CHILD PARTICIPATION IN JUVENILE JUSTICE IN THE NETHERLANDS

National Report for AIMJF´s Comparative and Collaborative Research.

La participación de los niños en la justicia juvenil en los Países Bajos
Informe nacional para la investigación comparativa y colaborativa de la AIMJF

La participation des enfants à la justice juvénile aux Pays-Bas
Rapport national pour la recherche comparative et collaborative de l´AIMJF

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Abstract: The paper is part of a collaborative research organized by the International Association of Youth and Family Judges and Magistrates (AIMJF/IAYFJM) on child participation in juvenile justice. The article explains the legal, institutional and procedural aspects of child participation in the Justice System in the Netherlands.

Resumen: El documento es parte de una investigación colaborativa organizada por la Asociación Internacional de Juventud y Familia (AIMJF) sobre la participación de adolescentes en la justicia juvenil. El artículo explica los aspectos legales, institucionales y procesales de la participación infantil en el sistema de justicia en los Países Bajos

Résumé : Le document fait partie d´une recherche collaborative organisée par l´Association Internationale des Magistrats de la Jeunesse et de la Famille (AIMJF) sur la participation des enfants à la justice juvénile. L´article explique des aspects légaux, institutionnels et procédurales de la participation des enfants dans le système de justice aux Pays-Bas.

Introduction

The International Association of Youth and Family Judges and Magistrates (IAYFJM or AIMJF, in the French and Spanish acronym) represents worldwide efforts to establish links between judges from different countries, promoting transnational judicial dialogue, in order to provide better conditions for a qualified attention to children based in a human rights approach.

To do so, AIMJF organizes research on international problems facing the operation of the courts and various laws relating to youth and family and training programs.

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The aims of this research are to identify similarities and discrepancies among countries and to develop a cartography of how child participation in juvenile justice is organized worldwide.

This national report is based on a questionnaire prepared by AIMJF.

Questionnaire

1. General description of the procedure and the system

1.1. What is the name of the Court in your country with jurisdiction for wrongful acts committed by children? Does the name vary among different regions of your Country? Does this Court also have jurisdiction for other matters? Which one?

Offences committed before the age of 18 (hereinafter: offences committed by juveniles) are tried by youth judges. Youth judges work at one of the courts of first instance or, for appeal cases, at one of the courts of appeal. Courts (of appeal) determine their organizational structure themselves, meaning that it may differ whether judges handling juvenile justice cases are affiliated with the criminal law section or with the family law section, or both, and may thus also try various other cases, such as youth protection cases. For the trial in the first instance it is determined that in principle, cases involving juveniles are tried by a single youth judge (Article 495 sub-section 1 of the Dutch Code of Criminal Procedure (*Wetboek van Strafvordering*), hereinafter CCP). This is different in more serious cases, for instance when a more severe sentence than 6 months of juvenile detention is (likely to be) imposed or when the case is complex; in such cases, the case is tried by a three-judge panel, one of whom should be a youth judge (Article 495 sub-sections 2 and 3 CCP).

Finally, a single-judge division (*kantonrechter*) may try misdemeanors instead of offences, such as violation of the Act on Compulsory Education (*Leerplichtwet*) if

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juveniles play truant (Article 382 CCP). Hearings before this judge will not be the focus of the rest of this report.[2]

1.2.What is the minimum age of criminal responsibility (MACR)?

Article 486 CCP stipulates that no person may be prosecuted for an offence committed before he reached the age of 12 years.

However, when facts or circumstances give rise to the reasonable suspicion that a person younger than 12 years committed an offence, certain investigative measures may be imposed (Article 487 CCP). For instance, the young person may be arrested and taken into police custody for the purpose of the investigation for a maximum of 6 hours. As juveniles that were younger than 12 at the time of the offence cannot be prosecuted, they are not entitled to state-funded legal aid before or during police interrogation.[3]

1.3.Until which age is a child subjected to the jurisdiction of the Youth Court? Does your legislation provide the possibility or possible obligation to treat a child under 18 as an adult? If yes, in which cases and in what way?

