

## Support for children during custody and contact proceedings in Belgium and in the Netherlands

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### **I. Introduction**

Child participation in custody and contact proceedings is an ongoing topic of interest worldwide. There is discussion about the pros and cons of child participation in these, often contentious, proceedings, there is discussion about what participation entails and how to interpret article 12 CRC and there is discussion about how to involve very young children in such proceedings.<sup>1</sup> In her work Laura Lundy states that it is not relevant what the pros and cons of hearing children are for the questions whether children should be heard, because having the opportunity to be heard is the human right of children.<sup>2</sup> The question is indeed *how* we involve children in decision making that concerns them. In our ongoing comparative project we distinguish four phases in the participation of children in custody and contact proceedings: the phase prior to the hearing by the family court judge, the hearing by the family court judge, the phase after the hearing by the family court judge and the phase of aftercare. Besides stating that children have a right to be heard “*in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body*”, article 12 CRC and the accompanying General Comment no. 12 set out requirements for child participation in each of these 4 phases.

In this paper we will zoom in on the phase 2: the actual hearing of the child by the judge in custody and contact cases. Article 12 CRC requires that the child has the right to express their views ‘*freely*’. In General Comment no. 12 the committee elaborates on this aspect of the right to be heard. First of all, ‘*freely*’ means that the child can choose whether or not they want to express their views,<sup>3</sup> furthermore if the child decides to express their views, the child must not be manipulated or subjected to undue influence, and be given the opportunity to express their own views and not those of others.<sup>4</sup> Moreover, ‘*freely*’ also means that the child has a right to be heard in an environment where they feel secure and respected.<sup>5</sup> This relates both to child friendly spaces for hearing children, the number of people present during the hearing and the attitude of the judge (not wearing a robe, child friendly language etc.) Another element of the hearing itself that has gained increasing attention in both Belgian and Dutch law is the question whether or not a child can bring a support person to the hearing. Recent Belgian and Dutch research with respect to children shows that children feel unsupported in the current system and indicate that one possible solution would be the possibility to bring a support person to the hearing. In this context a number of other questions arise: If the child can bring a support person of his/ her own choosing, can this be any person, including a parent involved in the proceedings, or are there guidelines preventing the child from bringing a person too close to the case? Moreover, are there guidelines as to what (if anything) such a support person may tell others about what was discussed between the judge and the child?

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<sup>1</sup> UN CRC, article 12; UN CRC General Comment no. 12 *The Right of the child to be heard* (2009).

<sup>2</sup> Lundy’s work resulted in the so-called Lundy Model, based on her article, ‘Voice’ Is Not Enough: Conceptualising Article 12 of the United Nations Convention on the Rights of the Child’, *British Educational Research Journal*, Vol. 33, no. 6, December 2007, pp. 927-942.

<sup>3</sup> UN GC 12, para 22.

<sup>4</sup> UN GC 12, para 24.

<sup>5</sup> UN GC 12, para 23.

In this paper we aim to present a comparative study of the possibilities for children to bring a support person to the hearing before the judge and the safeguards that are in place to ensure child-centered use of support persons in Belgian and Dutch law.

## II. Current situation in Belgium and in the Netherlands

### Current situation in Belgium

#### A. The support person according to the Act of 28 March 2024

Through the Act of 28 March 2024, the Belgian legislator strengthened the child's right to speak in family matters, as regulated by Articles 1004/1 to 1004/3 of the Belgian Judicial Code.<sup>6</sup>

Immediate cause for this amendment of the law was the practice study on the child's right to speak before Dutch-speaking family courts organised jointly by the Flemish Children's Rights Commissariat, the Order of Flemish Bars and the Family Association in 2022.<sup>7</sup> This study revealed, among other things, that children often do not feel heard by the family court judge and that the concrete application of the right to speak varies enormously from one judicial district to another.

When drafting the law, the legislator also paid attention to international research showing that children ask for someone to support them throughout the proceedings.<sup>8</sup> They ask for someone who is independent, reliable, trusted and empathetic. They want a person who puts them at ease, provides information and advice and empowers them.

