Study on children's involvement in judicial proceedings – contextual overview for the criminal justice phase – The Netherlands

June 2013

This National Report has been prepared by Zarif Bahtiyar for Milieu Ltd in partnership with ICF GHK. under Contract No JUST/2011/CHIL/PR/0147/A4 with the European Commission, DG Justice.

Contents

Executive summary

Overview of the general elements of child-friendly justice in criminal proceedings

The Criminal Code of Procedure (CCP) and the Criminal Code (CC) contain so-called deviated provisions, which provide for specific safeguards and rules applying to children between the ages of 12 and 18. However, where no specific rules exist, the criminal (procedure) rules for adults as stated in the CC and CCP also apply to children. In applying deviated provisions, where possible, the best interests of the child have to be the first matter of importance.

A Juvenile Court Judge, who acts as an examining and trial Judge, is competent for criminal proceedings involving children between the ages of 12 and 18. The child suspect is considered a party in criminal proceedings and is obliged to appear at the court session. (S)he has the right to express his/her view at the hearing. In recent years victims, including child victims, have also had the possibility to speak during a public hearing.

Overview of children's involvement before, during and after judicial proceedings

In the Netherlands, only the prosecutor has the power to decide whether someone should be prosecuted. During judicial proceedings, children can be involved in a variety of ways.

In principle, the general rules for victims also apply to children. This means that child victims have a right to information about the trial and a right to participate in proceedings by exercising their right to express their views about the consequences of the crime on their lives. A child victim can also participate in proceedings by asking the Public Prosecutor to mediate between the victim and the suspect for compensation for damages and by joining the criminal procedure as a third party (called the harmed party), with a civil claim for compensation for damages. In certain situations, there are specific regulations for child victims, such as the studio hearing which is a special interview method for children.

Child suspects have an active role during the hearing where the child can tell his/her side of the story. One or both parents of a child suspect must appear at the hearing.

Contrary to child victims and suspects, witnesses do not enjoy a right to be heard or participate in the proceedings. They are only involved when necessary for the progress of the proceedings.

Promotion and monitoring of a child-friendly approach to criminal justice, with an overview of strengths and potential gaps

The Child Care and Protection Board is the institution most responsible for promoting and ensuring a child-friendly approach in all judicial proceedings. This Child Care and Protection Board can request the court to employ child protection measures in cases of possible child abuse. Juvenile criminal cases take place under the direction of this Board. When a child is the victim of violence, or possible maltreatment or abuse is suspected, the principal responsibility to act lies with the social services. Besides the Board, the Youth Care Agency and the Advice and Report Point Child Maltreatment Service assist child victims. Since 2011, a national Child Ombudsman has been appointed to deal with complaints against government bodies.

The strength of the Dutch law system is in ensuring that the child's best interests are taken into account during judicial proceedings. With regard to child suspects, despite the involvement of several organisations for support and guidance, and the existence of information available to children involved in criminal judicial proceedings, children do not always receive the adequate support.

Abbreviations

CA	Competent Authority
CC	Criminal Code
CCP	Criminal Code of Procedure
CICFA	Criminal Injuries Compensation Fund Act
CoE	Council of Europe
COVOG	Certificates of Good Conduct of the Integrity and Screening Agency
CPT	European Committee for the Prevention of Torture
DJI	Dienst Justitiële Inrichtingen
EC	European Commission
ECHR	European Convention for Human Rights
ECtHR	European Court for Human Rights
EU	European Union
STP	Educational and Training Programme
UNCRC	United Nations Convention on the Rights of the Child
YCI	Youth Custodial Institution
YCIA	Youth Custodial Institutions Act

1 Overview of Member State's approach to children in criminal proceedings and specialised services dealing with such children[1]

The introduction of the Child Acts *(Kinderwetten)* in 1905 made it possible for the State to take action in cases where parents neglected their educational duties. These Acts also provided for combating juvenile delinquency. The Child Acts form the foundation of the current system of child protection and juvenile criminal law *(Jeugdstrafrecht)* in the Netherlands.

The United Nations Convention on the Rights of the Child (UNCRC) has been signed and ratified by the Netherlands. The Netherlands has a limited monist system of international law, meaning that the UNCRC is directly applicable but only UNCRC provisions having a generally binding nature are directly applicable and can be invoked before court. Article 3 UNCRC on the best interests of the child is considered directly applicable in the Netherlands and has been extensively invoked before Dutch courts[2].

Youth Justice System – Child suspects, defendants and offenders

The CCP and CC contain so-called deviated provisions, which are specific rules applying to children between the ages of 12 and 18. Where no specific rules exist for children between 12 and 18, the criminal (procedure) rules for adults as stated in the CC and CCP also apply to children[3]. As far as deviated provisions are applicable, these are based on the principle that where possible, the best interests of the child have to be the first matter of importance. Therefore, the emphasis in juvenile criminal law is less on punishment and reprisal and more on the protection and (re-) education of the child.

This distinction in approach creates wider possibilities for settling a criminal offence out of court and in the kind and degree of severity of the sanctions which can be imposed on a child. Differences with criminal law for adults have considerably diminished with the revision of juvenile criminal law in 1995. The thought behind this revision was that today's youth are substantially more mature than before and thus can be spoken to in a more mature way about their conduct and responsibilities. This does not alter the fact that the current sanctions system is strongly imbued with educational principles.

The Public Prosecutor has overall responsibility for the prosecution policy, but a frequent consultation between the partners involved in the prosecution can take place. A Judicial Case Consultation *(Justitieel Casusoverleg)* is introduced per district. Regular participants in this consultation are the Public Prosecutions Department, the police and the Child Care and Protection Board *(Raad voor de Kinderbescherming)*. After an evaluation with the Judicial Case Consultation, a decision will be made on the participation of the section for youth welfare work (juvenile probation service and voluntarily youth welfare work). By way of a transfer form, the case is presented to the Consultation. This happens within 7 days after the first interview by the police[4]. The goal is to ensure children's best interests are protected in accordance with the rules and regulations provided by criminal law regarding children.

The Juvenile Court Judge *(Kinderrechter),* who acts as an examining and trial Judge, is competent for criminal proceedings involving children between the ages of 12 and 18. One of the differences with adult criminal law is that the Juvenile Judge has an important (advisory)

[1] Parts of the text under 3.3.6 are taken from. Kalmthout, A.M. and Bahtiyar Z., 'Juvenile Justice Systems in Europe, Current situation and reform developments' Vol. 2, *Forum Verlag Godesberg GmbH*, 2010.
[2] De Graaf J., Limbeek M., Bahadur N.and van der Meij N., 'The application of the international convention on the rights of the child in the Dutch law' (*De toepassing van het internationaal verdrag inzake de rechten van het kind in de Nederlandse rechtspraak*) 11-12.
[3] With respect to the substantive criminal law, the deviated provisions are put in a separate Title VIIIa of Book I of the CC. The deviated procedural provisions can be found in Title II of Book IV of the CCP.
[4] Doek, J.E., Vlaardingerbroek P., *Juvenile law and youth care – Student Edition* (*Jeugdrecht en jeugdzorg – Studenteneditie)* (Elsevier, The Hague, 2006) 455.

voice in the decision on where and how the sentence or measure will be enforced. (S)he can exercise her/his influence on the enforcement of a custodial sentence which (s)he imposed by releasing the child on parole, upon the proper fulfilment of the conditions of conduct imposed by the Judge. Another difference with the system for adults is that criminal proceedings involving children assign an important role to the parents or guardians and the Child Care and Protection Board, which takes place behind closed doors. Also the powers of the lawyer are arranged differently in certain aspects.

Safe houses *(Veiligheidshuizen)*, which are organised by networks of local organisations working together to reduce crime, also focus on persistent child offenders. Cooperation between criminal justice organisations and municipalities, social sector and care organisations takes place in order to better combine and integrate penal and rehabilitative interventions for child offenders. The operational goal is to create greater alignment and unity in the approach towards different groups of offenders. Safe houses organise regular case meetings around individual offenders (or specific local safety themes). In each case meeting, professionals from various organisations discuss the interventions for offenders. Since 2009, there has been a nationwide network of regionally operating Safe houses in the Netherlands[5].

