juvenile offenders subject to sanctions or measures; and to promote their physical, mental and social well-being when subjected to community sanctions or measures, or any form of deprivation of liberty.

Recommendation Rec (2005) 5 on Rights of Children Living in Residential Institutions

This Recommendation establishes the overall guiding principles to be applied whenever a child is placed outside the family, particularly in a residential institution and underlines that every placement must ensure that the child's human rights are fully respected. According to this Recommendation, placements are justified only when the child is in such danger that it is impossible for him/her to remain in the family environment. Residential institutions have to assure children of the best possible development and future, but also the reintegration of children into family life should be considered. The quality of supervision is an important factor too, for it provides a minimum safeguard against the foster family itself causing harm.


The Recommendation concerning the Protection of the Human Rights and Dignity of Person with Mental Disorder aims at protecting especially those placed as involuntary patients in a psychiatric establishment. This Recommendation was considered necessary because of the exceptional nature of involuntary procedures that can be used for the placement and treatment of people with mental disorder and therefore the exceptional need for the protection of their rights.

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90 Council of Europe, supra footnote 89.
91 Like in the Convention of the Rights of the Child is depriving someone from his/her liberty the last measure that should be taken, and this should be done for the shortest possible time (Rule 10). Council of Europe, supra footnote 89.
92 Recommendation Rec (2005) 5 of the Committee of Ministers to member states on the rights of children living in residential institutions, preamble.
93 Ibid.
94 Ibid.
95 Ibid.
96 Ibid.
n Ibid.
97 Ibid.

This Recommendation demands new, multidisciplinary intervention concerning juvenile crime. A specific guideline is the maximum allowed period of 48 hours to let the adolescent stay in the police cell. Furthermore the Police should do everything needed to minimize this period.

**Recommendation No. R (92) 16 on the European Rules on Community Sanctions and Measures**

The term “community sanctions and measures” refers to sanctions and measures that maintain offenders in the community and involve some restrictions of their liberty through the imposition of conditions and/or obligations which are implemented by bodies designated in law for that purpose. Community Sanctions comprise all sanctions and measures before, instead or after the trial when they have a penal content or penal value: this therefore also applies to diversion, compensation, reparation or even mediation as long as those concepts are backed by any type of control by law enforcement agencies. Mere fines or warnings do not fall under those rules.

The principal aims of the European Rules on Community Sanctions and Measures are to safeguard the rights of the offender and to supply guidelines for good practice. According to the preamble the application of community sanctions has to balance the need to protect society and the needs of the offender having regard to his social adjustment.

**Recommendation No. R (87) 20 on Social Reactions to Juvenile Delinquency**

In this Recommendation, the Council of Europe particularly recommends that the member states review their legislation if necessary and practice in view of: prevention

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99 Ibid.
102 Ibid.
103 Ibid.
104 Ibid.
105 Ibid.
of maladjustment of juvenile delinquency; encouraging of procedures of diversion from the Juvenile Court; insuring a more rapid operation of juvenile justice; avoiding the referral of minors to adult jurisdiction; avoiding measures involving deprivation of liberty and requiring a motive from the juvenile judge for sentences involving deprivation of liberty.  

106 These recommendations place emphasis, like the Beijing Rules, on the role of the family and society in the treatment of young people.  

2. European Policies

Charter of Fundamental Rights of the European Union

The European Charter of Fundamental Rights brings together in a single document the fundamental rights protected in the EU.  

108 This charter is applicable on minors and has an overlap with the UN Convention on the Rights of the Child.  

109 Especially article 24 of the Charter deals with the rights of the child whereas protection and care are seen as necessary for their well-being.  

3. National Belgian Policies

On a national level, the previous mentioned international and European policies are reflected in the Belgian Youth Protection Law. This Law aims at stimulating and guaranteeing the well-being and the expansion of adolescents via a total of legal rules.  

111 In this section, a brief overview of the history and objectives of the Youth Protection Law is described.

Child Protection Law

In 1912 the Child Protection Law was published.  

112 This was the first time juvenile delinquents – under the age of 16 – were not tried as adults anymore.  


107 Ibid.


110 Article 24 Charter of Fundamental Rights of the European Union


112 In Dutch: Kinderbeschermingswet


adolescent was seen as incapacitated and irresponsible for his/her own mistakes, and therefore he/she could not be punished. The Child Protection Law has a twofold goal: in the first place protecting the child against the dangers of their environment and secondly, the prevention of juvenile delinquency and therefore the protection of the community for the criminal behaviour of the child.

Because of this law, the creation of a judge for children was necessary. In the decision-making process of the judge measures for re-education were of central importance. Specifically, decisions were, and still are, based on the individual. The personality of the adolescent was, and is, more significant than the seriousness of the committed crime.

**Youth Protection Law**

In 1965, the Youth Protection Law came to replace the Child Protection Law of 1912. This law is based on both the adolescent and his/her family. The adolescent is therefore not anymore seen as a danger for the community. Another change is the increase of the criminal majority from 16 to the year of 18, and there is even a possibility of protecting the minor ‘in danger’ until the age of 21. By exception, however, the juvenile judge can decide to refer a juvenile delinquent aged 16 to the Public Prosecutor with the intent of prosecuting and sentencing the minor before Adult Court according to penal law. This mechanism is called ‘transfer’, ‘waiver’ or ‘referral’. In Belgium the central criteria for a transfer are whether the available measures within the juvenile justice system are still adequate for the particular offender and whether the juvenile can still be rehabilitated. Within this

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120 Ibid.
121 In Dutch: Jeugdbeschermingswet
126 P. SENAEVE, *Jeugdbeschermingsrecht*, *supra* footnote 43.
128 Ibid.
evaluation the personality of the offender and his/her environment play a critical part. Furthermore, the judge for children is replaced by a Juvenile Court with a juvenile judge. The Juvenile Court is aiming at firstly guarding the essential rights of the child as a full member of the family and secondly, taking measures when necessary.

The second reformation of the Youth Protection Law in 2006 led to a wider legal range of measures that could be taken by the juvenile judge. These new measures focus on pedagogy and recovery: mediation, reprimand, etc. Moreover, the process of transfer to the Adult Court is made more concrete. A transfer is only possible when the Juvenile Court deems a measure of custody, protection or education unsuitable and when there is a prior medical and psychological research. The concretisation of the process of transfer aimed at: the introduction of ranking the measures wherefore the judge prefers measures that can be realised in the home environment of the adolescents; and limiting the placement in community institutions since the preference goes to the (re)education in the own personal environment of the adolescents.

III. DECISION-MAKING PROCESS BELGIAN JUVENILE COURT: JUVENILE JUSTICE SYSTEM

The implementation of the above-mentioned policies varies from one country to another. Because all states have created a special Juvenile Court system for minors who get into trouble with the law, the term ‘juvenile justice system’ can be defined in various ways; there is no clear uniform definition. The reasons for intervention, the

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129 P. SENAEVE, Jeugdbeschermingsrecht, supra footnote 43.
133 Infra 29
135 Ibid.
139 J.R. BONNIE et al., Reforming Juvenile Justice, supra footnote 18, 19 p.
ages taken into consideration, the intervening bodies, the reactions, the organisation, etc. can vary substantially between countries. Therefore, this research only focuses on the common elements of the juvenile justice systems.

1. Objectives

All juvenile justice systems have its origins in the criminal system based repressive means. This is mainly contractictonary to the objective of providing support and aid to children and families in difficult circumstances. Article 1.4 of the Beijing Rules clearly expresses the twin objectives towards which juvenile justice should be aimed: “Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society”. Maintaining peace and order in the society and protecting the juvenile is related again to the origins of juvenile justice being rooted in the criminal system. Juvenile justice is therefore part of the system for the maintenance of public order, above all other objectives. With the creation of a specific justice system for juveniles, an attempt was made to incorporate the needs of the child into methods of social control.

In accordance with article 3 of the Convention on the Rights of the Child, the child’s best interests must be a primary consideration in all actions concerning him/her. Rehabilitation and aid should always be a priority. In other words, whenever judicial and/or administrative authorities intervene in the context of the juvenile justice system, due consideration must be given to the child’s interests, alongside the traditional concerns of criminal law, being the interests of society in the prevention

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141 Ibid.
146 Ibid.
147 Article 3 of the Convention provides: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”
and punishment of crime and of the victim for redress.\textsuperscript{149} It is clear that the Convention does not state that the child’s interests must be the only interests to be considered in this context.\textsuperscript{150} It is one consideration among others but it is a “primary” one, that is, one of prime importance.\textsuperscript{151} In reality, however, there are several reasons to doubt whether the child’s interests are always considered of primary importance.\textsuperscript{152} The first reason to doubt such prioritising of considerations is the generally frequent resort to the deprivation of the liberty of children.\textsuperscript{153} It may be that the child’s interests are taken into account only when these interests happen to coincide with the interests of society.\textsuperscript{154} Another reason is that in certain cases it is possible to transfer the file of a delinquent minor from the juvenile justice system to the criminal system for adults in the interests of society.\textsuperscript{155,156}

2. Procedure

When a juvenile is suspected of violating a criminal statute, the procedure followed is very different from that one used for adult offenders in a typical criminal case.\textsuperscript{157} The first encounter a juvenile has with the juvenile justice system is usually his/her arrest by a law enforcement official.\textsuperscript{158} Other ways that juveniles enter the system include "referrals" by parents and schools, delinquency victims, and probation officers.\textsuperscript{159} In general, three main categories of behaviours or situations can lead to an intervention by the juvenile justice system: juvenile delinquency (MOF-adolescents); children in danger by virtue of their behaviour/status offences; and children in danger because of the environment in which they live (VOS-adolescents).\textsuperscript{160}

\textsuperscript{151} Ibid.
\textsuperscript{153} Ibid.
\textsuperscript{154} Ibid.
\textsuperscript{155} Ibid
\textsuperscript{156} Supra 24.
\textsuperscript{157} J.K.D. MICHON, Juvenile Delinquency, supra footnote 4.
\textsuperscript{158} J. SAMAH, Criminal justice, Stamford, Wadsworth/Thomson Learning, 2000, 253-276 p.
When there is a referral to the juvenile justice system, in most cases a police officer places the juvenile in custody, whereafter the prosecutor or Juvenile Court intake officer (often a probation officer) takes over.¹⁶¹ That person may decide to dismiss the case, handle the matter informally, or file formal charges.¹⁶² When the prosecutor or probation officer decides to proceed formally, he/she will file a petition in the Juvenile Court.¹⁶³ Hereby, the preparing phase of the court procedure starts.¹⁶⁴ During this phase, the social service of the Juvenile Court researches the living conditions and environment of the minor.¹⁶⁵ When deciding how to proceed, the social service will typically consider certain selection mechanisms: the severity of the offense; the juvenile's age; the juvenile's past record; the strength of the evidence in the case; the juvenile's gender (boys are more likely to be charged than girls); the juvenile's social history; and the ability of the minor's parents to control his/her behaviour.¹⁶⁶

In attendance of advice of social service, the juvenile judge can make a temporary decision.¹⁶⁷ Thereafter the juvenile judge communicates the file again to the public prosecutor, which decides to shelve or to continue to the main phase.¹⁶⁸

If the minor's case remains in the Juvenile Court, for example because voluntary aid is not possible and urgent protecting measures are required, one of three things may happen: (1) the minor enters into a plea agreement; or (2) the judge "diverts" the case;¹⁶⁹ or (3) the judge holds an adjudicatory hearing.¹⁷⁰