An important innovation of the Act of 28 March 2024 is that from now on explicit provisions are made for the *right* of the child to be assisted by an adult *support person* of his or her choice during the interview with the judge (Art. 1004/1, § 5/1, second paragraph of the Belgian Judicial Code).

However, in doing so, the legislator failed to provide a comprehensive legal framework regarding this support person.

First of all, the law does not define the term 'support person'. We can think of various examples, such as a teacher or care teacher, a psychologist, a lawyer. However, a non-professional third party can also act as a support person. Nevertheless, certain persons are explicitly excluded under the law, namely the parties to the proceedings themselves (usually the parents) as well as blood relatives up to the second degree of one of these parties (i.e. not the child), with the exception of the child's adult brothers and sisters whose parentage has been established in relation to the same parents (Art. 1004/1, § 5/1, third paragraph of the Belgian Judicial Code). In concrete terms, this means, for example, that such an adult sibling can, in principle, assist the child as a support person, but a half-brother or sister cannot do the same. A grandparent, uncle or aunt of the child cannot act as a support person

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<sup>6</sup> Act of 28 March 2024 containing provisions regarding the digitalization of justice and various provisions concerning Ibis, *Belgian Official Gazette* 29 March 2024. The proposal to strengthen the hearing rights of the minor, as contained in bill 55-3728, was adopted in plenary session on 21 March 2024. See in particular <https://www.dekamer.be/FLWB/PDF/55/3728/55K3728006.pdf>, specifically from amendments nos. 42-52 onward.

<sup>7</sup> See [www.spreekrecht.be](http://www.spreekrecht.be) (consulted on 10 May 2025); see also C. Declerck and U. Cerulus, "Het hoorrecht van het kind voor de Nederlandstalige familierechters: resultaten van een praktijkbevraging", *Tijdschrift voor Familierecht* 2022, 175-184.

<sup>8</sup> See e.g. A. Daly, *Children, autonomy and the courts: beyond the right to be heard*, Brill Nijhoff, Leiden, 2018, 226; E.K.M. Tisdall, F. Morrison and J. Warburton, "Challenging undue influence? Rethinking children's participation in contested child contact", *Journal of Social Welfare and Family Law* 2021, 8-22.

either, but the new partner of one of the parents (the step-parent) can. The law does give the judge the possibility to decide not to admit the support person during the interview or to stop continuing the interview in the presence of this support person, even if he or she does not fall under the aforementioned legal exceptions. The judge will inform the child about this in a manner appropriate to the child's age and maturity. If the child does not agree, the judge may end the interview. The judge must then, in the interview report, state the reasons why the interview could not take place in the presence of those involved (Art. 1004/1, § 5/1, fourth paragraph of the Belgian Judicial Code). For family judges, this possibility does not suffice because they fear that its use could potentially lead to an irreversible breach of trust between the judge and the child.

Furthermore, the law also does not clarify what role or powers the support person has. It only stipulates that the support person assists the child during the interview. But what does this actually mean? The Parliament's explanatory statement explains that the role of the support person is to indeed support the child during the conversation with the judge. The support person tries to gain the child's trust and provides a reassuring presence during this interview. He or she can also explain the court ruling to the child. Problems may arise concerning the latter. Not only does the court ruling often include other information that is not relevant for the support person, but, moreover, the law does not provide for the court ruling to be transmitted to the support person.

Finally, the law does not stipulate that the support person is bound by a duty of confidentiality. However, the child may ask the court not to include confidential information in the mandatory written report (Art. 1004/1, § 5/2, first paragraph, 4° and § 5/3, first paragraph of the Belgian Judicial Code). The parties shall take note of this report. In the presence of a support person who is not bound by professional secrecy, or at least by a duty of confidentiality, the family courts consider that they can no longer guarantee confidentiality regarding the child. If the family judge nevertheless keeps certain factual information confidential, this too may risk a breach of trust. Moreover, the child runs the risk of ending up in a tense atmosphere with one or both parents if the support person decides to disclose that information to the parents or third parties.

