

The new Dutch law and policy on young adult offenders

Jolande uit Beijerse

Associate Professor, Department of Criminal Law, Erasmus School of Law, The Netherlands

1. Introduction

In their recent report on European responses to young adult offending Ineke Pruin and Frieder Dünkel conclude that almost all European justice systems have accepted that the specific circumstances of the age of young adulthood have to be reflected in criminal justice laws and/or practice. Germany in particular has a long tradition, since 1953, of integrating young adults into the Juvenile Justice System. They point out that since April 2014 the Netherlands too has become a European pioneer in implementing a tailored approach to young adult offenders. (Pruin and Dünkel, 2015).

The application of the rules and regulations of juvenile justice on young adult offenders is explicitly welcomed by the UN-Committee on the Rights of the Child:

The Committee notes with appreciation that some States parties allow for the application of the rules and regulations of juvenile justice to persons aged 18 and older, usually till the age of 21, either as a general rule or by way of exception.¹

Despite several policy discussions about the treatment of young adult offenders in the past decades, the legal practice with respect to young adults in the Netherlands was very poor. The legal provision in article 77c of the Criminal Code which allows the court an opportunity to impose a youth sanction on a young adult aged 18 to 21 was seldom used. This changed in April 2014 when a policy was introduced to encourage the use of this provision and, as part of the new Adolescents law, the upper age limit was raised from age 21 to 23.

In this article, I will explain this new law and policy against the background of developments in the Dutch Juvenile Justice system, show how the new procedure is organized in practice and what are the weaknesses of the system.

2. The Juvenile Justice system in close connection with Child protection

The Dutch Juvenile Justice system dates from 1905. This criminal law Child Act was introduced together with the civil law Child Act. The first provided special rules for the

¹ United Nations, Committee on the Rights of the Child, General comment no. 10 (2007), Children's rights in juvenile justice, par.38.

criminal procedure for juvenile offenders below the age of 18 in the Dutch Code of Criminal Procedure as well as special youth sanctions with an educational goal in the Dutch Criminal Code. The second provided the possibility to end the legal parental custody when a child was abused or neglected. These acts were based on the then revolutionary presumption that intervention in the family should be possible in order to serve the interests of the Child and ultimately, the interests of the society as a whole (Weijers and Liefwaard, 2007). To quote the Minister of Justice Cort van der Linden who was responsible for the Children Acts:

“It is often purely coincidental if a child gets in touch with justice due to a criminal offence or due to neglect by his parents while the last, neglect, is often the cause of committing the crime.”

The connection between the Juvenile Justice system and Child protection became even stronger when in 1921 the specialized youth judge was introduced. This judge handled both civil and criminal cases and could replace a youth sanction by the new measure of Parenting Assistance by a family-guardian. In criminal as well as in civil cases the child could, as a last resort, be taken out of his or her environment to be (re-)educated in a Reformatory.

Depending on the age of the child the placement could take several years because it could be prolonged until adulthood, at that time the age of 21. Both groups were placed together. The legislator saw no harm in the placement in the same institutions because these institutions had the atmosphere of a boarding school with a regime aimed at protection and (re-)education. They were seen as part of the Child Welfare System. Not the legal basis of the placement, criminal or civil, but the behaviour and specific needs of the child determined the regime (Boendermaker and Uit Beijerse 2008).

3. The upper age-limit and its exceptions

The upper age-limit was already set in 1905 at the age of 18. A stain on the reputation of this child-friendly system was the provision that makes it possible to apply an adult sanction if the offender is 16 or 17 years old (article 77b Dutch Criminal Code). This provision was introduced in the law in 1905 and reserved for exceptional cases. It entered the law against the advice of the Minister of Justice and was a result of a proposed amendment to the law supported by some conservative Members of Parliament. Their main argument was that they wanted to keep the upper age limit at 16 instead of 18. Because the majority voted for an upper age-limit of 18 this provision to impose an adult sanction on juveniles aged 16 and 17 was seen as a compromise.

In practice the specialized youth judges were very cautious about using it and it was seldom used (Uit Beijerse 2009). With the revision of the Juvenile Justice laws in 1965 the child friendly principles were fortified. The provision to impose an adult sanction was kept, but could only be applied if two legal criteria are met; the personality of the offender combined with the seriousness of the offence. New was that the court now also acquired the legal possibility to impose a youth sanction on an offender aged 18 till 21 when this fits the personality of the offender (article 77c Dutch Criminal Code).