¹⁶¹ J.K.D. MICHON, Juvenile Delinquency, supra footnote 4.
¹⁶³ J.K.D. MICHON, Juvenile Delinquency, supra footnote 4.
¹⁶⁵ The term juvenile justice is often used synonymously with the Juvenile Court, but it also may refer to other affiliated institutions in addition to the court, including the police, prosecuting and defence attorneys, probation, juvenile detention centres, and juvenile correctional facilities. M.K. ROSENHEIM, A century of juvenile justice, Chicago, University of Chicago Press, 2002, 177-179 p.
¹⁶⁶ J.K.D. MICHON, Juvenile Delinquency, supra footnote 4.
¹⁶⁸ Ibid.
¹⁶⁹ When a judge diverts a case, the judge retains jurisdiction over the case while the juvenile undergoes a recommended program (such as counselling) or performs some act (such as community service or payment of restitution). If the juvenile doesn't fulfil these obligations, the court may reinstate formal charges. J.K.D. MICHON, Juvenile Delinquency, supra footnote 4.
¹⁷⁰ If the case goes to trial, both sides present evidence and the attorneys argue the case. In most states, the hearing is before a judge, not a jury. At the conclusion of the hearing, the judge will determine whether the juvenile is delinquent. A delinquency ruling is called "sustaining the petition." Ibid.
If the charges are proved and a delinquency determination is made, the juvenile offender comes under the Court's broad powers.\textsuperscript{171} At that point, the Juvenile Court has the authority to do what it considers to be in the best interest of the juvenile.\textsuperscript{172} Often, the Juvenile Court retains legal authority over the minor for a set period of time, until the juvenile becomes an adult, or sometimes even longer.\textsuperscript{173}

Cases of adolescents with a VOS-statute are also heard in the Juvenile Court. These cases are called 'juvenile dependency cases' and are cases involving minors who are abused or neglected by their parents or guardians.\textsuperscript{174} In a juvenile dependency case, the judge will ultimately decide whether or not a minor should be removed from a problematic home environment.\textsuperscript{175}

3. Decision

The legal reformation of the juvenile delinquency of the Youth Protection Law 1965 is slowly operative,\textsuperscript{176} whereas changes in police services, parquets, Juvenile Courts as other competent services are clearly visible.\textsuperscript{177} One of the most visible changes is the increased legal possibilities of the Belgian juvenile judge concerning the decision-making process.\textsuperscript{178} When an adolescent committed an offense, the juvenile judge can decide concerning the Juvenile law 2006:

1. Reprimand
2. Supervision order social services
3. Intensive educational accompaniment
4. An autonomous performance of pedagogic nature and general utility
5. An ambulant treatment concerning a psychological, psychiatric or addiction problem

\textsuperscript{172} J.R. BONNIE et al., \textit{Reforming Juvenile Justice, supra} footnote 18, 59 p.
\textsuperscript{174} J.K.D. MICHON, \textit{Juvenile Delinquency, supra} footnote 4.
\textsuperscript{175} Ibid.
\textsuperscript{177} J. PUT & M. ROM, \textit{De Nieuwe Jeugdwet, supra} footnote 136.
6. The entrust of a corporation to the adolescent forasmuch a positive performance
7. The entrust of a reliable person or a suitable institution
8. The placement in a hospital service
9. The placement in a service specialized in alcohol- or/and drug-addiction
10. The placement in a adolescent psychiatry service
11. The placement in an open or closed department of a community institution
12. The (temporary) placement in a federal centrum for detention

Additionally, there are several conditions for keeping the adolescent in his/her own environment: regularly attending school, performing on educational or philanthropic level, performing paid labour aiming at paying the victim a compensation, participation in a learning project, participation in one or more guided sportive, social or cultural activities, restraining order or instead ban, a house arrest, prohibition to participate in certain activities and other specific conditions or prohibitions the Juvenile Court states.

Specialised services, as well as an institutional framework, including institutions reserved for children or distinct sections in establishments for adults, may facilitate the application of these measures. Furthermore is it possible for the juvenile judge to cumulate these measures. In case of a measure of placement, a combination of measures with or without conditions and a placement in a closed establishment, a special motivation is necessary.

Not only the adolescent but also the parents are expected to take responsibility. The juvenile judge can impose parental training, however only in clearly defined situations.

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180 A learning project is participating one or more training modules or modules on awareness of the effects of their committed crime and the influence of their behaviour on the victim. Ibid.
181 J. PUT & M. ROM, De Nieuwe Jeugdwet, supra footnote 136.
183 J. PUT & M. ROM, De Nieuwe Jeugdwet, supra footnote 136.
184 Ibid.
186 J. PUT & M. ROM, De Nieuwe Jeugdwet, supra footnote 136.
IV. SELECTION MECHANISMS

Via a review of the objectives, procedure and possible decisions made by the juvenile judge, the question arises as to how a juvenile judge makes these decisions. Since the imposition of the above-mentioned measures by the juvenile judge has a serious impact on the life of the adolescent, it is of importance to understand the motivation of the juvenile judge to take a certain decision. In this section, an overview of the existing research of selection mechanisms is given.

Both international and Belgian studies researched the selection mechanisms used in the decision-making process of the juvenile judge. Caufmann et al. describe in their research the complexity of the decision-making process, whereas several factors affect this process: legal factors, individual factors, environmental factors and demographic factors. In what follows, each of these factors – considered selection mechanisms – are elaborated in detail.

1. Legal Selection Mechanisms

The legal selection mechanisms are clear and play even the biggest part in the decision process. The previous mentioned international, European and national

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187 Overall, the Belgian Youth Protection Law obliges the juvenile judge to motivate every decision he/she takes. Law 13 June 2006 amending the Law on the youth protection and taking at laste of minors with a MOF-statute, BS 19 July 2006 (Jeugdbeschermingswet 2006), article 37 (2).
policies are considered determinative. Hereby the individual is mainly put first by pointing out the well-being of the juvenile. For example, the Convention on the Rights of the Child formulates that the juvenile judge should always take into account the child’s sense of dignity and worth when taking his/her decision. Moreover, the impact on the society, the family of the individual and the victim of the offender are also considered important selection mechanisms. According to the Recommendation on Rights of Children Living in Residential Institutions for instance, a placement is only justified when the child is in such danger that it is impossible for him/her to remain in the family environment. Franssens, Put and Deklerck even recognize in their research that the national policies have a bigger impact than the international and European policies. Furthermore, researchers mention the importance of the seriousness of the facts, the circumstances of the committed crime, the damage and consequences for the victim(s), the amount of referrals to the Juvenile Court, the measures previously taken with respect to the delinquent, and his/her behaviour during these measures. The type of the committed crime is considered as an important selection mechanism as well.

198 Supra 15-24
199 IJJO, supra footnote 2.
200 Recommendation Rec (2005) 5 of the Committee of Ministers to member states on the rights of children living in residential institutions.
203 J. PUT & M. ROM, De Nieuwe Jeugdwet, supra footnote 136.
204 J.K.D. MICHON, Juvenile Delinquency, supra footnote 4.
205 J. PUT & M. ROM, De Nieuwe Jeugdwet, supra footnote 136.
210 J.K.D. MICHON, Juvenile Delinquency, supra footnote 4.
211 J. PUT & M. ROM, De Nieuwe Jeugdwet, supra footnote 136.
2. Individual Selection Mechanisms

Overall, no clear result has been found concerning individual selection mechanisms. In the Beijing Rules the importance of individual selection mechanisms was already acknowledged whereby especially the emotional, mental and intellectual maturity of the minor was asserted.\(^{217}\) Although no research is found concerning the maturity of the minor, the variable ‘personality’ is studied numerously. Hereby is the personality of the delinquent indicated as the most important factor for the decision-making process.\(^{218,219,220,221}\) Besides the personality of the adolescent, two additional selection mechanisms are emphasized: a possible psychiatric disorder and the sex of the adolescent. The fact that an adolescent was diagnosed with a psychiatric disorder, for instance a behaviour disorder, influences the decision of the juvenile judge in an unclear way.\(^{222,223,224}\) On the other hand, Beeman et al. found that a psychiatric disorder is the second best predictor for a nonkinship placement of VOS-minors.\(^{225}\) Moreover, concerning the sex of the adolescent, girls are more likely to get an intensive educational accompaniment, a private placement or a placement in a community institution.\(^{226}\) No research is found concerning boys.

3. Environmental Selection Mechanisms

Considering the selection mechanism related to the environment of the adolescent, a distinction can be made between school and family. On the one hand the safety of the delinquent needs to be guaranteed, and on the other hand the safety of the society is important as well.\(^{227}\) In the context of school, the degree of truancy,\(^{228,229,230}\) the

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\(^{218}\)J. PUT & M. ROM, *De Nieuwe Jeugdwet*, supra footnote 136.

\(^{219}\)J. PUT, 2016, supra footnote 17.

\(^{220}\)P. SENAEBE, *Jeugdbeschermingsrecht*, supra footnote 43.


\(^{226}\)I. RAVIER et al. *Beslissingen van jeugdrechters*, supra footnote 8, 29 p.

\(^{227}\)J. PUT & M. ROM, *De Nieuwe Jeugdwet*, supra footnote 136.
educational level and the presence of the adolescent at school are decisive.\textsuperscript{231,232} In relation to the selection mechanism ‘family’ the parenting style and the individual characteristics of the parents are of importance. It is essential for the juvenile judge to reflect on the ability of the minor’s parents to control the behaviour of their child.\textsuperscript{233} Hereby the legal and psychiatric history of the parents is of relevance.\textsuperscript{234,235,236,237} Concerning the parenting style of the parents, the juvenile judge needs to determine whether the home situation is safe or not.\textsuperscript{238}

4. Demographic Selection Mechanisms

Like the individual selection mechanisms, ambiguous results concerning demographic selection mechanisms are found. For example the study of Beeman et al. observed significant differences between kinship and nonkinship foster care for ethnicity, but not for sex.\textsuperscript{239} Secondly, Lindsey found that the income of the parents has an influence on the decision-making process of the juvenile judge as well.\textsuperscript{240} On the other hand, Britner and Mossler did not conclude the variable income as an influencing factor.\textsuperscript{241} The third selection mechanism recognized in the literature is the ethnicity of the adolescent. Leiber et al. found that this selection mechanism is especially important in decisions related to a placement.\textsuperscript{242,243} Furthermore, Van Dijk

\textsuperscript{228} P.C. O’DONNELL & A.J. LURIGIO, “Psychosocial predictor of clinicians’ recommendations and judges’ placement orders in juvenile court”, \textit{Criminal justice and behaviour} 2008, 1429-1448.
\textsuperscript{229} J.B. SANBORN, “Factors perceived to affect delinquent dispositions in juvenile court: putting the sentencing decision into context”, \textit{Crime and delinquency} 1996, 99-113.
\textsuperscript{231} C. VAN DIJK & A. NUYTIENS, \textit{Transferring Juvenile Offenders}, supra footnote 173.
\textsuperscript{232} J. PUT & M. ROM, \textit{De Nieuwe Jeugdwet}, supra footnote 136.
\textsuperscript{233} J.K.D. MICHON, \textit{Juvenile Delinquency}, supra footnote 4.
\textsuperscript{234} Ibid.
\textsuperscript{235} Ibid.
\textsuperscript{236} P.C. O’DONNELL & A.J. LURIGIO, “Psychosocial predictor of clinicians’ recommendations and judges’ placement orders in juvenile court”, \textit{Criminal justice and behaviour} 2008, 1429-1448.
\textsuperscript{238} C. VANNESTE, beslissingen jeugdrichters, supra footnote 230.
\textsuperscript{239} Ibid.
and Nuytiens discovered a connection between sex, ethnicity, educational-level and socio-economic background in their research.²⁴⁴ Via an analysis of the Juvenile Court files of Belgian transferred young offenders their research revealed that this group consist of mostly male, non-EU offenders with a lower level of education.²⁴⁵ They mostly committed a property offence, frequently accompanied with violence and their profile seems to be more determined by their disadvantaged socio-economic situation than by their offence record.²⁴⁶ So, the additional selection mechanism ‘socio-economic background of the parents’ could be considered.