As a result, family courts are reluctant to apply the law in its current form, which means that in practice most family courts do not use the model information form informing 12-year-olds of the possibility to bring a support person.<sup>9</sup> Pending intervention by the legislator – the judiciary could address this issue by developing a charter focusing on the role, powers and obligations of the support person.

## **B. The support person according to the Ghent pilot project**

Parallel to the Act of 28 March 2024, the pilot project 'Support person' was launched in the Ghent Family Court in February 2024.<sup>10</sup> Until recently, a support person was appointed *ex officio* in this family court for every new case concerning parental authority and residence regarding each child of primary school age.

Only lawyers were eligible to act as a support person. Moreover, they were required to have undergone a prior multi-day training at their own expense. The training included not only the exploration of and familiarity with the child's world through the so-called 'Matt game' (in theory and practice) but also communication tools to accommodate the child in court.

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<sup>9</sup> Royal Decree of 17 July 2024 amending the annexes to the Royal Decree of 28 April 2017 establishing the model information form referred to in Article 1004/2 of the Judicial Code, *Belgian Official Gazette* 28 August 2024. This Royal Decree entered into force on 7 September 2024. See on this: C. Declerck, "Nieuw model informatieformulier spreekrecht minderjarige", *Tijdschrift voor Familierecht* 2024, 335-339.

<sup>10</sup> A. Bruneel and G. Verschelden, "Kindvriendelijke justitie in de Gentse familierechtbank: het pilootproject 'Vertrouwenspersoon'", *Tijdschrift voor Familierecht* 2023, 282-284.

The support person had the following clearly defined tasks: he/she contacted the child, interacted according to the taught methodologies, informed the child about everything going on and listened to him/her. The support person was present during the hearing and reported on it orally and, where appropriate, was present at the interview with the judge. After the court ruling, the support person explained the judge's decision to the child.

The support person's compensation was set in 'points' for second-line legal assistance.

A ruling by the Ghent Court of Appeal on 14 January 2025 forced a (provisional) halt to the project.<sup>11</sup> This court of appeal ruled that minor children can be assisted during the interview with the judge by a support person of their choice, if they so wish. In the absence of a legal basis, the family court thus cannot ex officio appoint a lawyer or a support person for minors if they are not a party to the proceedings. There is also no possibility of delegating the hearing of the minor to a lawyer or organising it otherwise than provided for by law. Moreover, the support person may not be present in the chambers sessions, nor may the children themselves, or other third parties.

The ruling of the Ghent Court of Appeal caused such a stir in the Flemish media that it was explicitly included in the Federal Coalition Agreement that the pilot project would be rolled out further.<sup>12</sup> Afterwards, the Minister of Justice clarified in the Justice Commission that this can obviously only be done after a thorough evaluation and taking into account the comments of the Ghent Court of Appeal. Finally, any generalised assignment of a lawyer as a support person should also take budgetary implications into account.<sup>13</sup>

## Current situation in the Netherlands

### **A. The current state of affairs**

Under Dutch law, children aged 12 and over must be given the opportunity to let the judge know what they feel and think in custody and contact proceedings, and the judge may give children under 12 this opportunity.<sup>14</sup> Children can express their views either in writing by means of a letter or in person by means of a conversation with the family court judge.<sup>15</sup> The article in the Code on Civil Procedure that grants children this right does not say anything about the circumstances under which a child can be heard and whether a child can be supported while expressing their views. Under current practice, children of 8 or 12 years and older receive a letter from the court if the court has to decide on a matter relating to custody or contact proceedings between their parents.<sup>16</sup> In this letter children are told that they have the right (but not a duty) to express their views on the matter at hand to the family court judge, either by writing the judge a letter or by coming to the court to be heard by the family court judge. Nowadays the website of the courts contains information for children about the hearing by the

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<sup>11</sup> Ghent 14 January 2025, *Tijdschrift voor Familierecht* 2025, 120, obs. M. De Hemptinne.

<sup>12</sup> See [https://www.belgium.be/sites/default/files/resources/publication/files/Regeerakkoord-Bart\\_De\\_Wever\\_nl.pdf](https://www.belgium.be/sites/default/files/resources/publication/files/Regeerakkoord-Bart_De_Wever_nl.pdf) (consulted on 10 May 2025)

<sup>13</sup> CRIV 56 COM 090, 21.