The case is tried by a youth judge when the offence was committed before the age of 18 (Article 488 sub-section 2 and Article 495 CCP).

Moreover, the youth judge has jurisdiction over a criminal offence or offences committed after the suspect has reached the age of 18, if the prosecution thereof takes place simultaneously with the prosecution for a criminal offence committed before the age of 18 (Article 495 sub-section 4 and further CCP). In this case, the procedural provisions of the juvenile justice system apply and the court may impose a juvenile justice sanction if it sees reason to do this in the personality of the offender or the circumstances under which the offence was committed.

[2] The special characteristics of hearings involving juveniles will be discussed further below. For hearings before this single-judge division, (among others) the following characteristics specific for hearings involving juveniles apply as well: the case is tried behind closed doors, and the parents or guardian are obliged to be present during the hearing. The parents or guardian may also be sanctioned due to violation of the compulsory education requirements by the juvenile. Different from cases regarding offences committed by juveniles, in cases before the single-judge division, juveniles are not obliged to appear in person themselves, and they are not entitled to funded legal aid.

[3] However, see on recent developments in this regard under 3.3. Currently they do already have the right (similar to juveniles that were older than 12 at the time of the offence) to the presence of a parent or trusted person during interrogations by the police.

Article 77b of the Dutch Code of Criminal Law (*Wetboek van Strafrecht*, hereinafter CCL) provides a possibility to sanction children that were 16 or 17 years of age at the time of the offence as adults. According to this provision, the court may apply the general, 'adult' criminal law sentences if it finds reason for doing so in 'the seriousness of the offence committed, the personality of the offender, or the circumstances under which the offence was committed'.[4] Application of Article 77b CCL only affects the sanction that is imposed and not the procedure that is followed, meaning that in such a case the procedural provisions of the juvenile justice system are still applied.

Finally, young adults that were 18 years or older but younger than 23 at the time of the offence, may be sentenced under the provisions for juveniles if the court finds reason for this in the personality of the offender or the circumstances under which the offence was committed as stipulated by Article 77c CCL. This provision regards the sanctions to be imposed and not the procedural aspects of the case.[5] In principle, this provision is not applied by youth judges but rather by 'general' criminal judges. However, if there were (serious) indications during the phase preceding the hearing that this provision may need to be applied – e.g. if the public prosecutor stated his or her intention to demand the application of Article 77c CCL, or if the expert advice that was issued points in that direction – courts may (attempt to) involve a youth judge in the case, especially if it is judged by a three-judge panel.

1.4. Does this Court maintain the jurisdiction regardless of age at the time of the judgment if the offense was committed before the age of 18?

Yes.

1.5. Can you describe the general steps of the procedure?

- If a juvenile is suspected of committing an offence, he can be arrested and taken to the police station or invited to the police station for interrogation. According to Dutch law,

[4] Sub-section 2 of Article 77b CCL specifies that the sentence of life imprisonment may nevertheless not be imposed in the application of this provision.

[5] See, however, about an important consequence for the obligation to appear under 2.1. In addition, if pre-trial detention was ordered and the public prosecutor has already stated his or her intention to demand the application of Article 77c CCL, the pre-trial detention would normally take place in an institution for juveniles (Article 63 sub-section 5 and Article 493 CCP). Due to major capacity problems in the juvenile justice institutions, these young adults are currently being placed in institutions for adults more often. See on upcoming changes in this regard under 3.3.

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juveniles only have a right to a subsidized lawyer if they have been arrested. In 2021 however the court of Amsterdam ruled – invoking EU Directive 2016/800 – that this right should also apply to juveniles that were invited as well. While the government has lodged an appeal against this ruling, it is now (at least for the time being) indeed providing subsidized legal aid for this group as well. Juveniles cannot waive their right to legal aid before and during the interrogation (Article 489 CCP). Another important right that ensued from Directive 2016/800 is that during the interrogation the juvenile also has the right to be accompanied by a parent, guardian or trusted person. This right is not absolute: it may be limited if the presence of the persons mentioned is not in the best interest of the defendant or if the interest of the investigation precludes this presence (Article 488ab CCP).