4. The punitive turn and its effects on the Juvenile Justice System

From 1985 the Dutch penal climate experienced a so-called punitive turn that also affected the Juvenile Justice System. The revision of the law in 1995 broke the strong bond between Juvenile Justice and Child Welfare that existed for 90 years. The strong position of the youth judge was attenuated and typical youth sanctions were deleted from the Criminal Code. The remaining youth sanctions were adjusted to match adult sanctions. The legislator kept the provision to apply an adult sanction on juveniles aged 16 or 17. The legal criteria were even expanded. They were no longer accumulative, but each of the criteria was independently sufficient. Next to the two existing criteria a third one was added 'the circumstances of the case'. That meant that an adult sanction could be applied only on the basis of the seriousness of the offence or only on the personality of the young offender or only on the circumstances of the case.

The former Reformatories were now called 'Juvenile detention institutions' and they were now longer seen as part of the Child Welfare System but as part of the Prison System. They were equipped with the same strong security measures as prisons and developed the atmosphere of prisons. As to be expected this caused furious reactions of parents of juveniles who were placed there with a civil Child Welfare Measure. There was a public debate in the media and Parliament. The result of these debates was that the law was changed. Juveniles with a Child Welfare Measure – more than half of the population of the Juvenile detention institutions - were transferred to newly established closed Child Welfare Institutions.

These changes were fairly disastrous for the child friendly principles of the Dutch Juvenile Justice System. With these the law also moved away from the principles of the UN Convention on the Rights of the Child that was ratified by the Netherlands in the same year, 1995. While the Convention on the Rights of the Child has a clear upper age limit of 18, the Dutch government had to make official reservations.

5. A renewed interest in specialized youth sanctions

Salvation came from an unexpected angle. The child unfriendly effects of the punitive turn were reduced by the interest in the causes of juvenile delinquency that started in the same period. Juvenile delinquency was firmly on the political agenda and in 1994 the officially appointed Committee on Juvenile Delinquency (van Montfrans) presented its report 'Facing the Facts'. With respect to Juvenile Justice an *early, swift and consistent* intervention was promoted (Uit Beijerse and Van Swaeningen 2006). The Committee stressed the importance of an early recognition of signals that point at the development of a juvenile in the direction of starting criminal behaviour and of a consequent response to criminal behaviour of juveniles. Intensive, mandatory supervision of juvenile delinquents was an important element in a balanced approach of juvenile delinquency. To reach this goals a monitoring system was introduced and implemented and youth probation services became available all over the country. The police, prosecution service, judiciary, the Child Protection Service, Youth Probation Service and all other parties involved in combating juvenile delinquency started to consult each other on the level of the district-courts in newly introduced Districts Platforms for Juvenile Delinquency.

In 2000 the Minister of Justice announced the national introduction of the Individual Trajectory Supervision (Individuele Traject Begeleiding or ITB), especially designed for the

so-called ‘persistent offenders’ and juvenile offenders from ethnic minorities. For both groups, special, intensive and coercive trajectories with a rehabilitative focus were developed. This involves intensive supervision by the Youth Probation Service for a period between three to six months, in which also the parents are obliged to participate. Based on the individual ‘risk-factors’ a scheme is drawn up in collaboration with the child and his parents, and a contract is signed in which the juvenile agrees to observe conditions like going to school, no disorderly behaviour, agreements on a curfew, restrictions of movement, and so on.

ITB is at this moment one of the most applied interventions and can be imposed as a condition under which a juvenile can be released from pre-trial detention, as a conditional sentence or as a condition on release after incarceration. Next to that several other non-custodial interventions were introduced like Multi Systematic Therapy (MST) and Multidimensional Family Therapy (MDFT). Both are executed by therapists who work with the juvenile, his family and his wider social environment. MST, for instance, is for juveniles with (a combination of) serious behavioural problems. The therapist helps the parents to deal with the behaviour of the juvenile and helps the juvenile with developing his or her skills, functioning at school and interaction with prosocial peers.² These interventions last for a period up to six months and are ‘recognized’ as effective interventions.

The effectiveness of different measures was to be monitored carefully as part of the new ‘What works?’ approach. In the ‘Action-program on juvenile delinquency 2003-2006’ the new slogan was *fast, efficient and tailored*. A databank with interventions that are proven to be effective by the National Recognition Committee Behavioural Interventions, was introduced as well as a uniform instrument for risk-assessment. Immediately after the first police contact of the juvenile offender a coherent reaction will be developed in a consultation of the public prosecutor with the police, the Child Protection Service and the Youth Probation. As announced in the mentioned Action-program a new youth sanction entered the Juvenile Justice System in 2008, the ‘Behaviour Influencing Measure’.

This new youth sanction is a non-custodial measure that can be imposed by the Youth Judge for six or twelve months and can once be prolonged for the same period. This measure consists of a package of conditions with the aim to influence the behaviour of the offender. In practice it consists of day-care combined with individual therapy and one of the ‘recognized’ behavioural interventions like MST or MDFT. With these interventions that aim at assisting the family of the juvenile to cope with his problematic behaviour the Juvenile Justice System seems to return to its original principles in which the cause of the crime was found in the circumstances the juvenile was raised. Like in 1905 there is again an exchange of interventions in both fields of Youth Justice while several interventions are also applied as (part of) the civil measures of Child protection.