Child victims and child protection systems

Only when a child is a victim of domestic violence, or possible maltreatment or abuse is suspected, does the principal responsibility fall on social services. The Youth Care Act[6] *(Wet op de Jeugdzorg)* establishes that the Youth Care Agency *(Bureau Jeugdzorg)*[7] is the gateway to the entire youth care system. The Agency, among others, is responsible for the implementation of child protection measures and works in close cooperation and consultation with the Advice and Report Point Child Maltreatment Service *(Advies en Meldpunt kindermishandeling)*[8] and the Child Care and Protection Board. In 2011, the first National Child Ombudsman *(Kinderombudsman)* was appointed to deal with complaints against the actions of governmental bodies, including organisations involved in youth care[9].

General Approach towards children: definition of child, participation, age and maturity, discrimination

The Constitution guarantees that all persons, including children, must be treated equally in equal circumstances and prohibits discrimination on the grounds of religion, belief, political opinion, race or sex or on any other grounds whatsoever[10].

A child (minor) is considered under Dutch law to be a person who has not reached the age of 18[11]. A child is only legally competent to perform legal acts with permission of his/her legal representative, who has legal custody of the child[12].

The liability of children under criminal law starts at 12 years of age and ends at the age of 18. Though children under 12 years of age cannot be prosecuted, they can be subjected to coercive measures.

In this report, the terms child victim, suspect and offender are used for those children who are below the age of 18 and it is explicitly stated when there are no specific regulations for children on a certain matter.

Training

Child hearings are usually carried out by police officers, who are specially trained and appointed for that task. Such officers are educated in dealing with children and their

[5] Results of Safety Houses in the Netherlands.
[6] Act of 22 April 2004. Date of commencement 1 January 2005.
[7] http://www.bureaujeugdzorg.info/home/ .
[8] http://www.amk-nederland.nl/.
[9] http://www.dekinderombudsman.nl/.
[10] Article 1 of the Constitution.
[11] Article 1:233 of the Civil Code (*Burgerlijk Wetboek*).
[12] Article 1:234 and 1:245 of the Civil Code.

psychological state. In Juvenile Courts, Judges have knowledge of juvenile criminal law and are supposed to have a basic understanding of the relevant social and behavioural sciences, and more specifically in the field of pedagogy, developmental psychology and child and youth psychiatry. Also the staff members of the Child Care and Protection Board follow special training courses.

What is written above is only a brief description of the institutional framework in the Netherlands regarding the position of the child in Dutch juvenile criminal law. For a more comprehensive overview of the Dutch criminal law system please see the EU E-justice portal.

2 Child-friendly justice before and during criminal judicial proceedings

2.1 The child as a victim

Crime victims have gained a more prominent role in criminal proceedings in recent years. This development also applies to child victims. Those developments include providing more possibilities for the victim to participate in the criminal procedure against the suspect.

In addition to legal measures for the protection of the child victim, social services also play an important role in the investigation of possible child abuse and the assistance of those children in the criminal procedure. When being consulted, these services investigate whether it is necessary to report the alleged crime to the police and/or to request that the Judge imposes child protection measures *(Kinderbeschermingsmaatregel*). Social services in this context include the Advice and Report Point Child Maltreatment Service, the Child Care and Protection Board and the Youth Care Agency.

2.1.1 Reporting a crime

The Dutch criminal law system does not contain regulations that specifically deal with the way in which a child can report a crime. However, child victims who report a crime will be heard in a special environment and/or by specially trained police officers. Anyone who knows of a crime that has been committed can report the offence[13]. Victims of crime do not have the possibility to initiate the prosecution of the suspect. On the basis of the principle of opportunity, the Public Prosecutor makes a decision whether (s)he will bring charges against a person. When the child victim does not agree with the decision not to prosecute, (s)he can make an appeal before the Court of Appeal *(Gerechtshof)*.

A report can be made through the internet, by calling or going to the police station. The website of the police[14] provides under the header 'sexual offence' information on how to report child maltreatment or abuse. Child victims of abuse, as well as informants who want to report signs of possible child abuse, can report the matter themselves to a special police unit on 'children and sexual offence cases' (*Afdeling Jeugd -en zedenzaken*). This unit has police officers, men and women, specially trained to deal with these kinds of cases and are reachable 24/7.

In case a person suspects that a child is a victim of maltreatment or abuse, (s)he can also contact the social services mentioned above. These services assist child victims in finding a solution tailored to their situation. The Youth Care Agency, for example, has family guardians in service supervising the situation and participating in deciding which actions are necessary to stop the abuse or maltreatment. Such actions can include reporting to the police or asking the Judge to impose protective measures, such as placing under supervision, discharge of parental authority and taking the child out of parental authority or placing him/her in care.

2.1.2 Provision of information

Victims (adults and children) have the right to information on their rights during criminal proceedings and concerning the (progress of the) procedure[15]. To this end:

- victims have, upon request, a right to be informed by the police or the Public Prosecutor about the start and progress of the criminal procedure against the suspect[16];

[13] Article 161 CCP.
[14] http://www.politie.nl/aangifte/.
[15] Act to strengthen the position of the victim in the criminal procedure' (*Wet versterking van de positie van het slachtoffer*).
[16] Article 51a CCP.

- the right to be informed by the Public Prosecutor when the convicted suspect has been released[17];
- the right to a copy or record of the crime report;
- and a right to copies of the documents relating to the case, as far as they are relevant to the victim, upon permission of the Public Prosecutor. If the Prosecutor refuses, the victim can submit an objection against this[18].

2.1.3 Protection from harm and protection of private and family life

Protection from harm

In the case of child maltreatment or abuse especially, the Advice and Report Point Child Maltreatment Service plays an important role. Everyone who suspects a case of child maltreatment or abuse can report it at this centre. A child can make a report himself/herself concerning his/her own situation.

After a report is made, a 'trusted doctor' *(Vertrouwensarts* – this is a doctor specialised in handling delicate or strictly confidential issues such as those relating to sexual health, euthanasia incest etc*)* or social worker *(Maatschappelijk werker)* of the centre will assess the situation and whether an investigation is needed. In cases where there are serious concerns, the centre usually starts an investigation on the nature and the seriousness of the maltreatment or abuse. The Advice and Report Point Child Maltreatment Service initiates conversations with the child and his/her parents, teachers and others within the child's direct environment, who can give reliable information about the possible maltreatment or abuse. When the centre concludes that a further procedure is necessary, the following possibilities can be chosen:

- Social work: social work or treatment for the family.
- Protection: the transfer of the family case to the Child Care and Protection Board with the aim of requesting the Judge to initiate child protective measures.
- Criminal investigation: reporting to the police the possible maltreatment or abuse when the safety of the child requires it.

As mentioned above, the Child Care and Protection Board can request the Judge to order child protective measures. In such proceedings, the Judge will hear the parents and, when the child is 12 years or older, also the child him/herself. The Judge can impose the following measures:

- Placing under supervision: this measure restricts the authority of the parents over their children. The family receives accompaniment of a family tutor[19];
- Discharge of parental authority and displacement out of parental authority: in situations in which parents cannot take care of their children or in cases of maltreatment or abuse, parental authority can be suspended[20];
- Placing in care: in such cases, the child lives no longer at home but in a care home or with foster parents. This measure can be combined with the first mentioned measure of placing under supervision when the risk of maltreatment or abuse remains present[21].

  Other services available to support children in case of abuse are the *kindertelefoon* and *rechtswinkel.*

[17] Article 51a CCP, this provision counts for crimes for which a sentence of eight years or more is prescribed and several other crimes.
[18] Article 51b CCP.
[19] Article 1:254 en 1:255 Civil Code.
[20] Article 1:266 Civil Code.
[21] Article 1:261 Civil Code.

Protection of private and family life

No specific measures are available for threatened victims, including child victims, nor are there measures for victims who, for other reasons, want to participate anonymously in a criminal procedure. However, victim guidelines *(Slachtofferrichtlijnen)* and the CCP contain several provisions for the protection of the privacy of victims which also apply to children[22]. An example is that the victim has the right to provide another domicile address (at the police station or victim support) to their own, to prevent their address being known to the offender.

The indictment is only incidentally drawn up in a way in which the name of the victim is left out. Anonymity is only permitted in serious cases where there is concrete danger to the victim. The right to privacy of the victim has to be balanced against the right of the suspect to a fair trial as laid down in the ECHR. As a result of Article 6 ECHR, it is considered that in most cases anonymity is not an option.

When the victim is also involved in the criminal procedure as a witness there are several possibilities to guarantee his/her privacy, which are described under section 2.2.3.

With regard to protection from the media, the police and the judicial authorities need to weigh the interests to make information available to the public against the interests of the involved parties when deciding on whether to provide the media with information on a specific case[23]. According to the Circular on providing information to media, the following instructions should be followed:

- No description of personal or social circumstances of the involved persons, such as his/her nationality, ethnicity or sexual orientation.
- No information about the suspect, if such information would lead to recognition of his working or living circumstances.
- No information about the identity of the victims, surviving relatives, witnesses and reporters of the crime, unless the identity is already publicly known.