- Since 2013, there is a fast-track system: the so-called *ZSM*-meeting (*ZSM* is a Dutch abbreviation for 'as fast, smart, selective, simple, and collaborative as possible while taking into account the impact on society'), where cases are assessed within nine hours after arrest by all relevant actors – among others the police, the public prosecution service, the Child Protection Council, and the probation service. In principle all cases involving juveniles are brought forward by the police so that a decision may be taken to either settle the case, for instance through diversion/out-of-court settlement, or to proceed with the case, for instance by forwarding the police report for further investigation or for the hearing regarding pre-trial detention (see further below). More complex or serious cases which have not resulted in a decision within seven days after arrest are discussed in the regional Safety Homes (*Veiligheidshuizen*). The juvenile and his lawyer are not present during these meetings, but are informed afterwards on the decisions that have been taken.
- As was just mentioned, diversion/out-of-court settlement may also be used in cases that are not too complex or serious. For certain clearly defined acts of very minor severity, the police may refer to *Halt*, an organization which offers a diversionary measure: an intervention lasting up to 20 hours which, if completed properly, is not included on the criminal record of the juvenile (Article 77e CCL). In cases concerning other acts, the public prosecutor has the authority to refer juveniles to *Halt* as well. In addition, the public prosecutor may also impose a punishment order (*strafbeschikking*) for offenses which, for adults, carry a maximum detention of six years (Article 257a CCP and Article 77f

CCL). This means that the public prosecutor may impose community service for a maximum of sixty hours and supervision by the (youth) probation service for up to six months.

- If the juvenile is held in police custody beyond the first phase of six to nine hours, the Child Protection Council is notified so that they may speak to the juvenile and prepare a report on his personal circumstances (Article 490 sub-section 1 CCP). The juvenile will be brought before an examining judge no later than three days and 18 hours after his arrest, so that the legality of the detention may be determined (Article 59a CCP). During this moment he has a right to legal assistance (Article 59a, sub-section 3 and Article 489 CCP) and the parents or guardian of the juvenile will be present (although this is standard practice, at this moment this right is not explicitly enshrined in the Dutch legislation; see also Bruning, Van den Brink & Punselie 2020; see however under 3.3).
- Usually, the moment at which the legality of the detention is reviewed will coincide with the moment at which the examining judge will decide on the petition by the public prosecutor for (longer) pre-trial detention of the juvenile, with a maximum of two weeks. Before the judge decides on this petition the juvenile is heard and he has a right to legal assistance (Article 63 sub-section 3 and 4 and Article 491 sub-section 1 CCP) and his parents or guardian will be present (although this is standard practice, at this moment this right is not explicitly enshrined in the Dutch legislation; see also Bruning, Van den Brink & Punselie 2020; see however under 3.3). During this phase, the advice by the Child Protection Council plays an important role. First of all, the law stipulates that the prosecutor takes note of this report (if it is available) before requesting (prolongment of) pre-trial detention (Article 490 sub-section 2 CCP). Moreover, if pre-trial detention is ordered by the judge, the Dutch law obliges him to consider whether the enforcement of this order may be suspended under certain conditions; for these conditions, the judge needs the advice of the Child Protection Council (Article 493 CCP).
- After these two weeks of pre-trail detention, the prosecutor can issue a petition to prolong the pre-trail detention for a maximum of 90 days. Before the judge decides on this petition the juvenile is heard and he has a right to legal assistance (Article 491 sub-section 1 CCP) and his parents or guardian will be present (Article 493a CCP). After these 90 days, the

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child has to appear in court and the prosecutor has to present its case (Article 66 sub-section 1 CCP).

- See for information on the judicial hearing during which the case is tried by a judge or a three-judge panel further below, especially under 2.16.14.