5. Others

Apart from the above-mentioned selection mechanisms – centralized around the crime and the minor – other selection mechanisms are considered important. Franssens, Put and Deklerck researched the decision-making process of the Juvenile Court with the focus on the distinction between VOS- and MOF-adolescents, bearing in mind the different factors already mentioned, and others.²⁴⁷ For this end the researcher used both semi-structured interviews with ten prosecutors and ten juvenile judges and qualitative analysis of protective files. The results indicate that the juvenile judges in their decision policy concerning VOS- and MOF-cases on the one hand are actuated by the legislation and on the other hand by certain policies. Because these policies are not strongly directional, the juvenile judges have the freedom to use their own demand policy. Furthermore the national policies seem to have a bigger impact in the decision process than the international and European policies. Unfortunately the decision process for the juvenile judges mostly is influenced by the shortage of vacancies in the offer assistance.²⁴⁸ In addition the process is influenced by the knowledge of the juvenile judge concerning the offer assistance.²⁴⁹ What the juvenile judge does not know, he cannot impose. Therefore is the contact and collaboration with other professional actors, like the social service of the Juvenile Court, of

²⁴⁴ C. VAN DIJK & A. NUYTIENS, Transferring Juvenile Offenders, supra footnote 173.
²⁴⁵ Ibid.
²⁴⁶ Ibid.
²⁴⁸ Ibid.
²⁴⁹ Ibid.
importance in the decision-making process. Moreover, factors related to the attitude of the juvenile judge, the characteristics of the Juvenile Court and the availability of the source of information in the file are important selection mechanisms as well.

To sum up, researchers mainly make a distinction between selection mechanisms related to the juvenile judge itself and the ones linked to powerlessness concerning the availability of vacancies and treatments.

6. Preferences

In practice, juvenile judges have their preferences for certain selection mechanisms and decisions. The research of Ravier, Goedseels, Gilbert and Mahieu found that in two thirds of the MOF-cases ambulant measures were decided, and in one third the juvenile judge chose for a placement. The researched juvenile judges were as for ambulant measures more in favour of keeping the juvenile in his/her own living environment under strict conditions. A written project was rarely used as an ambulant measure. Concerning placement-decisions, mostly the juvenile is assigned to a closed institution. A minor that appears for the first time before the juvenile judge is more likely to get an ambulant measure, and less likely to be placed. Moreover, there is a positive link between the seriousness of the committed crime and the placement in a closed community institution. The behaviour of the adolescent during previous taken measures is also of importance: behavioural problems during measures previously taken most likely led to a placement in a community institution. Lastly, the choice of measure by the juvenile judge is also related to their status. Permanent juvenile judges do not often impose measures by which the adolescent stays in his/her

255 I. RAVIER et al. Beslissingen van jeugdrechtens, supra footnote 8, 70 p.
257 I. RAVIER et al. Beslissingen van jeugdrechtens, supra footnote 8, 70 p.
own environment. A juvenile judge who is the titular of the file does not prefer a placement in a federal centrum for detention.  

7. Selection Mechanisms for VOS-adolescents vs. MOF-adolescents

Little research on the differences in selection mechanisms for VOS-adolescents and MOF-adolescents is found. Franssen, Put and Declerck for instance concludes that there are minor differences between juveniles with a VOS- and MOF-statute:

The decision policy for VOS-adolescents is mainly influenced by the evaluation of the situation of the minor. A situation estimated as insufficiently safe will provoke the decision to impose a residential measure, otherwise a situation estimated sufficiently safe will have a highly probable result of an ambulant measure. Another important selection mechanism is the history of aid of the VOS-adolescent.

The decision policy for MOF-adolescents is strongly influenced by the characteristics of the crime and more specifically by the nature and seriousness of the committed crime, the previous committed crimes of the suspected minor, the personality and the family environment of the minor. Moreover the decision factors Juvenile law and the legal order of the measures have an important impact on the decision policy in MOF-files.

V. MAJOR LIMITATIONS FORMER RESEARCH

In the previous mentioned literature, the main findings are related to the final decision of the juvenile judge. Less research has been found related to the decision-making process of the juvenile judge, whereas the motivation of the juvenile judge is of central importance. Research related to the decision-making process is mainly researched via quantitative methods, like analysing files. Qualitative research is rarely done, and if this is the case mostly juvenile judges are queried. No research has been found whereas juvenile lawyers are questioned in an open, qualitative way. Moreover, the above-mentioned researches do not make a clear distinction between adolescents with a VOS- and MOF-statute. And when research makes this distinction, no clear results have been found. Likewise, mainly unclear factors concerning the demography, law, individual and environment are observed.

258 I. RAVIER et al. Beslissingen van jeugdrechters, supra footnote 8, 70 p.
Because of the freedom of the juvenile judge to use his own preferred measures, and because of the mentioned unclarities and defects, this research will focus on the viewpoint of the juvenile lawyer. Via a qualitative research method with open questionnaires eight Flemish juvenile lawyers are questioned.
C. METHOD

I. SAMPLE

For this research eight juvenile lawyers did participate. All of them are female; no men were willing to participate. Their age varies whereby two participants between the age of 20 and 30, three between the age of 30 and 40, one between the age of 40 and 50 and two between the age of 50 and 60. The juvenile lawyers are employed in five different Juvenile Courts: Hasselt, Tongeren, Veurne, Ieper and Turnhout. The other three lawyers work in an independent law firm. All of them have their certificate special education Youth Law. Because of the age differences, the experience of the juvenile lawyers varies as well. The range goes from 3 years to 35 years of experience in the field.

II. RELIABILITY AND VALIDITY

The used technique for analysing the obtained data is a thematic analysis of the coded questionnaires. This technique is a fundamental method in qualitative research used to identify, elaborate and analyse different themes within the data. Because of the limited knowledge of selection mechanisms used by the juvenile judge, and the viewpoint of the lawyers in the Juvenile Court, an explanatory description of the data is designated. In this research the data were inductively analysed. An advantage of this analysing method is the practical usability, flexibility and the fact that this method is not bound to a theoretical conviction. The data of the questionnaires were not interpreted via a particular theory, but with an open viewpoint starting from the data obtained.

To guarantee the reliability of this research, a large transparency is endeavoured for the fulfilment of this research. To meet the external reliability, this paper provides

263 Ibid.
264 Grounded Theory approach, Ibid.
information concerning the used methods and the context of the research.\textsuperscript{265} To obtain a clear understanding by third people, the process of this research is explicitly documented. Furthermore, the influence of the individual researcher on the research-results has been minimalized. Because the analyses of the data have been carried out by one researcher, the interpretation of the data should be understood within the perspective of this researcher.

The issue of validity in qualitative research deals with the question if interpretations in the research coincide with the data obtained.\textsuperscript{266} Internal validity is the degree in which the methods and techniques used lead to results that effectively answer the research-questions.\textsuperscript{267} Hereby it is important that the interpretations of the data are credible.\textsuperscript{268} To maximize the credibility negative proof has been taken into account.\textsuperscript{269} As is the case in quantitative research, no one answers consistently. Nevertheless the answers of the eight lawyers formed a fairly coherent entity. In the data, little negative evidence has been found. Furthermore the researcher tried, despite a certain personal involvement, to be open to any theme in the questionnaires. By reading and rereading the questionnaires, the data were familiarized. Initial ideas were formulated and noted in a logbook. Themes were designed via an iterative process, whereby every theme was checked on overlap with another theme and whether the data really belonged to that theme.\textsuperscript{270} An independent researcher, working in the department of criminology, verified this process. This intervision provided the possibility to achieve a consensus concerning the codation.

\section*{III. MATERIAL}

Every participant signed, prior to filling in the questionnaires, an informed consent. Herein they confirmed their voluntary participation and their permission to the researcher to use the results in an anonymous way. They were also informed about

\begin{itemize}
\item\textsuperscript{267} \textit{Ibid.}
\item\textsuperscript{268} The credibility in qualitative research looks to the tuning between the social constructed reality and the research-oriented translation of the researcher. D. MORTELHMS, \textit{Kwalitatieve analyse met Nvivo}. Leuven, België, Acco, 2011, 7-29 p.
\item\textsuperscript{269} Mortelmans says that there is always negative proof. \textit{Ibid.}
\item\textsuperscript{270} \textit{Ibid.}
\end{itemize}
their rights to stop their participation, on every moment and without any adverse effects.

Each participant received one questionnaire consisting of ten open questions related to the selection mechanisms juvenile judges use. These questions reflect the research-questions, in which a distinction between adolescents with a MOF- and VOS-statute was made. The same questions were asked to all of the participants, whereby there was enough space to answer in their own words. The advantage of these open questions is that the participant can think thoroughly before answering and is maybe more open in his/her answers because there is no face-to-face contact with the researcher. On the other hand, there is no possibility for the researcher to deepen the answers by asking further explanation in the first place. And secondly, the spontaneity of the participant’s answers is missing.

IV. PROCEDURE

Since this research aims at questioning as many lawyers as possible, the researcher started with a first recruitment via emails and phone calls to all the lawyers with a certificate special education Youth Law. Via the websites www.advocaat.be and www.jeugdadvocaat.be a total of 666 juvenile Flemish lawyers were found. They work in 14 different Juvenile Courts: Antwerp, Hasselt, Ypres, Bruges, Brussels, Dendermonde, Ghent, Kortrijk, Leuven, Turnhout, Mechelen, Oudenaarde, Tongeren and Veurne. A couple of lawyers answered that they could not make time to do this, because of their high workload. For that reason, the researcher decided to change the method by using questionnaires with a limited amount of open-ended questions. Originally, this research was meant to use semi-structured interviews.

After calling and sending emails again, three people responded: two did not want to participate and one juvenile lawyer wanted to take part. Because the initial response to these emails and calls was low, a reminder was send to all juvenile Flemish lawyers. Eventually, eight lawyers were interested in participating.

271 *Infra* 81-82 (Appendix 2: Questions)
274 Ibid.
275 Orde van Vlaamse Balies, available via: www.advocaat.be; Unie van Jeugdadvocaten, available via: www.jeugdadvocaat.be
V. TECHNIQUE

In a thematic analysis six phases are to be distinguished.276 These phases are used for analysing the obtained data in a systematic and iterative way in order to eventually define different themes. A schematic overview of these phases is shown in Figure 1.