<sup>14</sup> Article 809 Code of Civil Procedure

<sup>15</sup> In practice, judges in the appellate courts invite children as of 8 years old to express their views as of 1 January 2025. *Procesreglement Verzoekschriftprocedures Familiezaken gerechtshoven* of 1 January 2025. Whether this also happens on a regular basis in the courts of first instance is less clear, the new *procesreglement* (procedural rules) does not make this standard practice (*Procesreglement Familie en Jeugdrecht rechtbanken* of 1 January 2025).

<sup>16</sup> Parents or person who act as parents and who have either parental responsibilities or a right to contact.

judge and what to expect,<sup>17</sup> and a more general website for children which also includes information about the possibility to write a letter to the judge.<sup>18</sup>

On these sites it is clearly indicated that children can ask help with expressing their views in the letter, either from someone close to them such as a parent or another family member or from the *Kinderrechtswinkel*.<sup>19</sup> In contrast, there is very little to no information about whether a child can bring someone to the child interview to support them or help them express their views during the interview.

In the earlier mentioned procedural rules for both the courts of first instance and the appellate courts, no mention is made of the possibility to bring a support person to the child interview. The rules state that “the child will in principle be heard separately”<sup>20</sup> (courts of first instance) or “the child will be heard separate from the actual court hearing” (courts of appeal). The wording in both sets of procedural rules seems to leave room for the possibility to hear a child while a support person is present. The rules for courts of first instance merely state that the child is in principle heard separately, but separately from whom or what is unclear, and the rules for the appellate courts merely state that the child will not be heard during the actual court hearing where all other involved parties and their lawyers are present.

When consulting additional information supplied by the court, things do not become much clearer. In 2016 the courts of appeal drew up a professional standard for the child interview. The standards indicate that only one of the three judges on the case (most likely the chair) and the court clerk are present during the child interview and that in principle there is no room for third parties to be present. However, there may be exceptions at the express wish of the child, examples mentioned in the standards are a guardian ad litem or a lawyer if one has been appointed for the child, or a support person or companion. Parents are specifically excluded from attending the child interview as a support person.<sup>21</sup> Siblings are, in principle, also heard separately, unless siblings expressly wish to be heard together. The decision whether or not to allow siblings to be heard together is made by the presiding judge.<sup>22</sup> This means that children can bring a person with them to the interview at the appellate courts, as long as this person is not one of the child’s parents. It seems to be at the judge’s discretion whether or not to admit a support person to the interview, even though this is not explicitly mentioned. The standards do not include any information on the role this formal or informal support person plays during or after the hearing. If this person is present in a professional capacity, such as a guardian ad litem or a lawyer, they will be bound by their own professional standards. But this is not the case if the support person is present in a non-professional capacity, which would be the case if this is a friend or a family member, such as a grandparent or aunt.

If, however, children consult the child friendly 2018 brochure on the child interview issued by the courts they will receive very different information: *“If you come to the court for the child interview, you may bring someone with you, for example your mother or father. They are just not allowed to be present during the interview.”*<sup>23</sup>

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<sup>17</sup> <https://www.rechtspraak.nl/Naar-de-rechter/rol-in-rechtszaak/Paginas/Kindgesprek.aspx>

<sup>18</sup> <https://rechtvoorjou.nl/naar-de-rechter/mijn-ouders-gaan-scheiden> and <https://www.nji.nl/scheiding/hoeschrijf-ik-een-brief-aan-de-kinderrechter#hulp-bij-het-schrijven> and <https://kjr.w.eu>

<sup>19</sup> “Genoemde minderjarigen worden in beginsel afzonderlijk gehoord.”

<sup>20</sup> “Met de minderjarige wordt buiten de mondelinge behandeling gesproken.”