1.6. What are the opportunities for the child hearing in the whole proceeding?

Comentado [MJ1]: Suggestion: opportunities for the child to be heard?

- During interrogations the child is (literally) heard by the police. He has a right to a subsidized, specialized youth lawyer (see also under 1.5) and to the presence of a parent, guardian or trusted person. He also has the right to remain silent, of which he is notified before the start of the hearing (Article 29 CCP).

- With regard to diversion/the out-of-court settlements that were described under 1.5, both the juvenile defendant and his lawyer are informed of the proposition for the *Halt*-intervention. It is explained to the juvenile that he is not required to participate in this intervention, and the possible consequences of non-participation are explained (Article 77e sub-section 2 CCL and the Directive and framework for criminal proceedings regarding youth and adolescents of 2021 (*Richtlijn en kader voor strafvordering jeugd en adolescenten, inclusief strafmaten Halt*)). For children below 16 years, the parents need to consent to the referral to *Halt* as well.
  The other option for an out-of-court settlement is the punishment order, imposed by the public prosecutor. If the public prosecutor intends to impose a community service for more than twenty hours, or payment obligations in the form of a fine and/or a compensation measure which amount(s) to more than 115 euro, the juvenile is heard and has a right to funded legal aid (Article 491 sub-section 2 CCP). According to (binding) policy of the public prosecution service, minors are always heard for serious offences[6] and violation of the Act on Compulsory Education (Instruction on punishment orders (*Aanwijzing OM-strafbeschikking (2022A003)*)). If the punishment order has been imposed, the juvenile has the possibility to file a formal objection to it; if the punishment

[6] The Dutch law distinguishes serious offences (*misdrijven*) from minor offences (*overtredingen*) such as rowdy behavior in a public place.

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order is not withdrawn, the public prosecutor will bring the case to the attention of the court, which will then hear the case as a regular case during a hearing (Article 257e and 257f CCP).

- The juvenile speaks to a representative of the Child Protection Council when he is in police custody for longer than the first six to nine hours. As the report during this first phase is prepared under great time pressure, there will not be an opportunity for the juvenile (or his lawyer or parents) to study the report and respond to it before the hearing on the legality and/or prolongment of the pretrial detention (see Schmidt, Ospina & Rap 2020).
- For the assessment of the legality of the detention no later than three days and eighteen hours after the arrest (see also under 1.5), the juvenile is heard by the examining judge. Again, the juvenile has a right to legal assistance during this moment and his parent(s) or guardian will be present.
- Usually, the moment at which the legality of the detention is reviewed will coincide with the moment at which the examining judge will decide on the request by the public prosecutor for (longer) pre-trial detention of the juvenile (see also under 1.5). Again, the judge needs to hear the juvenile before taking this decision; the juvenile has right to legal assistance and his parent(s) or guardian will be present. If pre-trial detention is ordered but the enforcement of the order for pre-trial detention is suspended under conditions, the juvenile has to agree to those conditions (Article 493, sub-section 6 CCP). Moreover, the advice of the Child Protection Council is important during this time (see also under 1.5). To prepare this advice, the Child Protection Council speaks with the juvenile and his parents or guardian (see also Schmidt, Ospina & Rap 2020).

- See for information on the judicial hearing during which the case is tried by a judge or a three-judge panel further below, especially under 2.16.14. It can be added here that the Child Protection Council is requested by the public prosecutor to provide advice in a case against a juvenile, unless he decides immediately and unconditionally to waive prosecution (Article 494 CCP). If there is no report at the time of the hearing, the court also has the possibility to request this (Article 498 CCP). It was previously mentioned

that for the report by the Child Protection Council during (or shortly before) the first phase of pre-trial detention, the juvenile is heard, but does not have the opportunity to respond to the report prior to hearing regarding the pre-trial detention. This is different for the reports that are prepared for the (substantive) court hearing in the case: these will be presented to the juvenile and his parent(s)/guardian before the court hearing and will frequently include remarks, for instance if the juvenile or his parents do not agree with the information or advice that is included; also, factual errors may be corrected after remarks by the juvenile or his parents (Schmidt, Ospina & Rap 2020).