In the first phase the researcher reads and rereads the answers to the ten open questions.277 By rereading the answers, the researcher got familiar with the data. The five other phases consist of generating the initial codes, finding themes, reviewing these themes, naming and defining themes and lastly drafting a report.278 So as to generate the initial codes, the researcher identified the data related to mechanisms the juvenile judge uses in his/her decision-making process. The obtained data were subsequently subject to a coding procedure. The procedure of Braun and Clarke was used in this research.279 Because the participants often made the distinction between the preferences of the juvenile judge and the final executable decision, this became the first coding level. Two codes were created to verify the preferable measure (first code) and the final measure (second code). Hereafter, these two codes were discussed with fellow students to shape them. Moreover, the content of these codes was analysed to identify different selection mechanisms. In the third phase codes were awarded to the obtained data. This happened initially by selective coding, by staying close to the data, which resulted in 47 codes. Hereon the same fellow students did a second intervision. Next, these 47 codes were reduced to six overarching main themes each with several subthemes. This happened via axial coding concerning the shaping of the overarching themes.280 These themes were thence no longer linked to the obtained data; they know a higher level of abstraction. For this axial coding, codes that are closely related were merged and unnecessary codes were deleted. For example, the codes ‘involvement of parents’ and ‘structure of parents’ were merged to the subtheme ‘parenting skills’. Hereafter, the coding was refined via verifying whether the fragments belonged to the codes and whether the code on its own includes the fragments, or there should be a further split.281 For instance, the codes

277 Ibid.
278 Ibid.
279 Ibid.
281 Ibid.
‘seriousness of the committed crime’ and ‘type of the committed crime’ were combined into ‘committed crime’. This code, next to the code ‘history’ belongs to the subtheme ‘facts’. Deviating fragments therefore obliged the codes to be redefined, or new codes to be shaped. An example of this is the redefining of the subtheme ‘personality’ to ‘personal characteristics’ because otherwise age, sex and intelligence did not entirely fit in. This eventually resulted in the identification of six main themes: (1) legal selection mechanisms, (2) individual selection mechanisms, (3) environmental selection mechanisms, (4) demographic selection mechanisms (5) selection mechanisms related to the juvenile judge and (6) selection mechanisms related to the availability of vacancies and treatments.

The main themes and subthemes then formed the report. This report was again checked upon by the same fellow students. The formulated themes were repeatedly revised and where necessary adjusted in coding and naming. In this designation the researcher stayed as close as possible to the expression of the participants.

For each theme a detailed analysis of the content is described by virtue of answering the research questions. In the next chapter the result of this analysis is issued aiming at translating the results as good as possible for the reader.

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*Figure 1: Schematic visualisation of the six phases in a thematic analysis*

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282 Visualised in Table 1, *Infra* 44
D. RESULTS

Current research issued the question: ‘Which selection mechanisms does the juvenile judge use according to juvenile lawyers?’ These selection mechanisms determine the motive of the juvenile judge to take a certain decision about a particular adolescent. On the basis of a thematic analysis six main themes were formulated with several subthemes.\textsuperscript{283} These themes reflect the important selection mechanisms according to the juvenile lawyers.

In this chapter, every theme will be highlighted and illustrated via quotes of the participants whereas the distinction between adolescents with a VOS- and MOF-statute will be made.\textsuperscript{284} To guarantee the anonymity of the participants, fictive names are used.

Since the phases of analysing and interpreting flow together in qualitative research, this chapter will contain interpretations as well. The global discussion of the results will be elaborated in detail in the next chapter.\textsuperscript{285}

\textsuperscript{283} Visualised in Table 1, \textit{Infra} 44
\textsuperscript{284} \textit{Infra} 82-85 (Appendix 3: Example)
\textsuperscript{285} \textit{Infra} 56
TABLE 1: Report (overview of the obtained main themes and subthemes)

<table>
<thead>
<tr>
<th>MAIN THEMES</th>
<th>SUBTHEMES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal selection mechanisms</td>
<td>1. Policies</td>
</tr>
<tr>
<td></td>
<td>2. Facts</td>
</tr>
<tr>
<td>Individual selection mechanisms</td>
<td>1. Personal characteristics</td>
</tr>
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<td></td>
<td>2. Attitude</td>
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<tr>
<td>Environmental selection mechanisms</td>
<td>1. Family</td>
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<td></td>
<td>2. School</td>
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<td></td>
<td>3. Friends</td>
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<tr>
<td>Demographic selection mechanisms</td>
<td>1. Ethnicity</td>
</tr>
<tr>
<td></td>
<td>2. Socio-economic background</td>
</tr>
<tr>
<td>Juvenile Judge</td>
<td>1. Freedom</td>
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<tr>
<td></td>
<td>2. Knowledge</td>
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<tr>
<td>Availability</td>
<td>1. Vacancy</td>
</tr>
<tr>
<td></td>
<td>2. Treatment</td>
</tr>
</tbody>
</table>

I. SELECTION MECHANISMS

1. Legal Selection Mechanisms

a. Policies

Divided opinions are found concerning the legal standards for selecting a decision. All participants recognise the obligation of the juvenile judge to respect the law. The importance of these legal standards show less clarity. Some say the legal standards are subordinate, whereas others say these standards are very important for the decision process of the juvenile judge.

“Little legal factors play a part in the decision process of the juvenile judge. The juvenile judge is of course obliged to respect the law, and the law prescribes a couple of measures that the juvenile judge can use. The juvenile
judge has the freedom to choose the most appropriate measure.” (Hannah, 28 years old)

“The legal factors are very important in the decision process of the juvenile judge.” (Sanne, 35 years old)

As discussed in the literature, a distinction can be made between international, European and national policies. Overall, the juvenile lawyers do not make this distinction and mention mainly national policies.

“The National policies are most important, the juvenile judges only take these into account.” (Nathalia, 48 years old)

“Only the Youth Protection Law, the Decrees concerning integrated youth and the decision of the Flemish government 21/02/2014 influence the juvenile judge in his/her decision-making process.” (Miet, 31 years old)

Only two participants mention international, European and national policies:

“The legal policies that influence the decision of the juvenile judge are: the International convention for the rights of the child, the Guidelines child friendly justice, Article 6 and 8 European Charter for Human Rights, the Youth Protection Law of 1965 and 2006.” (Nadia, 52 years old)

“The juvenile judge decides within the limits of the legislation, both national, international and European policies are important. And this is the same for adolescents with a MOF- and VOS-statute.” (Marieke, 57 years old)

b. Facts

The subtheme ‘facts’ holds both the legal history of the particular adolescent as well as everything related to the current committed crime of this adolescent. Almost every participant emphasizes the importance of the history of the adolescent. This term refers to the amount of facts the adolescent committed so far.

“If the juvenile committed a crime for the first time, the juvenile judge will most likely set less punitive measures; if the juvenile already committed previous crimes, the juvenile judge will be stricter and an underlying problem will be searched for.” (Hannah, 28 years old)
“If the adolescent is a one-off, I guess the juvenile judge will choose an ambulant measure. But if the adolescent is a recidivist, the judge will take it more seriously, and will probably opt for a placement.” (Miet, 31 years old)

The characteristics of the current committed crime are also important. Hereby the seriousness of the committed crime and the impact of the crime on the society or victim are mentioned by only one participant. On the other hand, the type of the committed crime is emphasized by all of the participants.

“If it is a serious fact, a placement will be decided.” (Miet, 31 years old)

“The impact of the crime on society or on the victim is important for the decision of the juvenile judge.” (Miet, 31 years old)

“A property crime or drugs crime will mostly result in a measure related to society, whereas the perpetrator will do something back for the society. A sexual crime on the other hand will mostly involve a measure by which the perpetrator should do a training like ‘victim in picture’ or ‘sexuality in relations’.” (Miet, 31 years old)

No one discussed the differences between adolescents with a VOS- and MOF-statute.

2. Individual Selection Mechanisms

In general, there is a disunity concerning the influence of individual selection mechanisms on the decision of the juvenile judge. Most of the participants recognize the importance of the personal characteristics of the adolescents irrespectively the statute of the adolescent (VOS vs. MOF-statute). On the other hand, some minimize the influence of the individual selection mechanisms on the decision-making process of the juvenile judge.

“No many individual factors play a role, the report of the consultant is the most important (at the time of the decision of the juvenile judge, there is not many time to take the personality of the juvenile into account).” (Rita, 39 years old)

“Everywhere and always the individual factors play a role.” (Nadia, 52 years old)
a. Personal Characteristics

The subtheme ‘personal characteristics’ consists of the sex, age, intelligence and personality of the adolescents, as well as recent and childhood events in the life of the adolescent and a possible psychiatric and/or medical disorder of the adolescent. All the participants mention that the personality of the adolescent is one of the most important individual selection mechanisms, whereas the other characteristics are only mentioned in a minimal way.

“Individual factors that are important for the decision of the juvenile judge are: age, a psychiatric and/or medical disorder and intelligence.” (Miet, 31 years old)

“Personality is a very important characteristic to decide whether the adolescent should be placed somewhere, or any other measure should be taken.” (Nadia, 52 years old)

b. Attitude

Besides the personal characteristics of the adolescent, his/her attitude is of crucial importance in the decision-process of the Juvenile Court. The juvenile judge takes into account: the fact that the adolescent shows regrets; if he/she is conscious of guilt; understands the problem; shows interest or is unapproachable; is flexible; shows responsibility for his/her own behaviour and committed crime; is willing to compensate and his/her behaviour during previous measures, if any. Most of the participants talk about these elements; one participant adds the elements of suggestibility and future prospects. All these elements give the juvenile judge information about the attitude of the adolescent and help the judge deciding on certain measures.

“If the juvenile shows regret, the juvenile judge will be less strict.” (Hannah, 28 years old)

“If the adolescent shows responsibility for his behaviour, he shows that he understands the problem and he is willing to compensate the victim or do a service for the society, then the juvenile judge is more willing to make a decision in a less stringent way.” (Nadia, 52 years old)
“Does he/she show regret? Does he/she have insights on what he/she did to his/her victim? Does the adolescent show initiative to compensate (e.g. writing a letter to the victim to excuse himself, looking for a student job to pay the damage, ...).” (Miet, 31 years old)

In general, the participants have different opinions about the importance of individual factors in case of a VOS-statute or MOF-statute. Certain participants mention that individual selection mechanisms do not play a role in case of VOS-adolescents but only in case of a MOF-adolescent, others claim the opposite. One participant even argues that there are no differences between VOS- and MOF-adolescents.

“When talking about MOF-adolescents, not every measure is suitable for every age. For example, adolescents with the age of 12 are mostly seen as too young to take a training on ‘sexuality and relations’ even if he/she committed some serious crime like rape.” (Miet, 31 years old)

“In a VOS-statute the personality of the juvenile is taken into account, but also the intelligence plays a part. Some juveniles can’t deal with a particular form of parenting. Sex, sexual nature and identity don’t play a part. The individual factors in case of a MOF-statute don’t play a big part: only when they committed several crimes, the attitude of the adolescent is taken into account.” (Hannah, 28 years old)

“In case of an adolescent with a VOS-statute, the juvenile judge does take the individual factors of the adolescent into account in order to select an optimal treatment for the adolescent. In case of an adolescent with a MOF-statute, the juvenile judge does not only in a limited way take the individual factors of the adolescent into account.” (Sanne, 35 years old)

“For adolescents who already committed several of crimes, the juvenile judge will take his/her personality into account (MOF), otherwise personality is less important as a selection mechanism.” (Hannah, 28 years old)

“There are no differences between VOS- and MOF-adolescents. They are the same qua attitude, intelligence, age and education. These selection mechanisms play the same part, whatever the statute of the adolescent is.” (Nathalia, 48 years old)
3. Environmental Selection Mechanisms

The selection mechanism whereby the juvenile judge decides on the basis of the environment of the juvenile is one of the most important ones. This selection mechanism is divided into three sub-selection mechanisms: family, school and friends.

“The environmental factors (family and friends) are the most important selection mechanisms; they determine the future opportunities the juvenile has have.” (Nathalia, 48 years old)

“In case of a VOS-statute, the family, school and parenting style are important.” (Hannah, 28 years old)

a. Family

The family of the adolescent has a high importance as a selection mechanism for the decision-process. Within this selection mechanism a distinction can be made between the parenting skills of the parents and their personal characteristics. A legal history, a psychiatric history, bad partners, etc. can feature these characteristics of the parents. Half of the participants recognize these characteristics.