<sup>21</sup> Jurisdiction, Professional standard Child interviews for the courts, adopted at the LOVF-h meeting of 24 March 2015, updated 9 December 2016. <https://www.rechtspraak.nl/SiteCollectionDocuments/professionele-standaard-kindgesprekken.pdf>

<sup>22</sup> <https://www.rechtspraak.nl/SiteCollectionDocuments/professionele-standaard-kindgesprekken.pdf> p. 4.

<sup>23</sup> <https://www.rechtspraak.nl/SiteCollectionDocuments/R007-Kindgesprek.pdf>

The invitation letter send to children for the child interview does not include information about whether or not they can bring a support person to the interview. However, recent research among judges and children shows that children sometimes do bring a support person to the interview.<sup>24</sup>

## **B. What do children want and need?**

Three recent Dutch surveys of children and adolescents show, that they do not feel sufficiently seen and heard by their parents during and after separation (Children's ombudsperson),<sup>25</sup> that they do not feel sufficiently supported during the court's hearing in contact and custody proceedings (Villa Pinedo),<sup>26</sup> and that they would like to take a support person to the interview with the judge (Bruning et al 2020).<sup>27</sup>

The 2020 multidisciplinary study carried out by Bruning et al at the behest of the government, included a survey among 33 children who had been involved in custody and contact proceedings.<sup>28</sup> About half of these 33 children (17) were older than 12 at that time. Nine of the children over 12 indicated that they decided to be heard by the judge.<sup>29</sup> Of the 16 children younger than twelve, 8 decided to be heard by the judge. These numbers correspond with the findings in this study on the basis of interviews with judges, who indicate that almost half of the children that are send a letter by the court to express their views, do not respond.<sup>30</sup> The possibility for children to bring a support person to the child interview is discussed in the study as well. The judges interviewed in the study see the benefits for the child and do allow a support person to be present during the interview if the child brings such a person, but most of them prefer to speak to the child alone.<sup>31</sup> It seems that a majority of the children involved in the survey would have liked to bring a support person to a child interview.<sup>32</sup> The researchers recommend that it should become standard practice for children to bring a support person to the child interview if that is what they want. This means that children should be informed about this possibility in the invitation letter.<sup>33</sup> The then Minister of Judicial Affairs indicate in response to this study that he encourages that possibility for children to bring a support person to the child interview.<sup>34</sup>

The 2024 study carried out by Villa Pinedo,<sup>35</sup> a lived experience organisation to support children experiencing parental separation, covers the phases before, during and after the hearing. Children receive a letter from the court explaining they have to opportunity to express their views either

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<sup>24</sup> Bruning et al., *Child in process: from communication to effective participation: The right to be heard and the procedural position of minors in family and youth cases*, WODC, The Hague, 2020, p. 189-192.

<sup>25</sup> Kinderombudsman, *Ouders zijn onvervangbaar*, The Hague 2024,

<https://www.kinderombudsman.nl/system/files/publications/2024-Publicatie%20aanmaken/KOM%20-%20Ouders%20zijn%20onvervangbaar.pdf>

<sup>26</sup> Villa Pinedo, *Zie mij en hoor<sup>®</sup>echt*, Utrecht, 2024 [https://drive.google.com/file/d/15Vn2r7t0J\\_8Jtm13p-Z10qmyflCnEpnR/view](https://drive.google.com/file/d/15Vn2r7t0J_8Jtm13p-Z10qmyflCnEpnR/view)

<sup>27</sup> M. Bruning et al. *Child in process: from communication to effective participation: The right to be heard and the procedural position of minors in family and youth cases*, WODC, The Hague, 2020, p. 4. The survey included more children, but only 33 of the children included had actually been involved in custody and contact proceedings.

<sup>28</sup> This is a rich study in which child participation in legal proceedings was researched from different perspectives. The English summary at the end of the [report](#) is very interesting for those who do not read Dutch:

<sup>29</sup> Bruning p. 179 Table 7.

<sup>30</sup> Bruning p. 180. This number includes both the responses from children by letter. Very few children in this study wrote a letter to the judge if they chose not to be heard by the judge in person.

<sup>31</sup> Bruning, p. 190.

<sup>32</sup> Bruning p. 191.

<sup>33</sup> Bruning, p. 263.