2.1.4 Protection from secondary victimisation and ensuring a child-friendly environment

Child victims of serious crimes, such as sexual offences, have the possibility to be heard outside of the public hearing. The child victim can then be heard either by the examining Judge or via closed circuit television or video conference. In these cases, the identity of the victim is withheld from the suspect and his/her lawyer[24]. When deciding on whether the victim has to make a statement in or outside the public hearing, the Public Prosecutor and the Judge have to balance the interests of the victim (e.g. fear of victimisation), against the right of the suspect to fair trial.

The hearing of child victims, witnesses and suspects is usually carried out by police officers of the Department of Sexual Offences and Youth *(Zeden en Jeugd)*. These officers are specially trained and appointed for that task. For children below the age of 12, a so-called Studio Hearing takes place. This is named after the method used for the hearing of child victims, namely the studio hearing *(Studioverhoor)* which is a compulsory audiovisual recording. The studio interviewer *(Studioverhoorder)* is, in most cases, not involved in the case/proceedings. The design of the interview studio consists of two rooms: a child-friendly room and the studio where the recording takes place. Between these two rooms a one-way-screen is placed. The rooms have a child-friendly atmosphere with bright and cheerful colours and the furniture is adjusted to the child. Furthermore, there are several toys such as play and drawing materials[25].

[22] One of these guidelines is the Treatment of victims of sexual abuse Circular *(Circulaire bejegening van slachtoffers van sexuele misdrijven)*.
[23] The Circular on providing information to media on criminal cases of 16 August 1990 (*Circulaire informatieverstrekking en voorlichting media over strafzaken*).
[24] Article 264 CCP.
[25] Faber L., *Verhoor van minderjarige slachtoffers*, 1998, 31.

2.1.5 Protecting the child during interviews and when giving testimony

As mentioned under 2.1.4, for children under the age of 12, a studio hearing takes place. Likewise, interviews with children from the age of 12 to 16 must be recorded through audiovisual means. The recording is done in the interest of establishing the truth and can be used as evidence in court[26]. After proceedings have ended, the recorded materials must be destroyed. When a studio hearing takes place, the child's lawyer can follow everything live from a separate room.

2.1.6 Right to be heard and to participate in criminal proceedings

Right to be heard

Since 2011, all victims have been given an autonomous legal position. Surviving relatives are for the most part equated with victims and can exercise the same rights. The right of victims to express their views (called the right to speak) was created in 2005 and aims to contribute to the recovery from the emotional damage which the victims have suffered. The legal provision concerning the right to speak allows victim or the surviving relative to make a statement about the consequences of the crime during the public hearing. The right to speak can be exercised for crimes for which a sentence of at least eight years may be imposed or for other offences as prescribed by law. Examples of those specific crimes are the possession of child pornography, molestation, threats and inducing children to commit illicit sexual acts[27].

In cases where the deceased victim is an adult, in addition to the victim's partner, up to three surviving relatives have the right to speak at the public hearing. That can be a child, parent or other relative of the victim. Parents or tutors of underage victims, who cannot speak for themselves, also have the right to speak during the public hearing. They can speak about the consequences of the crime on their lives. In some cases, the right to speak can also be exercised by someone else on behalf of the victim or surviving relative. Parents, children and other relatives may practise the right to speak on behalf of the victim, if the victim is unable to speak due to physical or mental reasons. Victims or surviving relatives who cannot or dare not speak during the public hearing may allow an attorney or another authorised representative to speak on their behalf. If the victim or surviving relative is younger than 12 years old, his/her legal representative may speak for him/her.

In addition to the possibility for victims to speak during the public hearing, they may make use of the possibility to submit a written victim statement. In this statement they can explain the physical, emotional or financial consequences of the crime. Both the oral and written statements have to focus on these consequences. An opinion on the suspect or the sentence may not be given.

Right to participate

As mentioned earlier, in the Netherlands, a victim has no right to determine whether a suspect is to be prosecuted. But a victim, including a child victim, has the right to make his/her sentiments known and is allowed to appeal to the court if the Public Prosecutor decides to drop the case. The victim can join the criminal procedure as a third party, called the injured party *(Benadeelde partij)*, with a civil claim for compensation for damages[28]. However, the nature of the civil claim must not be a disproportionate burden to be dealt with in the criminal procedure[29]. Victims have the right to add documents to the case file. The Public Prosecutor can refuse to add information for a limited range of reasons. An appeal to the court is open to victims.

[26] Instructions on auditory and audiovisual registration of interviews with informants, witnesses and suspects (*Aanwijzing auditief en audiovisueel registeren van verhoren van aangevers, getuigen en verdachten*), 28 July 2010, Government Gazette n. 11885.
[27] Resp. article 240b, 242 and 248a CCP.
[28] Article 51a CCP.
[29] Article 361 CCP.

It is possible for a victim or suspect/offender to have a victim-offender meeting. The meeting will be arranged by a special organisation called "view on victims" (*slachtoffer in beeld*). Mediation, where the Public Prosecutor or judge refers to a mediator, is not common. Currently, projects are starting to develop mediation and restorative justice further.

The hearing of child victims is carried out by an officer specifically trained in creating a 'natural contact' with child victims, to ensure a child-friendly environment. As mentioned before, these hearings take place in specially designed rooms.

2.1.7 Right to legal counsel, legal assistance and representation

Every victim has the right to legal advice and assistance[30]. There are no specific rules for child victims. The victim is free in his/her choice for legal assistance. For example, (s)he can choose a friend or family member, but also a staff member of Victim Support Netherlands *(Slachtofferhulp Nederland)* or a lawyer.

During the public hearing, the victim can only be represented by an attorney of law, who has to be orally authorised for that purpose or has written authorisation with him/her. A child under 16 cannot make an arrangement with an attorney him/herself. Under the Civil Code, parents are responsible for the representation of their children.

The victim does not automatically have access to free legal aid as access to such aid depends on the type of case or on income. Legal aid is provided by lawyers. The victim himself/herself will have to request financial assistance for payment of the costs of legal assistance at the Council for Legal Aid *(Raad voor de Rechtsbijstand)*. The amount of financial contribution depends on the income of the victim, which in cases involving children depends on the income of the parents.

2.1.8 Remedies or compensation exist for violation of rights and failure to act

When the Public Prosecutor decides not to prosecute the suspect, the victim can make a written complaint to the Court of Appeal[31].

With regard to compensation for damages, the victim can ask the police or the Public Prosecutor to act as an intermediary for him/her or join the criminal procedure as the harmed party. Besides the criminal law procedure, the victim can apply for compensation from the Violent Offences Compensation Fund *(Schadefonds geweldsmisdrijven)*. This organisation is part of the Ministry of Security and Justice and is based on the Criminal Injuries Compensation Fund Act *(Wet schadefonds geweldsmisdrijven)*[32]. To qualify for compensation through this fund, the crime must have taken place in the Netherlands and the victim must have suffered severe physical or emotional damage[33]. In addition to this 'administrative law' option, the victim has the possibility to start a civil law procedure, with a claim for compensation for an unlawful act. Besides criminal, administrative and civil law procedures, the victim can try to obtain compensation through mediation.

Victims of sexual abuse fall under the current conditions to apply for compensation before the Fund. In addition, recently, a new regulation has been adopted with regard to compensation of child victims of sexual violence in youth care institutions and foster homes. The regulation allows victims of sexual violence to apply for compensation for offences which occurred as far back as 1 January 1945 and for which no compensation could be secured[34].

[30] Art. 51c CCP.
[31] Article 12 CCP.
[32] Act of 23 December 1992.
[33] Article 3 CICFA.
[34] Financial Regulation of 18 July 2013 on victims of sexual abuse in youth care institutions and foster homes. See also the Violent Offences Compensation Fund website.

2.2 The child as a witness

In the Dutch criminal law system, there are no specific rules concerning child witnesses, which means that the general rules on witnesses apply. In general, this means that the witness is entitled to legal assistance during the hearing and has the possibility to request treatment as a threatened witness *(Bedreigde getuige)* or to be treated as an anonymous witness.

In the regulations of the Public Prosecutors Office, binding guidelines are given on the treatment of certain groups of child witnesses and victims. For instance, special measures are in place for child witnesses of domestic violence.