1.7. Are there differences on how to proceed according to the age or other criteria? Please specify.

Procedure

In terms of the procedure there are no major differences on how to proceed according to the age, although some of the specific procedural aspects for juveniles no longer apply when the juvenile has turned 18. As is also mentioned under 2.1, juveniles are no longer obliged to appear for the hearing in their case if at the time of the hearing they have turned 18. Moreover, the provisions pertaining to (the role of) the parents – e.g. their mandatory presence during the hearing of their child, or the juvenile's right to have a parent present during interrogations by the police – also no longer apply if a juvenile has turned 18 (Article 488 sub-section 3 CCP). Finally, it can be mentioned here that if the defendant has not yet reached the age of sixteen years, all powers granted to him in the Code of Criminal Procedure or the Code of Criminal Law *also* belong to his lawyer.

Sanctions

In terms of the sanctions that may be imposed, there are some important age limits to take into account. Article 77i CCL stipulates that the maximum term of juvenile detention is twelve months in the case of a person who had not yet reached the age of 16 years at the time of the commission of the offence, and a maximum of 24 months in other cases.

The possibility to sanction juveniles in accordance with the general criminal law as described under 1.3 can only be used in the case of a juvenile who was 16 or 17 at the time of the offence.

As was also described under 1.3, young adults that were younger than 23 at the time of the offence may be sentenced in accordance with the juvenile criminal law, although the diversionary intervention *Halt* (see for explanation under 1.5) is excluded explicitly (Article 77c sub-section 2 CCL).

For participation in the *Halt*-intervention the consent of juvenile is necessary, and for juveniles younger than 16 years the consent of the parents as well.

2. Judicial hearing

2.1. Is it mandatory for the child to participate in the hearing or is it optional? Is the child invited or summoned for the hearing?

It is mandatory for the child to be present during the hearing as long as he has not yet turned 18, as stipulated in Article 495a sub-section 1 and 4 CCP. This provision also provides that the juvenile suspect shall be notified by the summons that if he does not comply with the obligation to appear, the court may order that he be brought forcibly (i.e. by the police). The obligation to appear in person does not apply anymore for an individual who was younger than 18 at the time of the commission of the offence, but who has turned 18 by the time of the court hearing.

However, if a young adult of 18 years or older but younger than 23 at the time of the offence is subpoenaed and the public prosecutor intends to demand the application of Article 77c CCL (i.e. the application of a juvenile justice sanction), the suspect is informed of this and of the fact that he is obliged to appear in person during the judicial hearing (see Article 260 sub-section 6 CCP).

Even in the case of mandatory presence during the hearing, the juvenile can of course exercise the right to remain silent which is enshrined in Article 29 CCP and applies to both adults and juveniles.

2.2. Is this call to appear, irrespective of its modality, made together with parent/representative or does the child receive a separate invitation/summon? Is it made in a child-friendly language? Can you please add a copy of this document?

The juvenile receives his own subpoena. The law stipulates that when the subpoena is issued, it is explained in simple and accessible terms that the juvenile is obliged to appear at the hearing, that he has the right to have the case tried behind closed doors, and that he has the right to be accompanied by his parents or guardian or a trusted person (Article 488aa sub-section 4 and 5 CCP). This is stated on the (back of the) subpoena.

The subpoena is also issued to the juvenile's parents or guardian and lawyer (Article 503 CCP). Parents are notified that they are required to appear at the hearing and that if they do not comply with the obligation to appear, the court may order that they be brought forcibly (Article 496 sub-section 1 CCP). As mentioned under 1.7, this obligation expires at the moment the juvenile turns 18.

2.3. Are there separate entrances and accesses for the child and other persons (professionals, victims and witnesses) to the room where the child is heard?

No. See also below, under 2.4.