<sup>34</sup> <https://zoek.officielebekendmakingen.nl/kst-33836-59.html>.

<sup>35</sup> 111 children took part in the study (p. 11).

through a letter or by coming to court to talk to the family court judge. Children in this study indicate that the letter is very formal, may be difficult to understand and does not fully explain what they can expect if they go to court.<sup>36</sup> A majority of the children indicate that they would have liked more information: they indicate that the court's letter made them feel responsible, in the sense that their views would determine the outcome of the court proceedings.<sup>37</sup> A little more than 25% of the children decided to write a letter to the judge, and some 69% of these children received help with writing this letter, more than half were helped by one of the parents. Half of the children who write a letter to the judge do so because they find it too scary to talk to the judge themselves.<sup>38</sup>

A little more than half of the children that took part in the study decided to go to the hearing by the family court judge. Their experiences differ, some are positive, and some are negative resulting in a 5.1 out of 10 score for the hearing. Participants gave a number of different reasons for their negative rating: children do not want to hurt their parents, which makes it difficult for them to talk honestly with the judge; the limited amount of time allotted for the hearing by the family court judge and the attitude of the family court judge also contributed to this inadequate rating.<sup>39</sup> In the cases where children did feel the space to really express their views, the judge first asked some general questions not related to the case, had an open attitude and took the time for the hearing. This put the children at ease and created an atmosphere of trust.<sup>40</sup>

Just over half of the children were supported by someone when they expressed their views.<sup>41</sup> It is not clear from the research whether this includes the children who expressed their views in a letter. Of the children who were not supported, about 70.4 per cent said they had missed this support. 'Most of the children participating in the study indicated that they needed support from an independent and neutral person, with whom they could share their feelings and who would help them prepare for the hearing or writing a letter. Someone just for them.'<sup>42</sup> Villa Pinedo itself works with a buddy system in which young lived experience adults (buddy) support children in the period surrounding parental separation (bobby).<sup>43</sup> Contact between the buddy and the child only takes place via an app and not in person. The buddies receive training before they can act as a buddy. In the study children were asked whether they would like the support of such a lived experience buddy before, during and after the hearing, to which some 82% said, they would. This would of course mean a different set-up than that of the current buddy system where buddy and bobby do not meet in person, in particular if the child can bring the buddy to the hearing. The courts indicate that this study can help them improve the hearings and that they will start a conversation with Villa Pinedo about the possibility to assign buddies to children who are faced with court proceedings in the context of parental separation.<sup>44</sup> Whether a pilot will include bringing a buddy to the hearing with the family judge remains to be seen.

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<sup>36</sup> Villa Pinedo, p. 11-13.

<sup>37</sup> Villa Pinedo p. 13. It is interesting to note here that both the earlier mentioned Procedural rules state that no copies of the child's letter will be supplied to the parents nor will an official report be made of the hearing of the child. The judge will provide the parents with a short and businesslike summary of the child's views.

<sup>38</sup> Villa Pinedo, p. 14-15.

<sup>39</sup> Villa Pinedo, p. 16.

<sup>40</sup> Villa Pinedo, p. 16.

<sup>41</sup> Villa Pinedo, p. 16.

<sup>42</sup> Villa Pinedo, p. 21

<sup>43</sup> Villa Pinedo, *App met een buddy*, <https://www.villapinedo.nl/ik-wil-een-buddy>; R van der Wal et al., *Wetenschappelijke toetsing van de effecten van het buddy programma*, Universiteit Utrecht en Villa Pinedo, februari 2021, <https://www.uu.nl/nieuws/een-digitaal-vangnet-van-jonge-buddys-sterkt-kinderen-bij-verwerking-scheiding>

<sup>44</sup> <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Raad-voor-de-rechtspraak/Nieuws/Paginas/Onderzoek-Villa-Pinedo-waardevol-voor-verder-verbeteren->