2.2.1 Reporting a crime

The same rules apply as according to the child as a victim. See 2.1.1.

2.2.2 Provision of information

There is no right to information for the witness. The right to information as prescribed for child victims does not apply to the child witness. However, in practice witnesses are usually informed by the police on the forthcoming case.

2.2.3 Protection from harm and protection of private and family life

For the protection of child witnesses, there are no specific legal provisions, so the general rules concerning the protection of witnesses apply. In cases where the witness has been put under pressure by the suspect or another person not to testify or is being threatened, or serious threat occurs, where the witness fears for his/her health, safety, disruption of family life or social economic existence, the witness can ask for protection. For situations where a witness becomes the victim of threats, the criminal jurisdiction ensures the protection of the witness. Such a person can request protection for example by keeping his/her identity secret[35], as detailed in the special witness protection Decree and Instruction[36].

2.2.4 Minimising the burden of proceedings and ensuring a child-friendly environment

See sections 2.1.4 and 2.1.5.

2.2.5 Protecting the child during interviews and when giving testimony

Similarly to child victims, interviews with child witnesses under the age of 12 take place in a studio hearing where the hearing will be recorded. For child witnesses between the ages of 12 and 16, the audiovisual recording of the hearing is mandatory. See sections 2.1.4. and 2.1.5.

The child witness can be kept outside the regular public hearing. In addition, a child under 16 is not sworn in but rather urged to tell the truth.

2.2.6 Right to be heard and to participate in criminal proceedings

The Public Prosecutor has the right to call witnesses up to the stand; on the other hand, witnesses do not have the right to be heard or to participate in the procedure. Contrary to the right of the victim and the surviving relatives, witnesses have no right to speak in the proceedings.

2.2.7 Right to legal counsel, legal assistance and representation

During the preliminary investigation, the witness has the right to be legally assisted by a lawyer. The right to legal aid is the same as for child victims; free legal counsel is not

[35] Article 226a CCP.

[36] Witness Protection Decree *(Besluit Getuigenbescherming)* and Witness Protection Instruction *(Instructie Getuigenbescherming)*.

automatically appointed to assist the witness and the witness has to make a request to the Council for Legal Aid for a financial contribution.

2.2.8 Remedies or compensation for violation of rights and failure to act

Child witnesses who are also victims can claim compensation for the harm suffered. Witnesses can get their costs reimbursed by the state or defendant, depending who called the witness to testify. If a witness experiences direct damage as a consequence of the crime (s)he has the right to claim compensation during criminal proceedings. See further details in section 2.1.8.

2.3 The child as a suspect/ defendant[37]

As explained under section 2, the criminal (procedural) law for adults is also applicable to children, unless child specific provisions apply. As a result, coercive measures such as the examination of body and clothes apply fully to child suspects[38].

When there is a suspicion of a criminal offence for which pre-trial detention is allowed, the Public Prosecutor or the assistant prosecutor can order the child to be taken into custody when it is in the interest of the investigation. There are no special rules regarding children in police custody. Children are kept in the same police cells as adults, where they usually stay alone[39]. Custody is for a maximum of 3 days and, if necessary in the interests of the investigation, can be prolonged by the Public Prosecutor for another 3 days[40], although this rarely happens[41]. In the case of an extension, the suspect has to be brought before the examining Judge within 3 days and 15 hours from the time of arrest.

When the Juvenile Court Judge/examining Judge decides that custody is unlawful, (s)he will order the instant release of the child. The Public Prosecutor can lodge an appeal against this judgment within 14 days. The police have to immediately inform the Child Care and Protection Board of the custody order which will then report on the situation of the child[42]. If the Public Prosecutor finds it necessary to put the child suspect in pre-trial detention, the Prosecutor will file a claim to the examining Judge[43].

Likewise in the case of police custody, there are also no specific rules for children regarding cases in which and grounds whereupon pre-trial detention can be ordered[44]. As in the case of adults, they can be detained for the purposes of public safety and further investigation. Pre-trial detention should be omitted when there is a possibility that the duration will exceed the final punishment of deprivation of liberty in the case of conviction. The examining Judge must check whether pre-trial detention can be suspended immediately. If not, custody can be ordered for a maximum of 14 days. The suspect can lodge an appeal with the court against the order of imprisonment. If the Public Prosecutor is of the opinion that the pre-trial detention has to be extended after the 14 days, (s)he will file a claim on imprisonment at the court. Before the beginning of the court proceedings, it is possible to extend the pre-trial detention two more times however a period of 90 days in total cannot be exceeded[45]. For suspected children, it is specified that when the court has not heard the child suspect on the case, the order of imprisonment may not exceed a term of 30 days[46].

[37] Parts of the text under 3.3 are taken from. Kalmthout, A.M. and Bahtiyar Z., 'Juvenile Justice Systems in Europe, Current situation and reform developments' Vol. 2, *Forum Verlag Godesberg* GmbH, 2010.
[38] As prescribed in Article 56 CCP.
[39] Defence for Children International, Violence against Children in Conflict with the Law, A study on Indicators and Data Collection in Belgium, England and Wales, France and the Netherlands, 2008, 53.
[40] Article 58 (2) CCP.
[41] Information provided by the Dutch Ministry of Security and Justice.
[42] Article 491 (1) and 494 CCP.
[43] Article 63 CCP.
[44] Articles 67-67a CCP.
[45] Article 66 CCP.
[46] Article 493 (4) CCP.

The Juvenile Judge will deal with the case at the court session[47]. The general rule is that the case is reported to a single Juvenile Court Judge though sometimes the case can be reported to a regular full court with three Judges which includes a Juvenile Court Judge. Court sessions of the Juvenile Courts are held behind closed doors. Therefore neither the public nor the media have access to them.. In addition to this, the delivery of the judgment by the court is not done in a public session[48]. The Judge can decide to have a public hearing, when (s)he believes the interest of a public hearing outweighs protecting the privacy of the child suspect, co-suspect, parents or guardians. This is, for example, the case when it concerns a very serious crime which shocked the community and where there is a lot of interest[49].

The child suspect is required to appear at the court session. This also applies to the court session on appeal. The court session has to be postponed to an indicated day, when the suspect has not appeared in court. A set rule is that a representative of the Child Care and Protection Board has to attend the sessions of the Juvenile Court Judge, who for that purpose has received special permission.

The child is a party in criminal proceedings and has the right to express his/her views at the hearing. If the child suspect has not reached the age of 16, his/her lawyer has the same powers as well[50].

Both parents are required to attend the hearing and can express their views with respect to the child's defence[51]. As from 1 January 2011, when the parents do not attend the hearing and the Juvenile Court Judge considers their attendance to be necessary, the Judge can order them to be brought before the court. If this is the case, the Judge will suspend the proceedings, unless the attendance of one or both of the parents is not considered to be in the interest of the child[52].

2.3.1 Age of criminal responsibility

The age of criminal responsibility is 12 years old[53]. Children under 12 years of age cannot be prosecuted. When a child under 12 is suspected of an offence, authorities can take action on the basis of civil juvenile law such as through a family supervision order[54] (these will be addressed in the appropriate civil and administrative reports).

Children aged between 12 and 18 years old at the time the offence is committed, fall under juvenile criminal law. The juvenile sanctions system, which contains special provisions, is applicable to this group of children. While children between 12 and 16 years of age are always tried according the juvenile sanctions system, those from the age of 16 to 18 can, in exceptional cases, be tried according to adult criminal law. The Judge can apply adult criminal law, based on the seriousness of the offence, personality of the offender at the time of the offence and the investigation during the hearing or the circumstances under which the crime is committed[55]. In cases where the Judge decides to apply adult criminal law, the case is still handled by a Juvenile Court Judge and the hearings are not accessible to the public.

[47] Article 495 CCP.
[48] Article 495b (1) CCP.
[49] Article 495b CCP.
[50] Article 503 (1) CCP.
[51] Article 496 (1) - (2) CCP.
[52] Article 496a is assigned to the CCP as from 1 January 2011. This provision is criticised for several reasons, see Weijers, De Jonge en Bruning, 'Forcing parents to appear at the juvenile criminal trial is a bad idea' *(Ouders dwingen tot bijwonen jeugdstrafzitting is slecht idée)*, FRJ 2008, 61. The Council for the Administration of Criminal Justice and Protection of Juveniles recommends in its 2011 report (The juvenile criminal procedural law: take account of future developments) to remove the provision. If that would not happen, the Council recommends obliging the appearance of one parent, 14 March 2011.
[53] Article 486 CCP.
[54] De Jonge G., Van der Linden A.P., 'Youngsters and Criminal Law' (*Jeugd & Strafrecht)*, Deventer 2007, 81.
[55] Article 77b CC.