6. Arguments for the new law and policy towards young adult offenders

The new policy towards young adult offenders was introduced against the background of this new ‘What Works’-approach. In 2009 there was a debate among scientists about the new results of brain research that showed that many capacities like impulse control and planning ahead, are only fully developed at the age of 23 or 25. In reaction to that debate the Minister

² For an overview of the recognized behavioural interventions, see: <http://www.nji.nl/nl/Databank/Databank-Effectieve-Jeugdinterventies>.

of Justice explicitly stated that there was no need for a separate system for young adults. But in 2010 the new government announced in the Coalition Agreement that a proposal will be developed for an Adolescents-law (adolescentenstrafrecht) for the group aged 15 till 23 and in 2011 the new State Secretary of Security and Justice Teeven presented this proposal in a letter to the Parliament. This was quite surprising while this State Secretary was in his former position as Member of Parliament known for his populist and harsh statements about crime. In that position he frequently used the media to advocate the use of an adult sanction and even a public trial for a juvenile who committed a serious crime. As quoted in the widely read, free newspaper Metro:

“Our society as a whole is tired of the fact that 15-year-old killers only get a prison sentence of two years. I want more clarity about the decision to impose an adult or juvenile sanction.”³

For that reason it was quite surprising that precisely this State Secretary came with the new Adolescents-law. Although it wasn't a separate system for young adult offenders, it meant an extension of the possibility to impose a youth sanction at an adult offender. The upper age limit to impose a youth sanction was raised from 21 to 23 and all young adult offenders aged 18 till 23 are now assessed in an early stage of the procedure to judge if he or she qualifies for imposing a youth sanction or not.

The arguments for introducing this new law were not in the first place based on the mentioned results of the brain-research or the UN-Convention on the Rights of the Child, but on the fact that according to the figures 30% of the suspects fall into the category aged 15 to 23. The fact that this group is responsible for a disproportionate share of crime was the main argument. With the new law and policy evidence-based and effective youth sanctions became available for young adult offenders. Next to that the State Secretary explicitly wanted to keep the heavily criticized article 77b Criminal Code to apply an adult sanction on 16 or 17 years old. Like the young adults this group should be assessed in an early stage of the procedure to judge if he or she qualifies for imposing an adult sanction.

7. The procedure to transfer a young adult into the youth system

As was mentioned before article 77c Criminal Code existed already since 1965, but was not used very often. The main reason for this was very practical. Offenders who are suspect of a crime that they committed at the age of 18 and older are brought before an adult court. Article 77c is however in the juvenile section of the Criminal Code and judges of the adult court were not aware of this provision. The best solution to change this practice would have been to follow the system of Germany. As mentioned before Germany has since 1953 a comparable provision to the Dutch one that has been in force since 1965, but unlike the Netherlands it is used in the majority of the cases. The big difference is that in Germany all offenders aged 18 to 21 appear in Youth Court (Pruin 2007).

Unfortunately the Dutch legislator didn't choose to follow the German system. It was discussed but this change appeared not to be feasible. A hidden reason for that may be the interests that are at stake. The courts in the Netherlands are financed by the number of suspects that appear in court and the number of young adult suspects is so big that the adult courts can be reluctant for that reason to transfer this group to youth court. Working as a

³ Joost van der Wegen, VVD: minderjarige daders openbaar berechten, Metro 24 november 2008.

youth judge requires certain qualities and interests and, to put it mildly, not every judge is attracted to this field of expertise.

Instead of transferring young adults to the youth court, the policymakers chose to allow for an assessment in an early stage of the procedure. Based on that assessment the public prosecutor can indicate that he or she has the intention to demand a youth sanction. And when the public prosecutor does so, the young adult can, if he is in pre-trial attention, be transferred to a Juvenile detention institution. As is usual in youth cases, the judge must then also examine if pre-trial detention can be suspended. If so, the conditions can consist of the evidence-based youth interventions.

The legal criteria for applying a youth sanction weren't changed and according to law the judge can impose a youth sanction if he finds a reason for that in '*the personality of the offender or the circumstances in which the offense was committed*' (article 77c Criminal Code). According to the legislator the main criteria should be which sanction fits the development of the young adult suspect and which provides opportunities for an effective approach. This assessment is conducted by the Probation Service that uses a nationally established assessment method. If necessary the Probation Service can consult the Child Protection Service who uses the same method. In some cases the public prosecutor also asks for an advice of a psychologist or psychiatrist and these rapporteurs use their own assessment system, developed by the National Institute of Psychiatry and Psychology (NIFP). Next to that the public prosecutors have national guidelines they use for making the decision.