“When the parents have alcohol and/or drugs problems, when the juvenile was neglected or even abused in their past or recently, a parental training to figure out their own problems is designated (...) the parents have to deal with their own problems.” (Miet, 31 years old)

“Bad partners of the parent can cause a lot of problems, and this is not good for the adolescent. When this is the case, the juvenile judge can decide on other and mostly stricter measures.” (Rita, 39 years old)

Almost all of the participants talk about the importance of the parenting skills as selection mechanisms. The structure parents use, the involvement of the parents and the safety they provide are fundamental as parenting skills.

“The structure of the family is relevant, for instance difficulties with the residence permit in case of divorced parents brings instability and is determining for the decision of the juvenile judge” (Hannah, 28 years old)

“If the parents are involved in the decision process of the juvenile judge, if they pinch on the facts and problems of their child, and if they punish their
child for his/her problematic behaviour (e.g. house arrest, Internet prohibition, take away their money, etc.) the juvenile judge will be less strict.” (Sanne, 35 years old)

“If the parents are strong enough to deal with the problems of their child, if they are able to set boundaries and rules, and if they are able to bring structure in their child’s life, then the juvenile judge is more likely to keep the child in his/her environment linked to measures like house arrest, “no contact” provision of friends, compulsory urine-tests, … If the parents aren’t really involved, or they are weak from an educational point of view, or they are powerless, or they tried already everything, then the juvenile judge is more likely to place the juvenile in a residential institution (VOS) or community placement (MOF).” (Miet, 31 years old)

b. School

The selection mechanism ‘school’ is only recognised by three participants, the others do not mention this selection mechanism or even say it is not important for the decision-making process of the juvenile judge. Concerning the presence of the adolescent at school, according to one juvenile lawyer, the level of truancy is determining for the decision of the juvenile judge. Another participant emphasizes the educational level and the school results of the adolescent as selection mechanisms for the juvenile judge. The last participant notices the impact of the school environment in general.

“A low level of presence of the adolescent at school can make the juvenile judge make stricter decisions.” (Miet, 31 years old)

“When the educational level and results of the adolescent aren’t good, the juvenile judge could be stricter in his decision-making.” (Nathalia, 48 years old)

“The juvenile judge takes the school situation of the adolescent into account.” (Marieke, 57 years old)

c. Friends

Friends are an important aspect when deciding on a certain measure as well. Only a minority of the juvenile lawyers mentions this selection mechanism but the ones who
talk about it, clearly emphasize the relevance of it. They mainly claim that in the case of a MOF-adolescent, bad friends can have a harmful influence, what on its turn has an impact on the decision of the juvenile judge.

“The friends of an adolescent can have a big influence on his/her behaviour.” (Sanne, 35 years old)

“In an MOF-case there bad friends are often involved, which can lead to a “no contact” provision.” (Hannah, 28 years old)

“Bad friends bring bad things and the juvenile judge knows that, therefore, he will take a more stringent decision.” (Elien, 26 years old)

In general, no differences between VOS- and MOF-adolescents are found. Seven out of eight participants do not see any difference. The other participant sets a distinction:

“In case of a VOS-statute, the family, school and parenting style are important. In a MOF-case bad friends are often involved, which can lead to a “no contact” provision (measure).” (Hannah, 28 years old)

4. Demographic Selection Mechanisms

Lastly, the juvenile judge uses demographic selection mechanisms to make a decision on the adolescent. Five participants recognize the importance of these selection mechanisms in a minimalistic way. The other participants do not think these selection mechanisms play a part or do not know any demographic selection mechanisms.

“The parental milieu of the minor plays a part.” (Nadia, 52 years old)

“These factors don’t play a part in the decision process, but the juvenile judge always respects these factors.” (Hannah, 28 years old)

“Not many demographic factors play a part in the decision process of the juvenile judge.” (Sanne, 35 years old)

“I think the juvenile judge takes the demographic factors of the adolescent unconsciously into account.” (Elien, 26 years old)

a. Socio-economic Background

The first subtheme deals with the socio-economic status of the parents. Hereby income, occupation and education of the parents are determining. Only one participant
mentions both income and occupation of the parents in an indirect way. Another participant mentions the intelligence of the parents as a possible selection mechanism.

“In my town these demographic factors are not really the case, but minors that are in contact with the Juvenile Court are mostly of a marginal or even super-marginal milieu. Moreover, the parents are often unemployed and addicted to drugs and/or alcohol.” (Rita, 39 years old)

“The intelligence of the parents can be determining for the environment of the adolescent, and the juvenile judge can take this into account when making his decision.” (Miet, 31 years old)

b. Religion

Lastly, one participant mentions the new selection mechanism ‘religion’. The other juvenile lawyers do not discuss this selection mechanism.

“I think religion is a selection mechanism that should not be underestimated, but I guess that is only of importance in case of a MOF-adolescent.” (Nadia, 52 years old)

Again, no participant emphasises a difference in demographic selection mechanisms in case of an adolescent with a VOS- or MOF-statute.

II. DISCREPANCY THEORY AND PRACTICE

The previous mentioned selection mechanisms cannot or will not always been used because of several reasons. The juvenile lawyers, in their claiming that the theory is not always executable in practice, identify four reasons. These reasons are issued in two subthemes: the first subtheme deals with reasons related to the juvenile judge itself; the second subtheme considers the availability of vacancies and certain treatments. Because of the influence these reasons have on the decision-making process of the juvenile judge, these reasons are considered as selection mechanisms.

It is striking that two participants do not see any differences between theory and practice. On the other hand, they both recognise the importance of individualisation. They both think that every aspect of the particular adolescent should be taken into account before making the decision.
“There is no difference, but in practice individualisation of the particular case is important.” (Hannah, 28 years old)

“I cannot think of any difference between the decision a juvenile judge should and wants to take and the final decision. Only individualisation is important in that regard.” (Sanne, 35 years old)

“There is a big difference between theory and practice. For example, too much VOS-adolescents are not in the right place or are even neglected.” (Nathalie, 48 years old)

“In practice, the juvenile judge has to improvise because the theory cannot always be applied.” (Nadia, 52 years old)

1. Juvenile Judge

a. Freedom

The first reason why there is a discrepancy between the theory and the practice is the freedom of the juvenile judge to choose. According to most of the participants, juvenile judges have their own preferable selection mechanisms to decide on a measure. Some participants judge that the legal selection mechanisms are more important than the individual selection mechanisms. Others argue that the environmental selection mechanisms are more preferred.

“The juvenile judge has to be creative.” (Rita, 39 years old)

“The previous facts and type of committed crime are the most important selection mechanisms for the juvenile judge to decide. The personality of the adolescent is not a common used selection mechanism.” (Hannah, 28 years old)

“The selection mechanisms ‘friend’ and ‘family’ are the most chosen ones by the juvenile judge.” (Nathalia, 48 years old)

“Some juvenile judges have other preferences than others.” (Sanne, 35 years old)
**b. Knowledge**

The second reason related to the juvenile judge is his/her knowledge. Only two participants mention this as a reason for the discrepancy between the theory and the practice. They mainly say that the juvenile judge bases his/her decision on the information he/she has. One of these participants emphasises the impact of the social service, especially the consultants.

> “Sometimes the juvenile judge is not involved. The consultants make a report and this report is determining for the decision of the juvenile judge. The juvenile judge sometimes only has to pronounce out the proposition of consultants, even without judging, they only have to follow. So, the consultants mostly do not involve the juvenile judge in their choice of selection mechanisms, even when necessary, when they are obliged.” (Rita, 39 years old)

> “The knowledge of the juvenile judge is the information that he/she got from the social service and the supervisors of the child.” (Sanne, 35 years old)

No participant makes the differences between VOS- and MOF-adolescents.

**2. Availability**

*a. Vacancy*

Besides the characteristics of the juvenile itself the availability of vacancies is relevant as well. According to the majority of the participants, the most common reason for the frustrations – because they cannot impose the measure they would like to – of juvenile judge is the shortage of vacancies in institutions.

> “In the Youth Law the juvenile judge can chose a lot of measures, but in practice the measure is mostly taken according to the places available. For some measures, like education in a closed institution, there are really long waiting lists (Marieke, 57 years old)

> “Sometimes a juvenile judge has to make a decision that he/she does not support 100% because there is no place in the suitable institution.” (Sanne, 35 years old)
“The availability and shortage of places is the most important selection mechanisms and it is also the reason that the theory is not at all what happens in practice.” (Rita, 39 years old)

b. Treatment

The availability of certain treatments is the last reason for not always being able to opt for what the juvenile judge wants. Only one participant emphasizes this reason by saying that there is a lack of specific treatment especially for psychiatric patients.

“The theory is not at all what happens in practice because there are no suitable treatments for certain adolescents. Irrespective of VOS- and MOF-adolescents, psychiatric patients do not have good treatments and therefore the juvenile judge has to choose another, less-suitable, final decision.” (Rita, 39 years old)

Overall, the participants do not mention differences between VOS- and MOF-adolescents.
E. DISCUSSION

I. DISCUSSION AND REFLECTION ON THE RESULTS

Two research questions were formulated earlier in this study. These inquired firstly into the previously discussed selection mechanisms in the literature, and secondly into the perception of the juvenile lawyers concerning the selection mechanisms used by the juvenile judges. Because of the unfamiliarity of studies elaborating the perception of juvenile lawyers, an explorative, qualitative method was used in this paper. Eight juvenile lawyers were queried via questionnaires with open-ended questions. Subsequently, a thematic analysis was made on the obtained data to eventually define several themes in order to answer the proposed second research question. Last but not least, the answers to both research questions will be compared to deal with the differences between the theory (what discussed in the literature) and practice (what perceived by the juvenile lawyers).

1. Which Selection Mechanisms are discussed in the Literature?

In the beginning of this paper, the selection mechanisms discussed in the literature have already been displayed in detail. Therefore, this section will answer the two subquestions briefly and will conclude with an overall ‘take-home message’.

a. Which Selection Mechanisms are More Important?

Both the current legal policies as well as the available relevant studies give an answer to the first subquestion of the first main research question. Starting with the policies, the Convention on the Rights of the Child directs the use of placements in closed institutions as the last resort only and for the shortest appropriate period of time. Also the Beijing Rules and Havana Rules emphasize this legal selection mechanism as one of the most important. The Youth Protection Law 2006 focuses on this legal selection mechanisms as well by preferring measures that can be realised in the home

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286 Supra 30-37
288 Article 37 (b), Convention on the Rights of the Child; rules 17.1(b) and 19.1, Beijing Rules.
289 UNITED NATIONS OFFICE ON DRUGS AND CRIME, Custodial and non-custodial measures: The prison system, Belgium, OSCE, 2006, 26-27 p.
environment of the adolescent and by limiting the placement in community institutions.  

The research of Ravier, Goedseels, Gilbert and Mahieu confirms this importance by acknowledging that in two thirds of the MOF-cases ambulant measures were decided upon, hereby keeping the juvenile in his/her own living environment was mostly preferred. In one third of the MOF-cases the juvenile judge chose for a placement, in favour for an assignment to a closed institution. The seriousness of the committed crime, the recidivism of the adolescent and the behaviour of the adolescent during previously taken measures were considered as important legal selection mechanisms as well.

Concluding, both legal and environmental selection mechanisms are considered – in the available literature – most important in the decision-making process of the juvenile judge.

b. Are there Different Selection Mechanisms for Juveniles with a VOS-statute vs. MOF-Statute?