With regard to persons between the ages of 18 and 21 years old, the Judge can apply juvenile criminal law to this group depending on the personality of the offender or the circumstances under which the crime is committed[56]. This rule is created in order to make it possible that those whose mental development is slower than the average (e.g. persons with intellectual disabilities) and who are actually considered to be children, are also treated as such with respect to their criminal liability.

It should be mentioned that a legislative proposal has recently been submitted to the House of Representatives by the State Secretary for Security and Justice on the introduction of adolescent criminal law[57]. According to the proposal, adolescent criminal law offers better opportunities for effective alignment with the child's developmental phase when determining the punishment. It makes the entire package of sanctions from juvenile criminal law and common criminal law available for punishing criminal adolescents. Adolescent criminal law is part of the State Secretary's efforts to establish an offender-oriented and coherent approach to children and young adults in conflict with the law between the ages of 15 to 23 years old[58].

2.3.2 Provision of information

Children are prepared for the procedure and hearing by their lawyers, the Child Care and Protection Board and the Juvenile Probation Service. The child's lawyer has an important role in providing information to the child suspect as well to his/her parents, from the moment the child comes into contact with the police until the ending of the proceedings. After the delivery of the judgment, the Judge has to inform the child of his/her right to appeal and the period of 14 days in which this has to be done.

Juvenile criminal cases take place under the direction of the Child Care and Protection Board and the representative of the Board informs the child prior to the hearing and provides him/her with leaflets about the criminal procedure. Besides the Board, the juvenile probation service *(Jeugdreclassering)* plays a role in the supervision of the child during the entire criminal proceeding and in the enforcement of the sentence. Some Juvenile Legal Advice Centres provide consulting hours in YCIs to which children can turn and there are several websites, leaflets in several languages and movies available which provide the child with information[59]. When the child does not speak Dutch, (s)he has the right to the assistance of a translator.

2.3.3 Immediate actions following first contact with police or other relevant authority

The interview at the police station can last for a maximum of 6 hours. An interview cannot take place between 00.00 and 9.00. Parents have to be informed by the police when their child is held at the police station for an interview[60]. Children have the right to speak with their lawyer prior to being interviewed by the police[61]. In addition to the right to consultation with a lawyer, which can last for a maximum of 30 minutes, the arrested child also has the right to be accompanied during questioning by his/her lawyer or another confidential advisor, such as a parent. However, only one person can accompany the child. A child suspect who does not have a lawyer will be allocated one ex officio by the court that will be specialised in juvenile criminal law.

[56] Article 77c CC.
[57] Legislative proposal on modifying the Criminal Code, the Code of Criminal Procedure and other laws concerning the introduction of an adolescent criminal law (*Wijziging van het Wetboek van Strafrecht, het Wetboek van Strafvordering en enige andere wetten in verband met de invoering van een adolescentenstrafrecht*).
[58] Information on the adolescent criminal law.
[59] Ten Brummelaar M., Kalverboer M., 'Children, children rights and the criminal procedure. The interest of the child in juvenile criminal proceedings' (*Kinderen, kinderrechten en de strafrechtelijke procedure. Het belang van het kind in het Jeugdstraf (proces) recht),* Rijksuniversiteit Groningen, October 2011, 23.
[60] Parents have the right to see their child who is deprived of his liberty and not placed in a youth custodial institution, Article 490 and 50 CCP.
[61] This right follows from the *Salduz vs. Turkey* (ECtHR 27 November 2008) and *Panovits vs. Cyprus* (ECtHR 11 December 2008) judgments.

Children under the age of 16 cannot waive the right to consult their lawyer before an interview while those aged 16 and 17 may do, depending on the severity of the case and personal circumstances[62]. When the child does so, it automatically implies the renouncement of the right to have his/her lawyer with him/her during the interview. The police officer has to inform the suspect about the consequences of waiving the right. The renouncement of legal assistance does not result in the automatic renouncement of assistance by another confidential advisor, which can also be waived[63]. As in the case of adults, the investigating officer from the Justice Institutions Services (*Dienst Justitiële Inrichtingen*) has to caution the child suspect before each questioning starts, which also counts for interviews at trial by the Judge[64].

2.3.4 Conditions for pre-trial detention/ custody

The Judge of the Juvenile Court decides on the place of pre-trial detention of the child suspect. According to the law, 'each suitable place for that purpose' is sufficient[65]. There are possibilities to implement the detention in a privately run hostel, parental home or elsewhere. Generally YCI's, which are appointed as remand homes and where boys and girls are separated[66], are used in practice. A preceding stay of a maximum of 10 days can take place at the police station[67]. The selection officer *(Selectiefunctionaris)* who is in charge of the placement will decide on this, after (s)he has determined that there is no place available in the remand home. For children under the age of 16, the maximum period in a police cell is 3 days[68]. A supervisory body *(Commissie van Toezicht)* is, amongst others, in charge of the accommodation, safety, care and treatment of persons in police cells[69].

'Night detention' *(Nachtdetentie)* is available as an alternative to pre-trial detention for children. In cases of night detention, the child goes to school or work during the day and in the evenings, nights and at weekends the child stays in a remand home. To be eligible for this programme, the child must have a 'positive and structured spending of the day' (school or work) close to the remand home (concerning daily travel). To guarantee 'the undisturbed performance of the pre-trial detention', the child also has to sign a contract in which (s)he agrees with the conditions. Child suspects with an expected long term punishment and without a legal residence permit in the Netherlands are barred from night detention[70]. However, during detention they have access to education.

2.3.5 Protection of private and family life

See section 2.1.3

2.3.6 Alternatives to judicial proceedings[71]

The police and the Public Prosecutions Department have the authority to give children the opportunity to settle their case in an alternative way instead of via formal criminal proceedings.

The police do not always take further action against a child suspect. In many cases a warning, an unconditional dismissal or a conditional dismissal will do. A special form of

[62] Report of the Council for the Administration of Criminal Justice and Protection of Juveniles (*Raad voor Strafrechtstoepassing en Jeugdbescherming)*: The juvenile criminal procedural law: take account of future developments *(Het jeugdstrafproces: toekomstbestendig!)* 14 March 2011, 42-43.
[63] The 'Instructions on Legal Aid during police interrogation' *(Aanwijzing rechtsbijstand bij politieverhoor)*, 1 April 2010, Government Gazette 2010, 4003.
[64] Article 29 (2) and 273 (2) CCP.
[65] Article 493 (3) CCP.
[66] Article 9 YCIA.
[67] These 10 days start to count after the expiration of police custody.
[68] Article 15 YCIA.
[69] Article 16a Regional Police Forces (Management) Decree *(Besluit beheer regionale politiekorpsen)*.
[70] Factsheet 'Night detention for youngsters in pre-trial detention', (*Nachtdetentie jeugdigen bij voorlopige hechtenis)*; Ministry of Justice 2006-June/F&A.
[71] Parts of the text under 3.3.6 are taken from Kalmthout, A.M. and Bahtiyar Z., 'Juvenile Justice Systems in Europe, Current situation and reform developments' Vol. 2, *Forum Verlag Godesberg* GmbH, 2010.

conditional dismissal concerns participation in a project which the police can suggest to the child offender in cases of acts of minor violence (*Halt*)[72]. The so-called HALT-settlement involves community service or educational tasks[73]. Participation in such a project means that no official report will be sent to the Public Prosecutor. If the child does not accept the offer of the police, the case will still be brought before the Public Prosecutor. Criteria to participate are, *inter alia*, that the child offender must confess guilt and that it concerns an offence which is stated in a separate ministerial regulation[74]. This regulation focuses on light forms of crimes that fall into the category of 'nuisance' such as property offences, acts of violence, arson, vandalising and street offences.

A successfully completed HALT-settlement is not registered in the Judicial Records System *(Justitieel Registratie Systeem)* and is no obstacle for obtaining a Certificate of Good Conduct *(Verklaring omtrent het gedrag)*. The police records do register these settlements which can cause problems for children who later apply for a job at the police or the military police. The registration in the police records is saved for 7 years or until the child reaches the age of 21. For children below the age of 12 who commit an offence, the STOP-disposal *(STOP-reactie)* was introduced nationwide in 2001. It is not a penal measure and not obligatory. The parents decide whether they participate (with their child). Research showed that the approach in its entirety was not effective, which led to the termination of this programme in 2010[75].