2.4. Is there a specific waiting room assigned to the child, separated from other people (especially victim and witnesses of the same case; any adults)? Can you share a photo of this place, if any?

The courts usually have separate waiting rooms for victims and/or (surviving) relatives. If possible, the preferences of the victims and/or (surviving) relatives (e.g. for entering the courtroom first or last to prevent running into the defendant) will be accommodated. If the juvenile is not in pre-trial detention, he will normally wait in the hallway to be called in for the hearing.

2.5. If children are brought by the police from places of detention, are they transported separately from adults? Do they have to wait in cells, if so under what conditions (e.g. single or group cells, separation from adults etc.)?

Children are transported separately from adults. There are cell complexes in the courts, with for the most part single-person cells. In exceptional cases there are child-friendly cells as pictured below; however this is not always the case. Usually the juvenile will stay in either a standard cell or a 'child-friendly' cell with slightly more room and/or colored

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walls; in some courts however the child-friendly space is intended specifically for juveniles in residential care instead of juveniles in the justice system.

Source: derechtspraakreporters.nl

2.6. Is there some space where the child and his/her support persons can meet confidentially before and after the hearing?

No. In principle, the private spaces that are available are meant for victims and/or (surviving) relatives.

2.7. Where does the hearing occur? In the courtroom, chambers, in another room (if so please specify)? If various options apply, which situation will determine the difference in the approach?

The (substantive) hearing of the case takes place in the courtroom. For decisions which do not have to be taken during a (public) courtroom hearing (although in principle cases involving juvenile defendants are always heard behind closed doors, see under 2.11), the cases are dealt with in chambers (*raadkamer*). This applies, for example, to decisions on whether to extend pre-trial detention.

2.8. Are there differences in terms of accommodation between the hearing environment in comparison with a family (or child protection, or child victim/witness) hearing environment?

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In family law or child protection cases, juveniles between 12 and 18 are invited to a so-called 'child interview' (*kindgesprek*). For a child below the age of 12 the judge may – but does not have to – give him the opportunity to express his views as well. The interview takes place in the courthouse and is informal in nature, with only the judge and a clerk present. It may take place in a meeting room, an office or in the courtroom; often the judge will not wear the black gown (see under 2.16.1). The judge will give a brief summary of the interview during the actual hearing.

Child victims/witnesses are almost never questioned during the hearing; in principle, this takes place at the police station or by the examining magistrate during the preliminary investigation (i.e. not during a public hearing). Like adult victims, juvenile victims do have the right to speak at the hearing in certain (serious) cases. In principle, the juvenile victim has this right if he is 12 years of age or older, or if he is younger but considered to be capable of a reasonable appreciation of his interests (Article 51e CCP). For the (juvenile) victim a tailored approach is possible: his right to speak can also be exercised by another person (e.g. one of the parents), he can request the public prosecutor to have a written statement added to the file or a video recording with the victim's statement may be played at the hearing. However, the courtroom itself is no different than in a case with a juvenile defendant.

2.9. Are there differences regarding the hearing room in comparison with a regular criminal courtroom (for adults)?

In principle the courtroom is no different for juvenile defendants than for adults.

In the court of Amsterdam two 'child-friendly courtrooms' have been designed and are now in use. In these courtrooms there is, among others, a large, round table placed in the center of the room, without computers; attendees can take a folding chair and take a seat at the table.

2.10. Are hearings sound or video recorded? Does such option exist?

Hearings are not sound or video recorded.[7]

[7] However, currently experimentation is allowed in several judicial districts with (audio and/or visual) recordings of (among others) hearings, in anticipation and further preparation of the modernization of the CCP (see further on this modernization under 3.3)

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2.11. Who must, may, may not take part in the judicial hearing? If there are differences according to the situation, please specify.

See under 2.1 and 2.2: the presence of the juvenile and his parents is obligatory during the hearing (while the juvenile has not yet turned 18). In principle, victims and/or (surviving) relatives are granted access to the hearing, unless the president of the court decides otherwise (Article 495b CCP).