Little research mentions the differences in selection mechanisms for juveniles with a VOS- and MOF-statute. In case of a VOS-adolescent, mainly environmental selection mechanisms are considered. In his/her decision-making process the juvenile judge should always assess the safety of the home situation of the minor. Besides, the legal selection mechanism related to the previous taken measures and the individual selection mechanism linked to the history of aid of the VOS-adolescent, are important as well.

In the decision-making process of MOF-adolescents as well, both environmental and legal selection mechanisms are of relevance. Unlike the VOS-adolescents, the legal selection mechanisms are the most important ones in this case: the nature and seriousness of the committed crime, the previously committed crimes and the

292 Ibid.
293 Ibid.
selection mechanisms prescribed by the Juvenile Protection Law. Additionally, the personality of the adolescent and his/her family environment are considered important.

Thus, there are no clear differences in the kind of selection mechanisms used for juveniles with a VOS- and MOF-statute. The only difference might be that in case of a VOS-adolescent the environmental selection mechanism are more stressed, whilst with MOF-adolescents legal selection mechanisms are more emphasized.

c. Take-home Message

Summarizing and completing the findings mentioned, a take-home message can be formulated. This aims to succinctly visualize the first research question. The selection mechanisms found in the literature have already been comprehensively discussed. Still, it is important to reflect about this, namely: ‘What do I, as researcher, keep in the back of my mind?’ This nuance opens the way to formulate the implications of this research. In Figure 2 the most important reflections that can be taken into account for future research are visualised graphically.

<table>
<thead>
<tr>
<th>VOS-ADOLESCENTS</th>
<th>MOF-ADOLESCENTS</th>
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<tbody>
<tr>
<td>Environmental selection</td>
<td>Legal selection mechanisms</td>
</tr>
<tr>
<td>mechanisms (Family)</td>
<td>(Facts &gt; policies)</td>
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<td>Environmental selection</td>
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<tr>
<td>(Facts)</td>
<td>mechanisms (Family)</td>
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<tr>
<td>Individual selection mechanisms</td>
<td>Individual selection</td>
</tr>
<tr>
<td></td>
<td>mechanisms (Personality)</td>
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<tr>
<td>Demographic selection mechanisms</td>
<td>Demographic selection</td>
</tr>
<tr>
<td></td>
<td>mechanisms</td>
</tr>
<tr>
<td>Others</td>
<td></td>
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</tbody>
</table>

**Figure 2: Take-home message 1**

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298 *Infra* 67-68
2. Which Selection Mechanisms are used by Juvenile Judges?

The thematic analysis of current study shows that the juvenile lawyer observes several important selection mechanisms. These selection mechanisms have already been presented in the previous chapter, consisting of six main themes and 13 subthemes. This section will answer the two subquestion of the second research question while comparing these with the two subquestions of the first research question.

a. Which Selection Mechanisms are More Important?

Concluding the discussed results, there is disagreement about which selection mechanisms are more important. Mainly the legal and environmental selection mechanisms are considered very important. The availability of vacancies is also observed highly relevant. Regrettably, the participants did not distinguish preferable selection mechanisms for VOS- and MOF-adolescents. In comparison with the more important selection mechanisms discussed in the literature, similarities are found. In both cases, the legal and environmental selection mechanisms are put forward as the most important ones.

b. Are there Different Selection Mechanisms for Juveniles with a VOS-statute vs. MOF-Statute?

In general, no differences in legal selection mechanism for juveniles with a VOS- and MOF-statute were found. This is slightly different than what is found in the literature. As already mentioned, Franssens, Put and Deklerck concluded an importance for the selection mechanisms related to the previous taken measures of the juvenile judge in case of VOS-adolescents. 299 As regards the MOF-adolescents, both of the selection mechanisms under the subtheme ‘policies’ and ‘facts’ are considered important. 300

On the other hand, concerning individual selection mechanisms, disagreeing opinions are reflected. Half of the participants do not think individual selection mechanisms are used in the decision-making process of the juvenile judge. The others recognise, mainly for VOS-adolescents, the selection mechanisms ‘personality’ and ‘intelligence’ as important. Concerning adolescents with a MOF-statute, the attitude and age of the adolescent is taken into account in the decision-making process. This disagreement is also reflected in the existing literature. Overall, no differences

300 Ibid.
between VOS- and MOF-adolescents concerning individual selection mechanisms were found. Franssens, Put and Deklerck found on the contrary a relevance for the personality of the MOF-adolescent.\textsuperscript{301} Therefore, it can be expected that the personality of the adolescent is decisive in both the VOS- and MOF-cases.

Furthermore, in regard to the environmental selection mechanisms almost every participant pinpoints the importance of the family’s educational skills – no difference between VOS- and MOF-adolescents is hereby made. Additionally, the relevance of friends in relation to MOF-adolescents is emphasized. These findings do confirm the literature except from the selection mechanism ‘friends’, which is not mentioned in any research found.

Lastly, no differences between VOS- and MOF-adolescents are made concerning the demographic selection mechanisms – both in the literature as in the perception of the juvenile lawyers. One exception is made, namely the importance of the religion of the minor is recognized by one participant and only in the case of a MOF-adolescent.

Thus, the juvenile lawyers perceive no clear differences – with only a few exceptions – between juveniles with a VOS- and MOF-statute.

\textit{c. Take-Home Message}

Again while answering the two subquestions of the second research question, several reflections and findings where put forward to draft certain implications. The main features are visualized in Figure 3.

\textsuperscript{301} M. FRANSSENS et al. \textit{Het Beleid van de Jeugdmagistraat}, supra footnote 6.
3. Discrepancy Theory and Practice

When comparing the two subquestions of both research questions – and thus comparing the two take-home messages – discrepancies between theory and practice are found. Therefore, it is assumed that there will be a discrepancy between the selection mechanisms described in the literature and the ones used by juvenile judges. To conclude, this chapter will compare the selection mechanisms discussed in the literature with those observed by the juvenile lawyers in practice, ending with a brief conclusion of the major findings. Since the distinction between VOS- and MOF-adolescents is already made in the previous section, this section will focus on the overall selection mechanisms.

a. Legal Selection Mechanisms

Current research findings confirm the importance of international, European and national policies. Overall, the participants emphasize mainly the national policies as the ones with the biggest impact on the decision-making process of the juvenile judge. This finding supports the conclusion of the research of Franssens, Put and Deklerkck – whereby they observe that national policies are more decisive than international and European policies.\(^{302}\) New legislation applied by the participants are: the decree of legal status integral youth help and the decree of the Flemish government

21/02/2014. The other international, European and national policies – mentioned by the juvenile lawyers – are already emphasized in previous research.

As regards the selection mechanisms ‘facts’, the observed selection mechanisms by the juvenile lawyers mainly support the ones mentioned in the literature. On the one hand, the literature emphasizes more selection mechanism in relation to the legal history of the adolescent. Caufmann et al. mention for example the relevance of previous referrals to the Juvenile Court, and Michon for instance states the impact of previously taken measures on the decision-making process. On the other hand, the juvenile lawyers observe more selection mechanisms linked to the committed crime of the adolescent. They at first confirm the research whereas the impact of the seriousness of the committed crime and the type of committed crime is shown, but then add relevance to the impact of the committed crime on the society or victim.

As to conclude, the differences in legal selection mechanisms between those discussed in the literature and those mentioned by the juvenile lawyers are narrow. Globally, the juvenile lawyers confirm the legal selection mechanisms described in the literature, and they even add a couple of selection mechanisms.

b. Individual Selection Mechanisms

In conformity with the vision of certain researchers the personality of the adolescent is one of the most important selection mechanisms in making the decision in this research. The maturity of the adolescent on the other hand, is not confirmed by the findings of this research. This could be because the participants did not observe this selection mechanism or because they explained it in other words. For instance, two participants emphasize the intelligence of the adolescent. Furthermore,

303 Decision of the Flemish government concerning integrated youth help, BS 21 February 2014; Decree concerning integrated youth, BS 12 July 2013.
305 J. PUT, 2015, supra footnote 16.
306 P. SENAEVE. Jeugdbeschermingsrecht, supra footnote 43.
308 J.K.D. MICHON, Juvenile Delinquency, supra footnote 4.
310 J.K.D. MICHON, Juvenile Delinquency, supra footnote 4.
311 J. PUT & M. ROM, De Nieuwe Jeugdwet, supra footnote 136.
312 P. SENAEVE, Jeugdbeschermingsrecht, supra footnote 43.
314 J.K.D. MICHON, Juvenile Delinquency, supra footnote 4.
the juvenile lawyers do not recognize the sex of the adolescent as an important factor either, whereas the researchers Ravier, Goedseels, Gilbert and Mahieu showed the influence of the sex on the decision-making process.315 The question could be asked: ‘does the juvenile judge in practice not take the sex into account or did the participants forget to mention this?’ Moreover, in accordance with some researchers,316 the psychiatric disorder of the adolescent can have an effect on the decision-making process of the juvenile judge.317,318 The findings of this paper confirm this statement and even add some medical problems. Like many researchers,319,320,321,322,323,324 the juvenile lawyers also highlighted the importance of age. They mainly claim that younger adolescents receive other – less strict – measures than older ones. Additionally, one participant even mentions the relevance of not only recent events in the life of the adolescent, but also what happened to that person in his/her childhood. No literature has been found concerning these possible selection mechanisms.

Unlike previous literature the participants do highly emphasize the importance of the selection mechanisms related to the attitude of the juvenile. Only two researchers showed the relevance of unacceptable behaviour during previous measures as decisive for the decision-making process of the juvenile judge.325,326 The participants argue about this selection mechanism in more detail. They mention for instance the consciousness of guilt, the understanding of their problems, the will to compensate, etc. Because of the lack of research concerning the attitude of the juvenile, this selection mechanism should be further explored in the future.

315 I. RAVIER et al. Beslissingen van jeugdrechters, supra footnote 8, 70 p.
323 I. RAVIER et al. Beslissingen van jeugdrechters, supra footnote 8, 70 p.
324 J.K.D. MICHON, Juvenile Delinquency, supra footnote 4.
So, although the juvenile lawyers did not observe the selection mechanisms ‘maturity’ and ‘sex’, they mainly emphasize the same selection mechanisms as the ones mentioned in the literature – with or without additional selection mechanisms.

c. Environmental Selection Mechanisms

The social network in general is considered one of the most important selection mechanisms in the decision-making process of the juvenile judge. In the literature, this social network consists of the selection mechanisms related to ‘family’ and those linked to ‘school’. Besides these categories of selection mechanisms, the juvenile lawyers add the selection mechanisms related to ‘friends’.

The selection mechanisms described in the literature within the category ‘family’ are narrow. Researchers mainly mention the importance of structure in the family environment and the legal and psychiatric history of the parents.327,328,329,330,331 The juvenile lawyers confirm these selection mechanism and even extend this list by mentioning the importance of the involvement of the parents, the parenting skills, the maturity of the parents, the intelligence of the parents, the support-possibilities and bad partners of the parents.

Both the researchers and the juvenile lawyers emphasize the same selection mechanisms linked to ‘school’. The degree of truancy,332,333,334,335 the educational level and the presence of the adolescent in school are discussed.336,337 Only one participant disagrees by saying that school is not important in the decision-making process of the juvenile judge.

330 C. VANNESTE, beslissingen jeugdrechters, supra footnote 230.
331 J.K.D. MICHON, Juvenile Delinquency, supra footnote 4.
335 C. VANNESTE, beslissingen jeugdrechters, supra footnote 230.
336 C. VAN DIJK & A. NUWTIENS, Transferring Juvenile Offenders, supra footnote 173.
337 J. PUT & M. ROM, De Nieuwe Jeugdwet, supra footnote 136.
Besides the additional selection mechanisms in the category ‘family’, the juvenile lawyers also add the overall category ‘friends’. This category mainly focuses on the impact of the friends of the juvenile on his/her behaviour.