The police also have the authority to deal with the case by way of an out-of-court settlement, which only relates to minor offences. The child can pay a settlement penalty of a maximum of 350 euros[76], which ends the prosecution.

When the criminal offence is too serious to be dealt with by the police, the official report will be sent to the Public Prosecution Department, which also has the possibility not to send the child to appear before a Judge. The Prosecutor has a choice between a punishment order and a transaction.

The possibility of transaction is meant for all minor offences and for crimes with a maximum of six years of imprisonment. If it concerns a pecuniary offence and the suspect is willing to pay the maximum fine, the Public Prosecutor is required to arrange a compromise[77]. Child suspects have the restriction that a fine cannot be more than 3,900 euros. Apart from a fine, other conditions can be issued such as compensation for the victim, performing unpaid labour or attending a training programme[78].

Contrary to the transaction, the punishment order is not a means of preventing prosecution. It is a way of settlement which gives the Public Prosecutor the authority to prosecute and punish, just like a Judge would do. Because of this, a punishment order is not eligible for children under the age of 12. Similar to the transaction, this order can be used for crimes with a maximum of six years imprisonment[79]. The Prosecutor cannot order custodial sentences, but has several penalties and measures available. Among the penalties, the Prosecutor can order community punishment for which the maximum is set at 60 hours for

[72] Article 77e CC.
[73] http://www.halt.nl/index.cfm/site/Halt%20Nederland/pageid/1B5F8730-3048-7291-FD8405E03D434BD2/index.cfm
[74] HALT-offences (Designation) Decree *(Besluit aanwijzing Halt-feiten).*
[75] The STOP-disposal proceedings evaluation (*De Stop-reactie een procesevalutie*), WODC, Laan, A.M. van der, Kea, R., Verwers, C. (medew.), Vervoorn, L. (medew.), 2009.
[76] Article 74c CC.
[77] Article 74a CC.
[78] For children, the law also knows another condition which is not known in adult criminal law: that the suspect will conform to the instructions of a family supervision institution for the duration set by the Public Prosecutor with a maximum of six months (Article 77f (1) CC).
[79] Article 257a CCP.

children[80]. The intention is that the punishment order will replace the transaction in the upcoming years[81].

2.3.7 Minimising the burden of proceedings and ensuring a child-friendly environment

According to the Kalsbeek-norms *(Kalsbeek-normen)*, which were introduced in 2001 and deal with the time taken to process juvenile criminal cases, 80% of the cases which are tried before the court have to be handled within 6 months[82]. This norm has not been achieved in all the cases in recent years; in 2009, 62% of the cases and in 2011, 57.8% of the cases were handled within a period of 6 months[83]. Also the Public Prosecutor aims to deal with cases within a certain period of time; 76% of the cases were handled within 3 months[84].

The appearance of the child suspect before the examining Judge is often done in small settings, where the child has close contact with the Judge. Juvenile criminal hearings can take place in different settings, which can be a large courtroom but also a small area. Irrespective of the size of the room, the child suspect always sits opposite the Judge.

2.3.8 Protecting the child during interviews and when giving testimony

See the text on studio hearings under sections 2.1.4. and 2.1.5.

2.3.9 Right to be heard and to participate in criminal proceedings

Children can be a party to criminal proceedings and have the right to express their views at the hearing. Several professionals are involved to offer support to children.

2.3.10 Right to legal counsel, legal assistance and representation

A child suspect, who does not have a lawyer, will be allocated one by the court[85]. The ex officio allocation is not required when it concerns sub-district court cases and an out-of-court settlement offered by the Public Prosecutor with a community punishment order for less than 20 hours. Children can be in contact with their lawyers as often as they want to and the lawyer has access to all procedural documents. Several court districts work with protocols for specialised juvenile law lawyers. There is an intention to introduce a nationwide protocol for the ex officio allocation of juvenile law lawyers[86].

2.3.11 Remedies or compensation for violation of rights and failure to act

There is no specific regulation for the granting of compensation for child suspects. The general rule, for adults and children, is that when a case ends without the imposition of a measure or punishment, the Judge can, on the request of the former defendant, grant him/her financial compensation at the cost of the State. The Judge is not obliged to do so but decides based on reasons of equity, taking into account all the circumstances of the case. Such a request has to be submitted within three months after the ending of the proceedings and the compensation can also include immaterial damages[87].

---

[80] Article 77f CC.

[81] Apart from a transaction or a punishment order, the Public Prosecutions Department can decide not to bring a case to court because of a slim chance for a sentence of conviction, due to insufficient evidence or technical-judicial hindrances. In that case we speak of a technical dismissal.

[82] Also the 'Settlement of juvenile criminal cases Instructions 2011' (*Aanwijzing effectieve afdoening strafzaken jeugdigen 2011*) refers to the Kalsbeek-norms.

[83] http://www.jaarberichtom.nl/jaarverslag-2011/aDU1022_Doorlooptijden-volgens-Kalsbeeknormen.aspx?intPage=3.

[84] Information collected in writing from the Dutch authorities.

[85] Article 489 (1) CCP.

[86] Report of the Council for the Administration of Criminal Justice and Protection of Juveniles (*Raad voor Strafrechtstoepassing en Jeugdbescherming)*: The juvenile criminal procedural law: take account of future developments *(Het jeugdstrafproces: toekomstbestendig!)* 14 March 2011, 37.

[87] Articles 89 and 90 CCP.

The suspect as well as the Public Prosecutor can sign away the power to take recourse to that legal remedy. When this happens, the Judgment is directly enforceable. After the appeal to a higher court, the child can also appeal to the court of cassation, which only carries out a legal assessment. The way the legal remedies have to be applied is the same as for adults. When the convicted child is under 16 years of age, (s)he as well as his/her lawyer can apply for legal remedies. As soon as the convicted child is 16 years old, (s)he has to personally appeal for the chosen legal remedy or explicitly authorise his/her lawyer for that

The lawyer can act independently if (s)he believes this is in the best interests of the child. When the child and his/her legal representative do not agree with the actions of the lawyer on whether or not to make use of the available remedies, they can file a notice of objection to the President of the court where the case is being tried[88].

[88] Article 503 (2) CCP.

3 Child-friendly justice after judicial proceedings

3.1 The child as a victim or offender

3.1.1 Provision of information

The Dutch judicial criminal system has a child orientated approach. For cases involving children, the competent authorities meet to gather all the information available on the situation of children and to draw a plan for the reintegration of the child after having served his/her sentence[89].

3.1.2 Sentencing[90]

The Judge has the possibility of expressing a verdict of guilt without the imposition of a punishment, which is the so-called judicial pardon[91]. If the Judge decides to impose a sanction, (s)he can choose between three kinds of sanctions which are similar to adults: the principal sentence, additional penalties and measures. Though the division of the sanctions is the same, the penalties for children differ from those of adults.

The principal sentences for children are in the case of a criminal offence: juvenile detention, community punishment order or a fine. In the case of minor offences, these are a community punishment order or fine[92]. The additional penalties are confiscation and disqualification from driving[93]. There are six criminal measures which can be imposed, namely: placement in a judicial institution *(PIJ-maatregel)*, measures concerning the behaviour of the child *(Gedragsbeïnvloedende maatregel)*, withdrawal from circulation, confiscation of illegally obtained profits or advantages, compensation or measures for the restriction of liberty[94]. The Dutch criminal system also contains the possibility of conditional sentencing.

Juvenile detention is the only custodial sentence in juvenile criminal law. The duration of the detention will not exceed 12 months for children of 12 to 16 years old and 24 months for those aged 16 and 17[95]. These maximum periods also apply in cases of two concurrent sentences (when two sentences are served at the same time) and recidivism (where the offender subsequently commits additional offences). As opposed to adults, concurrence and recidivism are not grounds for an increase in penalty. Also no reduction of these maximum periods takes place in the case of an attempt and preparation, unsuccessful incitement and complicity as provided for in criminal law for adults. Time spent in custody, pre-trial detention or detention abroad in pursuance of a Dutch request for extradition, counts towards the juvenile detention[96].

The **community punishment order** consists of performing unpaid labour for public service, performing labour for the reinstatement of the damage caused by the offence, a training order or a combination of community service and an educational project. A community punishment order can be imposed for a maximum 200 hours and, when it concerns a combination, for 240 hours. For children between the ages of 12 and 14, a mitigation of these hours takes place. The period in which the sentence has to be completed amounts to six months for an educational project and six to 12 months for community service[97].

[89] N. Duits, J, Bartels, "*Jeugdpsychiatrie en recht*", chapter *Jeugdstrafrecht,* 2011 page 173-197 ; information provided by the Dutch Ministry of Security and Justice.