With regard to the professional participants, in addition to the defense counsel, judge(s), clerk, and public prosecutor, there may be experts who provided advice in the case, mostly from the Child Protection Council (*Raad voor de Kinderbescherming*) and/or juvenile probation service, and sometimes from the Netherlands Institute for Forensic Psychiatry and Psychology (*Nederlands Instituut voor Forensische Psychiatrie en Psychologie* or NIFP). Experts – like witnesses – may be summoned and heard during the hearing under the same rules as in criminal cases involving adult defendants. In addition, it is not uncommon for another social worker that is involved with the juvenile to be present during the hearing with the judge's permission.

In principle, cases involving juvenile defendants are tried behind closed doors, although the judge may grant special access to persons such as social workers, and also researchers, interns, or possibly members of the press (Article 495b sub-section 1 CCP).[8] It is possible for the president of the court to order a public hearing if, in his judgment, the interest of a public hearing should outweigh the interest of the protection of the privacy of the defendant, his co-defendant, parents or guardian (Article 495b sub-section 2 CCP). However, both during a trial in camera or in public, the court may decide that some of those present should leave the courtroom for part of the hearing, for instance during the discussion of the personal circumstances of the juvenile.

[8] Strangely, currently, according to the Dutch legislation this is different for hearings regarding the enforcement of sentences (e.g. when the prosecutor requests that enforcement of a suspended sentence due to violations of the conditions that were imposed along with it) once the juvenile has already turned 18 (Article 6:6:3 sub-section 6 and Article 6:6:4 sub-section 1 CCP). Under Article 269 sub-section 1 CCP the court may order that a hearing takes place behind closed doors, for instance if the interests of minors so require. In practice, the hearings regarding enforcement of sentences are thus also always conducted behind closed doors.

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If the verdict does not immediately follow the hearing (i.e. in cases involving three-judge panels) it is pronounced in public; for this, however, in principle, the juvenile defendant is not required to be present in person.

2.12. Can you please share a photo of the hearing room, specifying where each person sits? (or provide a drawing of photo not possible)

The juvenile sits across from the judge. Usually the judge(s), public prosecutor and clerk are seated at a small elevation. The public prosecutor is (as seen from the courtroom) seated to the left of the judge(s); the clerk is seated to the right. The defense counsel is seated next to or behind the child. Parents may either sit in the front row of the public gallery; next to their child, at the same table; or at a separate table, behind the juvenile.

Source: still from documentary '*De kinderrechter*' (The youth judge), https://www.youtube.com/watch?v=TGmDqxk67QQ Nowadays the judge, public prosecutor and clerk have computers in front of them as well, although the screens are usually slanted so that the professionals are still clearly visible.

2.13. Is there any informative material for children to explain who will attend and how the hearing will be held? Can you please share it/them?

The website of the Dutch judiciary provides information regarding the hearing, for instance here (for children) (Ik word verdacht - Raad voor de Rechtspraak (rechtvoorjou.nl) or here (for parents).(Jeugdstrafrecht | Rechtspraak)

2.14. Who normally hears the child in juvenile justice proceedings? Is it the Judge or other professional? If it is another professional, does the child have the right to be heard by the Judge? In which circumstances?

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The judge is in charge during the hearing and is thus responsible for hearing the child.

2.15. Are there guidelines or a protocol on how to interact with the child? Can you please share it/them? Do those interacting with the child receive specific training on this?

There is a certain order during the hearing (see under 2.16.14). Other than that, there are no specific guidelines or protocol. For judges trying juvenile justice cases, a course on communication during the juvenile justice hearing, provided by the training institute for the Dutch judiciary and public prosecution service, is recommended, but not required. Lawyers that want to be registered for juvenile justice cases (to provide funded legal aid) also need to ensure that they follow sufficient training in this area, although there are no specific requirements with regard to training in communication. Public prosecutors and deputy prosecutors handling juvenile court hearings must follow a course on juvenile justice that includes practicing with an actor and focuses, among others, on interview techniques and child-friendly language.