Thus – concerning the environmental selection mechanisms – the juvenile lawyers confirm all of the selection mechanisms mentioned in the literature and even more, add family- and school- related selection mechanisms.

d. Demographic Selection Mechanisms

As already mentioned, the demographic selection mechanisms are considered the least significant ones. Or the juvenile lawyers do not have any knowledge of these selection mechanisms, or he/she does not think these play any part in the decision-making process. The participants do not mention the relevance of ethnicity, for example EU-membership or not, and the fact if the adolescent is assigned to kinship or non-kinship foster care.\(^{338,339}\) Afresh, the question is if they forgot to mention it or if these selection mechanisms do not have an impact on the decision of the juvenile judge. On the other hand, they confirm the impact of the socio-economic background of the parents and the relevance of the income of the parents as possibly decisive in the decision-making process.\(^{340,341,342}\)

Overall, only a few demographic selection mechanisms are identified whereas the juvenile lawyers even recognize less than described in the literature. Nevertheless, this could be considered positive, as making different decisions based on a different demographic context might be discriminatory.

e. Possible Reasons for the Discrepancy between Theory and Practice

Because of the above mentioned discrepancies between the selection mechanisms discussed in the literature and those observed by the juvenile lawyers, it can be assumed that there is an overall discrepancy between the theory and the practice in relation to the decision-making process of the juvenile judge. Several possible reasons were recognized while analysing the literature and the open questionnaires of the...
juvenile lawyers. In the perception of the juvenile lawyers, four reasons can be identified. Two reasons are linked to the juvenile judge him/herself and two consider the availability of vacancies and certain treatments. These reasons confirm the ones described in the literature such as the freedom of the juvenile judge to choose, the shortage of vacancies and suitable treatments, etc.\textsuperscript{343, 344, 345, 346, 347, 348} The reasons described in the literature are even more detailed. For instance, the research of Sanborn mentions the characteristics of the Juvenile Court as important in the decision-making process.\textsuperscript{349}

Globally seen, the possible reasons for the discrepancy between theory and practice can be regarded as selection mechanisms that influence the decision-making process of the juvenile judge. These selection mechanisms probably explain the discrepancy by making clear that the available selection mechanisms cannot or will not always used.

4. Conclusion

By comparing the answers to the two subquestions of the first and second research question, the discrepancy between theory and practice becomes clear. It is globally shown that researchers in the literature and juvenile lawyers observe equal selection mechanisms. Nevertheless, they both find additional selection mechanisms and sometimes do not confirm each other’s perceptions. Therefore, in this paper an extensive list of selection mechanisms is elaborated which can help to raise the understanding of how the juvenile judge makes his/her decision.

\textsuperscript{343} M. FRANSSENS et al. Het Beleid van de Jeugd magistraat, supra footnote 6.
\textsuperscript{346} P.C. O’DONNELL & A.J. LURIGIO, “Psychosocial predictor of clinicians’ recommendations and judges’ placement orders in juvenile court”, Criminal justice and behaviour 2008, 1429-1448.
\textsuperscript{347} J. PUT & M. ROM, De Nieuwe Jeugdwet, supra footnote 136.
\textsuperscript{348} R. SHEEHAN, Magistrates’ decision making in child protection cases, Aldershot, Ashgate, 2001, 41-46 p.
II. IMPLICATIONS

The research in this paper is unique in its sort and can provide an added value to current literature concerning the decision-making process in the Flemish Juvenile Court, as it can lead to insights and understandings of the different selection mechanisms used by the juvenile judges. It even can make a start for an improvement of the current decision-making process of the juvenile judge. Nevertheless, much remains to be learned. The varied circumstances of each case and the distinct characteristics of each minor require close examination by juvenile judges and/or the social service linked to the Juvenile Court, as to hear from all parties to the case and evaluate the important personal and community factors related to the choice of jurisdiction. Unfortunately, this study shows that each juvenile judge has his/her own preferences and his/her choice can be limited because of the restricted availability of vacancies and suitable treatments. In this context, reporting these findings to the juvenile judges can raise their awareness in the way they make their decisions. Maybe they can be trained in taking into account all the selection mechanisms described in this paper, in order to make more grounded decisions and to lessen the freedom of choice of the juvenile judge. Nevertheless, the individuality of the adolescent cannot be lost out of sight because it will never be the case that different people can be treated equally in the decision-making process of the juvenile judge.

Moreover, because of the lack of harmonisation in the decision-making process between the juvenile judges, the mentioned recommendations should be translated and disseminated as widely as possible and more specifically among juvenile judges and their social service.\textsuperscript{350} As shown in this paper, concerning the juvenile lawyers, the juvenile judges better monitor the legally binding guidelines. So translating the non-binding recommendations into binding guidelines could be helpful as well. This is of course difficult to obtain, but it would definitely improve the functioning of the aid. Furthermore, the knowledge of the strictly used selection mechanisms by the juvenile judge could change the therapeutic treatments for the better. Knowing which selection mechanism is perceived more important in which context may help the prevention of placements for example. This may, in its turn, lead to more available vacancies in institutions and consequentially meet the problem of shortage of vacancies. Moreover,

\textsuperscript{350} Council of Europe, \textit{supra} footnote 89.
since the personality of the adolescent is shown to be an important selection mechanism, mandatory standardised personality tests might help the decision-making of the juvenile judge.

Lastly, the distinction between juveniles with a VOS- and MOF-statute is not displayed clearly is in this paper. Further research should be done to elaborate these two statutes and possibly question whether this distinction is necessary in a legal perspective.

III. STRENGTHS AND RESTRICTIONS CURRENT RESEARCH

1. Strengths

Current research queried the juvenile lawyers concerning the selection mechanisms used by the juvenile judges. Therefore a second-person perspective is used. This can be seen as a limitation of this study because the juvenile judge is not directly queried. On the other hand is this strength for this research because supposititious juvenile lawyers have a unique vision on the selection mechanisms. Furthermore, not much research currently exists questioning the juvenile lawyers concerning selection mechanism. The researchers mostly use quantitative methods. This study meets these shortages and can therefore be seen as another strength. It also focuses on the decision-making process of the juvenile judge, whereby previous research mainly concentrates on the final decision. Moreover, this research makes the distinction between adolescents with a VOS- and MOF-statute, what could be seen as another strength.

2. Restrictions

Besides the strengths of this research, restrictions can be found. The first restriction is the fact that the processing of the data was done by only one researcher. The theoretical background of the researcher can never be completely disconnected from the process of coding. The theoretical background of the researcher and her vision on the Juvenile Court unconsciously influences the coding of the questionnaires. Because the reliability of the research can be improved by comparing the data-

analyses via different researchers, the researcher tried to limit this restriction via different interusions by an external researcher.

Moreover, the software programme NVivo was not used to analyse the data. Since NVivo could contribute to the automation and the processing of the obtained data and therefore to make them more insightful, this programme could have been beneficial.

As a result of the explorative character of this research, a qualitative method using open questionnaires was chosen. Inasmuch the limited willingness and interests of the juvenile lawyers, only a restricted group of juvenile lawyers could be queried. Even more, it is very striking that all participants are female. This might bias the obtained results excessively. Furthermore, only Flemish juvenile lawyers were queried whereby a generalisation to the European or international level is very difficult. Because of the limited sample the results are barely representative for the whole population, in particular all perceptions of the juvenile lawyers on the selection mechanisms used by juvenile judges in all the Flemish Juvenile Courts. This method, on the other hand, did allow the researcher to question the juvenile lawyers in depth in order to obtain a complete vision of their unique perception on the Juvenile Court and in particular on the selection mechanisms. In qualitative research it is not about generalisation but rather about diversity. To gain diversity of the results, this research aimed to query different juvenile lawyers working in different Flemish Juvenile Courts. Furthermore an attempt was made to question both young and older juvenile lawyers, as their perception might be different. Also juvenile lawyers with different levels of experience were examined.

IV. SUGGESTIONS FUTURE RESEARCH

Following the restrictions of current research, several suggestions for future research can be formulated. The first proposition concerns researching the selection mechanisms by means of quantitative research. In this way, variables as gender, age and socio-cultural background can be controlled and standardized so as to be able to generalize the data. Though the aspiration of this paper was not to generalize, it could be enriching to listen to more juvenile lawyers concerning selection mechanisms in

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353 Ibid.
the future. The variables gender, age, socio-cultural background, etc. could be used as a starting point to answer for example the question if the perception of male juvenile lawyers differs from that of female juvenile lawyers. It is important to research the viewpoint of male participants as well. Another question for future research could be if there is a difference in perception concerning the cultural context of the juvenile lawyer, or even, which selection mechanisms are used in other countries and cultures? Do these selection mechanisms contribute to different decisions of the juvenile judge? Juveniles in every culture experience problems whereby it is possible that other selection mechanisms are observed.

To increase the quality of this research, future research could provide triangulation. For instance, the data could be gathered via different parties like juvenile judges, consultants, the adolescent itself and their family. Furthermore the open questionnaires could be completed with focus groups and observations, for example concerning the characteristics of the adolescents that play a part in the decision-making process. Further research whereby the data are interpreted by several independent researchers and the use of NVivo could also contribute to the quality of current research. Lastly, feedback of the results to the juvenile lawyers can benefit the validity and reliability of current research.

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The concept of ‘triangulation’ is used in qualitative research as a metaphor to solve the problem of the single perspective. By this is meant that the researcher prefers to work with certain kinds of data, data sources and data collection methods. P.L.B.J. LUCASSEN & I.T.C. OLDE, Kwalitatief Onderzoek: Praktische methoden voor de medische praktijk, Houten, Bohn Stafleu van Loghum, 2007, 143 p.
F. CONCLUSION

Despite its restrictions this research gained insights in the selection mechanisms used by juvenile judges in the Juvenile Court, but also in the distinction between adolescents with a VOS- and MOF-statute. The existing literature and the thematic analysis show six main selection mechanisms each featured by several underlying selection mechanisms. The most important selection mechanisms considered were the legal and environmental ones – recognized both in the literature as well as by the juvenile lawyers. Moreover, no clear differences were found between adolescents with a VOS- and MOF-statute, especially in the perception of the juvenile lawyers. In the literature a slight preference was found in case of VOS-adolescents for the environmental selection mechanisms. Concerning the MOF-adolescents, the legal selection mechanisms were considered more important. Furthermore, through comparing the selection mechanisms described in the literature and those observed by the eight participants, the discrepancy between theory and practice became clear. Both the existing literature and the juvenile lawyers identify four reasons for this discrepancy. These reasons are considered highly important in the decision-making process of the juvenile judge.

This paper provides a start for more process-research in the Juvenile Court, with in particular attention to the perception of the juvenile lawyer. This small qualitative research paves the way for other researchers in the future. This is consistent with the statement of Lowe, Matz and Messer: “The decision-making process of the juvenile court judge continues to remain an important area of both research inquiry and judicial practice. This area, however, has remained understudied within the research literature.”

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H. APPENDICES

I. TOPIC LIST

- Individual factors that could influence the decision-making process of the juvenile judge
- Legal factors
- Environmental factors
- Demographic factors
- Distinction VOS- and MOF-adolescents
- Differences in theory and practice
- Preference of the juvenile judge

II. QUESTIONS (in dutch)

1) Welke selectiemechanismen kent u? Waarop denkt u dat de jeugdrechter zijn/haar beslissing m.b.t. jeugddelinquent baseert?

2) Welke selectiemechanismen wegen volgens u het meest door in de beslissing? Welke selectiemechanismen worden volgens u het meest door de jeugdrechter belangrijk geacht?