[90] Parts of the text under 4.1.2 are taken from Kalmthout, A.M. and Bahtiyar Z., 'Juvenile Justice Systems in Europe, Current situation and reform developments' Vol. 2, *Forum Verlag Godesberg* GmbH, 2010.

[91] Article 9a CC.

[92] Article 77h (1) CC.

[93] Article 77h (3) CC.

[94] Article 77h (4) CC.

[95] Article 77i CC.

[96] Article 77i and 27 CC.

[97] Article 77m CC.

The Child Care and Protection Board carries the actual responsibility for the preparation, the implementation and the guidance of the alternative sanctions[98]. The formal responsibility on the other hand, rests with the Public Prosecutions Department, which is legally responsible for the implementation of the sentences.

The amount of the **fine** has a minimum of three euros and a maximum of 3900 euros. This maximum is the standard for all criminal offences and minor offences. When imposing a fine, the Judge has to bear in mind the (financial) position of the offender. In the verdict, the Judge can state that the child can pay the fine by instalments as determined by the Judge. If the fine is not paid or only partially paid and the remaining sum cannot be recovered through the child's property, the outstanding amount can be replaced by subsidiary juvenile detention. The duration of the subsidiary juvenile detention has a minimum of one day and a maximum of three months. For each 15 euros of the outstanding amount, only one day of detention can be imposed. At the request of the child, the subsidiary juvenile detention can be converted into a community punishment order[99].

The regulation of **confiscation** is identical to the one in adult criminal law. The confiscation concerns objects that have played a role in the offence or objects that were vested through the offence.

Disqualification from driving a vehicle can also be ordered. The disqualification applies mainly to mopeds, be it that the additional punishment also can be imposed if the juvenile criminal law is applied to criminal adults from 18 to 21 years old. In that case, the driving ban also applies to cars and motorbikes.

Confiscation and disqualification can be imposed separately, jointly or together with principle sentences.

The measure of placement in a judicial institution for child offenders is the only custodial measure known in juvenile criminal law at this moment. This measure can be compared with the in-patient or hospital order for adults and can be executed in youth justice institutions (*Justitiële jeugdinrichtingen*), mental health institutions (*geestelijke gezondheidszorg instelligen*) or any other institution. It can be enforced:

a. when it is a matter of a serious criminal offence, for which conditional detention is possible;

b. when the safety of others or the general safety of persons or goods demands the enforcement of the measure;

c. if the measure is promotes the personal development of the child suspect/offender[100].

It is a matter of cumulative formulated conditions. If all three conditions are met, the measure can be enforced on a conviction as well as on an acquittal (e.g. where the act cannot be attributed to the accused on ground of a lack of mental capacity). The measure can be combined with other sanctions. In principle, the placement in a judicial institution for child offenders is in force for the duration of two years. It can be terminated conditionally or unconditionally at all times by the Minister of Security and Justice, after obtaining the advice of the Child Care and Protection Board. The measure can also last longer than two years. The Judge who imposed the measure can, on demand of the Public Prosecutions Department, repeatedly extend the term up to two years, as long as the total duration of the measure does not exceed four years. This is only possible under restrictions (violence or danger to persons)[101]. For children with a limited development of mental faculties or a mental disorder, the total duration of the measure may not exceed six years in the institution (with one year of conditional release). The measure must be enforced in relation to a crime

[98] Article 77o CC.
[99] Article 77l CC.
[100] Article 77s CC.
[101] Article 77t.3 CC.

directed against or causing danger to the physical integrity of one or more persons especially regarding crimes of violence and sexual criminal offences[102].

The measure concerning the behaviour of the child aims to change the child's behaviour and prevent recidivism. Such a measure consists of one or more courses or treatments which deal, among other things with controlling anger, learning social skills and stopping the use of alcohol or drugs. The measure can last for a period of half a year and can be extended to one year[103].

The measure of **withdrawal from circulation** is similar for children and for adults. It is meant to withdraw objects from circulation that were obtained by criminal means, used by or fabricated for the preparation or commission of the crime or used to hinder the investigation of the offence. This is only possible if these objects are of the sort that uncontrolled possession is contrary to the law and public interest. Since social interest is the first matter of importance, the measure is also feasible in cases where a (child) suspect is acquitted or discharged.

Also the measure of **confiscation of illegally obtained profits or advantages** is not different to the measure for adults. The purpose of this measure is to deprive the sentenced person of the profits obtained through criminal acts. The measure can not only be imposed for illegally obtained profits through a criminal act with a conviction but also for other facts known to have been committed by the person sentenced. The sum will be determined during a separate procedure. If the sentenced person does not pay the ordered sum, it will be converted into a subsidiary detention. The duration of which will be determined by a Judge for a duration of a maximum of six years. This also applies to children.

As in criminal law for adults, the Judge can impose on the child **compensation for the damage** caused by the offence. If necessary, this measure can be combined with other punishments or measures. The measure is based on the liability of the offender under civil law against the injured party. This means that it cannot be imposed on children who according to civil law cannot be held responsible for their behaviour. This is of importance because the Civil Code stipulates that the behaviour of a child who has not yet reached the age of fourteen cannot be attributed to that child as a wrongful act[104]. If, in such a case, the Judge wants to impose compensation as a sanction, (s)he will have to resort to the conditional sanction modality which enables him/her to impose the compensation as a special condition.

The Judge has a considerable amount of freedom to determine the nature and size of the sanction as well as the possibility to combine different sanctions. All thinkable combinations are possible and the sanction of juvenile detention, fine and placement in a judicial institution for children can be implemented wholly or partially.

On the basis of the last prescribed measure which is **the restriction of liberty**, the child offender is not allowed to be at a certain place or with a certain person or has to report to an appointed investigating official.

3.1.3 Deprivation of liberty[105]

The enforcement of custodial sentences and criminal measures is done in YCIs, which are to be either remand homes, treatment centres or state and subsidised private institutions. Juvenile detention is enforced in remand homes where the focus is on (re)-education. The Judge who imposes the punishment can, when demanded by the Public Prosecutions Department or at the request of the convicted child, replace the punishment of juvenile

[102] Article 77t CC.
[103] Leaflet 'Measure concerning the behavior of the child' *(De gedragsbeïnvloedende maatregel),* Child Care and Protection Board, January 2012 and information provided by the Ministry of Security and Justice.
[104] Article 164, Book 6 of the Civil Code.
[105] Parts of the text under 4.1.2 are taken from Kalmthout A.M. and Bahtiyar Z., 'Juvenile Justice Systems in Europe, Current situation and reform developments' Vol. 2, *Forum Verlag Godesberg GmbH*, 2010.

detention wholly or partially by another punishment[106] if the enforcement of the sentence would wholly or partially take place at a time at which the person convicted would be eighteen years old and, in the opinion of the Judge, would no longer be eligible for juvenile detention[107]. A conversion will only be possible when the sentence concerned has become irrevocable. So, it is not permitted to immediately decide on conversion to a custodial sentence for adults when sentencing juvenile detention. Nor can it be decided by upholding a claim to the enforcement of conditional juvenile detention that this punishment will be converted into imprisonment with fixed duration[108]. There is no legal remedy available against the conversion.

The rehabilitation of a child and their re-integration into society are important principles when the child, on the basis of punishment or measures, is placed in a YCI. The standard rules for the treatment of children in YCIs are laid down in the YCIA which deals with rules on participation and complaints and also with the disciplinary sanctions that can be imposed and what institutions have to organise for the children in the areas of education, care, recreation and sports[109].

According to the YCIA, both detention and treatment, including education, must be arranged soon after conviction. The director of a remand home can draw up a plan of residence for the child[110]. For those who have a remaining sentence of three months or more, (s)he is required to do this. In a treatment centre the director has to draw up a plan of treatment for everyone who is placed in the centre. For the realisation of the plan, several parties are involved, such as the group leaders, teachers, guardianship institutions and the probation service. As much as possible, parents or guardians, step-parents or foster parents take part in drawing up the plan.

The child is required to attend school or other activities within the framework of his pedagogical training. Which school (s)he is in and which activities (s)he attends are noted in the child's plan. Furthermore, the child can make use of library facilities on a weekly basis and follow the news via TV or newspapers. The child has the right to physical training (twice a week of 45 minutes each), recreation for two hours a day and may go outside daily for one hour. These minimum facilities can be extended as per institution[111].