8. Conclusion

In this article the new Dutch law and policy on young adult offenders was described against the background of developments in the Dutch Juvenile Justice system. It became clear that the new policy was based on the new of 'What works'. Since 2000 several non-custodial youth interventions are introduced that are proven to be effective. Because adolescents are responsible for a big share of the crime the legislator wanted the young adult offenders to profit from these new effective youth sanctions.

The new law has been in operation for more than two years now. It will be evaluated and monitored in the period till 2019. No interim reports have been published yet but early results are already noticeable in the figures for the Juvenile detention institutions. The Minister of Security and Justice mentioned in a letter to Parliament that, already in the first year, from April 2014 till March 2015, 252 young adults were transferred from Adult Prisons to the Juvenile detention institutions on the basis of article 77c Criminal Code.⁴ The new policy to stimulate the use of youth sanctions for young adult offenders, thus seems to be successful.

However, in the chosen system the faith of the young adult depends completely on the assessment and the decisions the public prosecutor makes in an early stage of the procedure. The new policy led to three parallel systems that are used to assess if the young adult qualifies for a youth sanction, that of the Probation Service, that of the National Institute of Psychiatry and Psychology (NIFP) and the national guidelines of the public prosecutors. This complicated system creates a lot of uncertainty and will likely lead to inequality in the different practices of each court district. It also creates the peculiar situation that various

⁴ Parliamentary Documents (Kamerstukken II) 2015-16, 28741, nr.27.

decisions have been made on various sets of differentiated criteria that are not described in law before the young adult finally appears in Court and that the Court then decides on the broad legal criteria.

With respect to the organization of the transfer it would have been better to follow the system that exists in Germany, where all young adult offenders are brought before the youth court and the Court itself decides on more differentiated legal criteria. At the other hand the conclusion must be that the Netherlands took surprisingly big steps in developing a completely new policy towards young adult offenders and is the only European country that provides a legal basis for extending the use of youth sanctions up to such a high age, 23 years. Regarding the aim of the new policy it is also interesting to see that the wish of the policymakers for a more effective approach of crime meets the requirements of the UN-Committee on the Rights of the Child.

References

Boendermaker, Leonieke and Jolande uit Beijerse (2008). *Opvoeding en bescherming 'achter tralies'*. Jeugdinstellingen tussen juridische beginselen en pedagogische praktijk, Amsterdam: SWP.

Dünkel, Frieder and Ineke Pruin (2012). Young adult offenders in juvenile and criminal justice systems in Europe. In: Friedrich Lösel, Anthony Bottoms, and David P. Farrington, eds., *Young Adult Offenders: Lost in Transition?* London, U.K.: Routledge.

Liefwaard, Ton (2012). Juveniles in transition from Juvenile Justice to Adult Criminal Justice, in: R. Loeber, M. Hoeve, N. W. Slot and, P. H. van der Laan (eds.), *Persisters and desisters in crime from adolescence into adulthood. Explanation, prevention and punishment*. Farnham: Ashgate, p.159-200.

Loeber, R, M. Hoeve, N. W. Slot and P. H. van der Laan eds. (2012). *Persisters and desisters in crime from adolescence into adulthood. Explanation, prevention and punishment*. Farnham: Ashgate.

Pruin, I. R. (2007). Die Heranwachsendenregelung im deutschen Jugend strafrecht: Jugendkriminologische, entwicklungspsychologische, jugend soziologische und rechtsvergleichende Aspekte. Mönchengladbach: ForumVerlag Godesberg.

Pruin, Ineke and Frieder Dünkel (2015). *Better in Europe? European responses to young adult offending*, Universität Greifswald.

Uit Beijerse, Jolande and René van Swaaningen (2006). The Netherlands: Penal Welfarism and Risk Management, in: Muncie, John and Barry Goldson eds., *Comparative Youth Justice. Critical Issues*, London, Thousand Oaks, New Delhi: Sage Publications.

Uit Beijerse, Jolande and René van Swaaningen (2007). Non-custodial sanctions, in: Boone, Miranda and Martin Moering eds., *Dutch prisons*, The Hague: BJu Legal Publishers, p.77-98.

Uit Beijerse, Jolande (2009). De toepassing van een volwassenensanctie op 16- of 17-jarigen: pro's, contra's en alternatieven, *Delikt en Delinkwent* volume 75, issue 10, p. 1067-1088.

Van der Laan, Peter H. (2008). Just Desert and Welfare: Juvenile Justice in the Netherlands, in: Junger-Tas, Josine and Scott H. Decker eds., *International Handbook of Juvenile Justice*, New York: Springer.

Weijers, Ido and Ton Liefwaard (2007). Youngsters, in: Boone, Miranda and Martin Moering eds., *Dutch prisons*, The Hague: BJu Legal Publishers, p.127-166.