### C. Support person: where are we at?

In 2018 the government started a project to reduce harm for children experiencing parental separation. During the project *"efforts were made to raise awareness about the importance of a support figure for children during parental separation. An informal support person from the immediate environment can help a child with their emotions, concerns and interests to someone who is outside the conflict, whom the child trusts and with whom the child feels safe. This allows children to better express their opinions."*<sup>45</sup> This project was concluded in 2022 in a final report with recommendations including a new approach to parental separation that *"also addresses the position of children during the proceedings, for example by allowing the child to bring a support person"*.<sup>46</sup> In the context of this project a guideline was developed for municipalities (who are responsible for child wellbeing in the Netherlands) and professionals on support persons for children during parental separation.<sup>47</sup> Even though it is not clear whether these Guidelines also apply to support persons that may be brought to the child interview, they are nevertheless interesting to discuss, since there are no other Guidelines on the support person for the child as such.

According to the Guidelines *"A support person is an adult chosen by the child with whom the child feels safe, with whom the child can speak openly and who can bring the child's perspective to the parents."*<sup>48</sup> Each party involved in the separation procedure has the obligation to check whether the child has a support person. The Guidelines contain requirements regarding the attitude of the support figure:

- the support figure stays out of the conflict;
- discussions with the child are *in principle* confidential;
- the support person is not an informant (exceptions are possible);<sup>49</sup>
- the support person may be approached for information but decides whether to share information; it is discussed beforehand with the child what can be shared with whom and why;
- the support person clearly explains their role and mandate to the child, so that the child feels safe and knows what to expect and what their position is in relation to all others involved;
- the support person knows that a professional support person can be a desirable addition, for example when the situation becomes too complicated for the support person chosen by the child.

In conclusion, we do know that most children would like to have a support person present during the child interview, and that in 2020 the then minister of judicial affairs indicated that he supports this possibility. However, many questions as to the who and what as yet remain unanswered.

### III. Conclusion

A comparison between Belgian and Dutch law on the possibility to bring a support person to the hearing by the family court judge in contact and custody proceedings first of all shows us that as of

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[kindgesprekken.aspx#:~:text=Buddies&text=Het%20onderzoek%20van%20Villa%20Pinedo%20bevat%20belangrijke%20informatie%20die%20de,de%20rechter%20te%20maken%20krijgen.](https://www.kindgesprekken.aspx#:~:text=Buddies&text=Het%20onderzoek%20van%20Villa%20Pinedo%20bevat%20belangrijke%20informatie%20die%20de,de%20rechter%20te%20maken%20krijgen.)

<sup>45</sup> Final report *Scheiden zonder schade* The Hague March 2022 p. 7.

<https://www.rijksoverheid.nl/documenten/rapporten/2022/03/22/tk-bijlage-2-scheiden-eindrapport>

<sup>46</sup> Final report *Scheiden zonder schade* The Hague, March 2022 p. 10.

<sup>47</sup> Handreiking Steunfiguur Kind bij Scheiding, October 2021,

<https://www.ouderplatformjeugdzorg.nl/kind/steunfiguur>

<sup>48</sup> Handreiking Steunfiguur Kind bij Scheiding, October 2021, p. 1

<sup>49</sup> For example, professionals have obligations under the Reporting Code on Domestic Violence and Child Abuse <https://www.augeo.nl/nl-nl/themas/meldcode/>

recently Belgian law includes a right for children to bring a support person of their choice to the hearing, whereas Dutch includes no such right. However, despite the recent inclusion of this right in Belgian law, there is no underlying comprehensive legal framework which defines the figure of the support person, the role and powers as well as the rights and obligations of this support person. This lack of clarity means that Belgian family courts struggle with the child's right to bring a support person to the hearing, which in turn results in family courts refusing the presence of such a support person.

Despite the lack of regulation in Dutch law, there seems to be more room in practice to allow the presence of a support person, although the decision whether or not to allow a support person to be present is squarely placed in the hands of the presiding judge. Moreover, the lack of regulation means that children are not informed of the possibility to bring a support person and questions as to the figure of the support person, the role and powers as well as the rights and obligations of this support person remain unanswered.

We can draw no other conclusion than that many questions with regard to the support person remain unanswered and that further interdisciplinary and comparative legal research is required on this topic of social and legal importance.