Children in juvenile detention are eligible for an educational and training programme *(Scholings- en Trainingsprogramma, STP)* after serving half of the imposed sentence and when the remaining punishment amounts to a minimum of one month and a maximum of three months. No later than a month before the end of the sentence, the STP has to start. When children are sentenced to juvenile detention of two months or less, they do not qualify for an STP. The same applies for a remaining punishment, which after deduction of custody is a month or less. During detention, there is also a possibility to follow a behavioural training programme.

The programme covers a minimum of 26 hours per week and the activities on offer are directed towards, for example, learning special social skills; extending the chance of work after completion of the custodial sentence or the custodial measure and offering special care to the candidate in the field of addiction, mental welfare or mentally disablement.

When special incidents occur in YCIs, they must be immediately reported by the director of the YCI to the National Agency for Correctional Institutions *(DJI)* and also reported to the Youth Care Inspectorate *(Inspectie Jeugdzorg)* or the Inspectorate on Security and Justice

[106] These punishments as prescribed in Article 9 (1) CC are imprisonment, custody, community service order and fine.
[107] Article 77k CC.
[108] Doek, J.E., Vlaardingerbroek P., *Juvenile law and youth care – Student Edition* (*Jeugdrecht en jeugdzorg – Studenteneditie)* (Elsevier, The Hague, 2006), 504.
[109] Other relevant instruments include the Regulation Youth Custodial Institutions Act *(Reglement justitiële jeugdinrichtingen)* and several Instructions and Circulars.
[110] Article 20 YCIA.
[111] Doek, J.E., Vlaardingerbroek P., *Juvenile law and youth care – Student Edition* (*Jeugdrecht en jeugdzorg – Studenteneditie)* (Elsevier, The Hague, 2006), 741.

(Inspectie V&J)The Minister of Security and Justice has the final responsibility for everything that happens in YCIs[112].

3.1.4 Criminal records

All criminal offences committed from the age of 12 are registered in the Judicial Records System *(Justitieel Documentatiesysteem)*. The registration does not automatically end when a child reaches the age of 18. For the registration, a distinction is made between minor offences and crimes. Minor offences are kept in the system for five years, but if this offence is sentenced with a community punishment order or stay in a penitentiary institution, the removal occurs after 10 years. Crimes are removed after 30 years, while sexual offences are registered indefinitely.

If a person from the age of 12 on is registered in the Judicial Records System, but has not committed criminal offences in the last four years, (s)he can obtain a Certificate of Good Conduct. There are three exceptions to this rule, namely: if (s)he has been in prison during those four years; committed a sexual offence or has been placed in a state educational home or in a judicial institution for child offenders during the four years. In these three cases and when the person has committed a criminal offence in the last four years, the Central Organisation for Certificates of Good Conduct of the Integrity and Screening Agency (COVOG) will have a follow-up survey to decide whether a Certificate will be issued or not. Several aspects will be taken into account before deciding, such as information from the police, the age of the person and the kind of job for which the Certificate is requested.[113]

[112] Defence for Children International, Violence against Children in Conflict with the Law, A study on Indicators and Data Collection in Belgium, England and Wales, France and the Netherlands, 2008.
[113] Leaflet 'Do I have a criminal record'? *(Heb ik nu een strafblad?, Informatie voor jongeren)*, Child Care and Protection Board, January 2012.

4 Strengths and Potential Gaps

Child suspects have the right to speak at trial and are also given the right to have the last word. It is general practice at trials that the Juvenile Court Judge offers the child suspect the opportunity to tell his/her side of the story and give more detailed information about his/her personal circumstances. It can be considered a strength of the system that children are assigned an active role during the hearing. A positive development is that the position of victims, including child victims, has improved in the Dutch criminal system. In addition to their ability to speak at the hearing, there are also more possibilities for victims to participate in criminal proceedings in order to claim compensation for damage suffered.

What can be identified as a potential gap is that although several actors are involved in the support and guidance of child suspects during proceedings, children's experience of the proceedings is that they can be difficult to comprehend and the guidance is not always understandable or sufficiently adapted. Children may not always receive sufficient assistance and support, and they may not be sufficiently prepared for the criminal proceedings and the hearing [114]. Furthermore, one piece of research showed that Judges in general do not have the right skills to communicate with children and further training would be needed for them to have a better understanding of children's needs[115].

In its 2008 report on the Netherlands, the European Committee for the Prevention of Torture (CPT) noted that the information gathered during its visits to a number of police stations indicated that a significant number of persons spent between 10 to 14 days detained in a police cell. This appeared particularly to be the case for children between 16 and 18 years of age, which was apparently due to capacity problems in juvenile detention facilities[116]. In its recent 2012 report, the Committee stated that it was pleased to note that the capacity problems in the remand prisons and juvenile detention systems had been overcome and that in practice the persons detained in police facilities, including children, at the time of the visit were held for no more than six days, and often for significantly shorter periods of time not exceeding several hours or a few days[117].

[114] Ten Brummelaar M., Kalverboer M., 'Children, children rights and the criminal procedure. The interest of the child in juvenile criminal proceedings' (*Kinderen, kinderrechten en de strafrechtelijke procedure. Het belang van het kind in het Jeugdstraf (proces) recht),* Rijksuniversiteit Groningen, October 2011.
[115] ibid.

[116] Council of Europe Report to the authorities of the Kingdom of the Netherlands on the visits carried out to the Kingdom in Europe, Aruba, and the Netherlands Antilles by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), http://www.cpt.coe.int/documents/nld/2008-02-inf-eng.htm, 2007.
[117] Council of Europe Report to the Government of the Netherlands on the visit to the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 2011.

Conclusions

No separate statutory regulation for juvenile criminal (procedural) law exists in Dutch legislation. The criminal (procedural) law for adults, as regulated in the CC and CCP, also applies to children, as long as no specific provisions (called deviated provisions) are formulated.

Different actors are involved in cases where children are involved and regular case consultations take place. The Child Care and Protection Board plays an important role for child victims as well as child suspects. The Board can request the court to engage child protection measures in cases of possible child abuse, and juvenile criminal cases take place under the direction of the Board.

The revision of juvenile criminal law in 1995 has considerably diminished the difference with criminal law for adults. The thinking behind this revision was the idea that today's children are substantially more mature than before and thus can be spoken to in a more mature way about their conduct and responsibilities. This does not alter the fact that the current sanctions system is strongly imbued with educational principles: learning and work projects as an alternative to custodial punishment or fine, or a custodial sentence (juvenile detention), which for the most serious crimes committed by children under the age of 16, cannot last longer than a year. It is to be seen whether the intended introduction of adolescent criminal law will change with regard to sanctioning child offenders.

With regard to the protection of the child, it can be mentioned that court hearings take place behind closed doors and that a child-friendly environment is created for children below the age of 12 years old. These children are interviewed in a studio with rooms designed in cheerful and bright colours and with furniture adjusted to the world of a child. Interviews with children up to the age of 16 years old must be recorded by audiovisual means.

Child suspects must appear at trial and have the right to be heard and participate in the proceedings. Since 2011, both of the child suspect's parents must attend the hearing. A relevant development with regard to the position of victims is that they are provided with more possibilities to participate in the proceedings and can also speak at the hearing. Contrary to child suspects and victims, witnesses do not have the right to be heard or participate. Nor do they have the right to be informed.

With regard to juvenile delinquency, the government chooses an individual approach, based on the 'what works' movement, to reduce crimes and prevent recidivism. Safe houses for child offenders were established nationwide in 2009 and have acted since 1 January 2013 under the auspices of the municipalities. This transfer of responsibilities is part of the government's plans to devolve youth care, including juvenile probation, to the municipalities by 2015.

Annex – Legislation reviewed during the writing of this report

- Settlement of juvenile criminal cases Instructions, 1 July 2011
- Act to strengthen the position of the victim in the criminal procedure, 1 January 2011
- Instructions on auditory and audiovisual registration of interviews with informants, witnesses and suspects, 28 July 2010
- Instructions on Legal Aid during police interrogation, 1 April 2010
- Witness Protection Instruction, 2010
- Witness Protection Decree, 21 December 2005
- Youth Care Act, 22 April 2004
- Regulation Youth Custodial Institutions Act, 5 July 2001
- Criminal Injuries Compensation Fund Act, 23 December 1992
- Circular on providing information to media, August 1990
- Treatment of victims of sexual abuse Circular, December 1986
- Criminal Code of Procedure, 15 January 1921, date of commencement is 1 January 1926
- Criminal Code, 3 March 1881, date of commencement 1 September 1886
- Dutch Constitution, 1815