3) Denkt u dat er een verschil is in de beslissing bij jongeren met een VOS-statuut vs. een MOF-statuut?

4) Spelen volgens u de individuele factoren van de jongere een rol bij de beslissing van de jeugdrechter? Zo ja, welke? Is er hierbij volgens u een onderscheid tussen jongeren met een MOF-statuut vs. VOS-statuut? Welke individuele factoren wegen volgens u het meest door?

5) Welke wettelijke factoren bepalen volgens u de beslissing van de jeugdrechter? Is er hierbij volgens u een onderscheid tussen jongeren met een MOF-statuut vs. VOS-statuut? Welke wettelijke factoren wegen volgens u het meest door?

6) Spelen volgens u omgevingsfactoren van de jongere een rol bij de beslissing van de jeugdrechter? Zo ja, welke? Is er hierbij volgens u een onderscheid tussen jongeren met een MOF-statuut vs. VOS-statuut? Welke omgevingsfactoren wegen volgens u het meest door?
7) Spelen volgens u **demografische factoren** van de jongere een rol bij de beslissing van de jeugdrechter? Zo ja, welke? Is er hierbij volgens u een onderscheid tussen jongeren met een MOF-statutuut vs. VOS-statutuut? Welke demografische factoren wegen volgens u het meest door?

8) Bij MOF-statutuut: zijn de kenmerken (individuele kenmerken, omgevingskenmerken, demografische kenmerken) van het **slachtoffer** volgens u van belang bij de beslissing van de jeugdrechter?

9) Merkt u een verschil tussen de theorie en de praktijk?

10) Heeft u nog bedenkingen, opmerkingen, tips, …?

**III. EXAMPLE (in dutch)**

Vragenlijst masterproef ‘internationaal en Europees recht’

Naam en voornaam: ***
Geslacht: ***
Leeftijd: ***
Ervaring: ***
Plaats tewerkstelling: ***
Samenwerkend met jeugdrecht (naam en plaats): ***

1. Welke selectiemechanismen kent u? Waarop denkt u dat de jeugdrecht zijn/haar beslissing m.b.t. jeugddelinquent baseert?

*Onder een ‘selectiemechanisme’ wordt begrepen: een criteria/mechanisme dat door de jeugdrecht gehanteerd wordt voor het maken van zijn/haar beslissing met betrekking tot de jongere (bv. de jeugdrecht beslist aan de hand van de persoonlijkheid, feiten in het verleden, ... over de jongere).*

Een zeer belangrijke factor in het nemen van de beslissing is of de jongere al eerdere feiten gepleegd heeft. Een minderjarige kan immers steeds het verkeerde pad opgaan en dan is het de bedoeling van de jeugdrecht en jeugdrechtbank om die minderjarige terug op het juiste pad te krijgen. Een minderjarige die een eerste keer voor de jeugdrecht komt, wordt heel erg de les gespeld en krijgt een aantal maatregelen opgelegd. Voor minderjarigen die al meerdere feiten hebben gepleegd, is de jeugdrechtener echter strenger aangezien ze van oordeel zijn dat eerdere ingrepen niet geholpen hebben. Er is dan immers een diepgaand probleem bij die minderjarige en de jeugdrechtener gaat dan echt op zoek naar maatregelen die de minderjarige weghalen uit het criminale milieu.

Een andere belangrijke factor zijn de gepleegde feiten. Als het bijvoorbeeld gaat over geweldpleging ten opzichte van een andere persoon wordt er vaak een cursus agressiebeheer opgelegd. Er wordt wel steeds een verslag opgesteld over de minderjarige zelf en er wordt soms wel gesproken over de persoonlijkheid van de jongere maar ik heb niet de indruk dat een beslissing op basis van de persoonlijkheid genomen wordt. Het is natuurlijk
anders als het gaat over een minderjarige die al heel wat feiten gepleegd heeft. Er zal dan zowel een MOF als een VOS dossier zijn. Bij veelplegers wordt er wel meer rekening gehouden met de persoonlijkheid van de minderjarige omdat men dan op zoek gaat naar het onderliggend probleem.

2. Welke selectiemechanismen wegen volgens u het meest door in de beslissing? Welke selectiemechanismen worden volgens u het meest door de jeugdrecteur belangrijk geacht?

Zoals hierboven reeds beschreven is de factor ‘voorgaande feiten’ zeer belangrijk. Ook de gepleegde feiten zelf zijn belangrijk in het nemen van de beslissing. Volgens mij houden jeugdrecteurs vooral rekening met deze twee factoren. Er wordt in mindere mate rekening gehouden met de persoonlijkheid van de jongere omdat de meeste MOF-dossiers nog steeds alleenstaande feiten uitmaken. Er is maar een klein deel van de minderjarige die veel feiten pleegt. Zoals hierboven geschreven wordt er bij veelplegers wel rekening gehouden met de persoonlijkheid.

3. Denkt u dat er een verschil is in de beslissing bij jongeren met een VOS-statuut vs. een MOF-statuut?

Er is zeker en vast een verschil. Indien het gaat over VOS-situaties. In de meeste VOS-situaties ligt het probleem bij de ouders. Er wordt door de jeugdrechtbank dan ook echt gepusht bij de ouders om aan hun problemen te werken. De kinderen worden dan opgevolgd qua persoonlijkheid omdat zij emotioneel heel veel te verwerken krijgen door de problemen die hun ouders hebben.

In sommige gevallen ligt het ook niet aan de ouders. De minderjarige blijft maar fouten maken (hangt dan ook vaak samen met de MOF) en het slechte pad opgaan. Dan kijkt men meer naar de persoonlijkheid van de minderjarige en gaat men op zoek naar het probleem.

4. Spelen volgens u de individuele factoren van de jongere een rol bij de beslissing van de jeugdrecteur? Zo ja, welke? Is er hierbij volgens u een onderscheid tussen jongeren met een MOF-statuut vs. VOS-statuut? Welke individuele factoren wegen volgens u het meest door?

Onder ‘individuele factoren’ wordt begrepen: de factoren dat de jongere kenmerken, zoals zijn persoonlijkheid, geslacht, geaardheid, identiteit, intelligentie, attitude, ...

Zoals hierboven reeds gesteld wegen individuele factoren minder door bij MOF-dossiers, behalve in het geval dat het gaat om veelplegers. Bij MOF-dossiers houdt men wel altijd enigszins rekening met de attitude van de minderjarige. Ik vind niet dat dit een doorslaggevende factor is maar de jeugdrechtener staat anders ten opzichte van een jongere die spijt betuigt dan ten opzichte van een minderjarige die tegen het zonlicht in blijft ontkennen.

In VOS-dossiers wordt er wel rekening gehouden met individuele facturen. Men gaat immers trachten de jongere zo goed als mogelijk te laten opgroeien en dan gaat men zeker rekening houden met de persoonlijkheid van de jongere. Ook de intelligentie speelt een rol. Sommige jongeren kunnen bepaalde vormen van opvoeding niet aan. Voor iedere jongere moet er daarom gezocht worden naar een gepaste oplossing.

Naar mijn mening wordt er geen rekening gehouden met geslacht, geaardheid en identiteit.
5. Welke wettelijke factoren bepalen volgens u de beslissing van de jeugdrezeker?
   Is er hierbij volgens u een onderscheid tussen jongeren met een MOF-statuut vs. VOS-statuut? Welke wettelijke factoren wegen volgens u het meest door?
   *Onder ‘wettelijke factoren’ wordt begrepen: richtlijnen en/of wetten zowel op Internationaal, Europees en nationaal niveau.*

   Naar mijn mening spelen er weinig wettelijke factoren een beslissende rol in het nemen van beslissingen door de jeugdrezeker. De jeugdrezeker dient natuurlijk de wet te respecteren en de wet schrijft een aantal mogelijke maatregelen voor die een jeugdrezeker kan opleggen. Het is dan aan de jeugdrezeker om de best passende maatregel op te leggen en die is in iedere situatie anders.
   Ik vind dit zowel het geval in VOS als in MOF dossiers.

   *Onder ‘omgevingsfactoren’ wordt begrepen: de factoren die in de directe omgeving van de jongere een rol spelen, zoals gezin (gescheiden, alleenstaande moeder, …), school, opvoedingsstijl van de ouders, vrienden, …*

   In een MOF dossier komt het vaak voor dat een minderjarige ‘slechte’ vrienden heeft. Daar wordt door de jeugdrezeker wel rekening mee gehouden. Soms wordt door de jeugdrezeker een contactverbod opgelegd tussen bepaalde minderjarigen om strafbare feiten te vermijden in de toekomst.
   In een VOS dossier gaat men meer rekening houden met het gezin, de school, de opvoedingsstijl van de ouders, … De jeugdrezeker zal zich gaan focussen op dat punt waarop het slecht gaat. Als er bijvoorbeeld een probleem is op school, tracht de jeugdrezeker dit aan te pakken. Als er een probleem is in het gezin – bijvoorbeeld omwille van een echtscheiding van de ouders en een moeilijk verloop van de verblijfsregeling – tracht de jeugdrezeker hierop in te spelen.

7. Spelen volgens u demografische factoren van de jongere een rol bij de beslissing van de jeugdrezeker? Zo ja, welke? Is er hierbij volgens u een onderscheid tussen jongeren met een MOF-statuut vs. VOS-statuut? Welke demografische factoren wegen volgens u het meest door?
   *Onder ‘demografische factoren’ wordt begrepen: kenmerken van de bevolking in de (directe) omgeving, zoals leeftijdsoptibouw, geslacht, geloof, spreiding, …*

   Naar mijn mening spelen demografische factoren geen rol bij het nemen van de beslissing, zowel niet in MOF dossiers als in VOS dossiers. De jeugdrechtbank heeft wel steeds respect voor de demografische factoren, doch laat een beslissing hier niet van af hangen.

8. Bij MOF-statuut: zijn de kenmerken (individuele kenmerken, omgevingskenmerken, demografische kenmerken) van het slachtoffer volgens u van belang bij de beslissing van de jeugdrezeker?
In de meeste gevallen zijn de kenmerken van het slachtoffer niet van belang bij het nemen van de beslissing en dat zou ook niet mogen. De jeugdrechter moet nog altijd neutraal blijven en de feiten bekijken zoals ze zijn.
In zeer uitzonderlijke gevallen laat de jeugdrechter zich leiden door de houding van het slachtoffer. Dit kan soms wel negatief uitdraaien en kan ervoor zorgen dat de feiten erg overdreven worden. Dit is soms niet correct toe naar de minderjarige.
In de meeste gevallen gebeurt dit echter niet.

9. Merkt u een verschil tussen de theorie en de praktijk?
*Onder ‘theorie’ wordt begrepen: wat de wet voorschrijft.*

Ik merk niet echt een verschil maar dat is volgens mij ook heel logisch. De theorie schrijft bepaalde dingen voor, maatregelen die jeugdrechter kunnen opleggen, bepaalde stappen die genomen kunnen worden maar uiteindelijk moet er naar iedere situatie apart gekeken worden welke stappen er ondernomen moeten worden.
De theorie is natuurlijk ‘simpel’ ten opzichte van de praktijk maar dat is bij de meeste rechtsgebieden het geval. In de praktijk is het altijd zoeken naar hoe de theorie het beste kan worden toegepast en spijtig genoeg zijn de meeste situaties niet zo ‘perfect’ zodat de theorie erop toegepast kan worden…

10. Heeft u nog bedenkingen, opmerkingen, tips, …?

Interessant onderzoek!!

Bedankt voor uw tijd!

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