2.16. Can you please describe the ritual? (Some guiding questions are below)

2.16.1. Does the judge wear a gown/wig during the hearing? Would it be different in a family court? And in a criminal court for adults? Can you please share a photo?

The judge wears a black gown and white band; wigs are not used. This attire is the same as for judges in family law cases and for judges in criminal cases involving adults.

Source: still from documentary '*De kinderrechter*' (The youth judge), youtube.com

2.16.2. Do the prosecutor and the defense attorney have to wear a gown or to use special clothes?

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The attire of the prosecutor and the defense attorney is the same as that of the judge.

2.16.3. Who else is allowed to attend the hearings?

See above, under 2.11.

2.16.4. Are there cloth restrictions for the child, his/her parents or non-legal professionals to enter in the hearing room?

Face-covering clothing is not allowed in courthouses. Moreover, children under the age of 12 are not allowed in courthouses.

2.16.5. When the child is deprived of liberty, does he/she wear regular clothing or a uniform? What kind of security measures/measures of restraint may be adopted? Is their use regulated by law (if so, please share provision)? Would it be visible for any attendee that the child is deprived of liberty?

Juveniles that are deprived of their liberty have the right to wear their own clothing and footwear, unless these may pose a danger to the order or safety in the institution (Article 49 sub-section 2 of the Act on Juvenile Justice Institutions (*Beginselenwet Justitiële Jeugdinrichtingen*), hereinafter AJJI). Before the transport (to or from the courthouse) commences, the juvenile may be examined by the transport supervisor on his body or clothing (Article 7 sub-section 1 of the Regulation on the transportation of litigants (*Regeling vervoer van justitiabelen*)). The staff of the juvenile justice institution also has the authority to examine the juvenile on his body or clothing upon leaving or entering the institution (Article 34 sub-section 1 of the AJJI). For the purpose of the transport, a stick that is put in one trouser leg or handcuffs may be used (Article 2 of the Regulation on the instruction of violence for juvenile justice institutions (*Regeling geweldsinstructie justitiële jeugdinrichtingen*), see also the Service instruction for the transportation of litigants by DV&O of 1 July 2014 (*Circulaire dienstinstructie bestemd voor het Vervoer van justitiabelen door DV&O, 1 juli 2014*)).

2.16.6. Is the judge/decision maker in the hearing room when the child enters?

The judge(s) is (are) already in the room when the juvenile enters.

2.16.7. Does the child have to stand up?

It is tradition that all attendees in the courtroom stand up when the judge(s) enter or leave the room.

2.16.8. Does someone have to allow the child (or others attendees) to sit down?

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The attendees can take their seat once the judge(s) have taken theirs.

2.16.9. Does the child have to remain standing during the hearing?

No, the child may remain seated.

2.16.10. Is there any kind of solemn speech or specific information/explanations provided to the child before he/she has the opportunity to speak? What is it said at this moment?

First, the judge opens the hearing and checks the personal information of the defendant, such as his name and address. As was mentioned under 2.1, the juvenile has the right to remain silent. At the beginning of the hearing, the presiding judge has to point this out to the (juvenile) defendant (Article 273 CCP). The juvenile also has the right to speak at the end of the hearing and is given the opportunity to do so.

2.16.11. Does the child have to make any kind of commitment or swear an oath before speaking?

No. Defendants are not required to cooperate in their own conviction.

This is different for witnesses and experts, who do have to promise they will tell the truth. Witnesses younger than 16 do not have to make this promise, but instead are urged to tell (nothing but) the truth (Article 290 sub-section 4 and Article 216a sub-section 2 CCP).

2.16.12. Who poses the questions to the child: judge, psychologist, any other? Does the child respond directly or via a third person, eg lawyer?

In principle, the judge poses most of the questions directly to the child (see also under 2.14) and the child will respond directly, or he may exercise his right to remain silent. The public prosecutor may also ask questions. The same applies to the lawyer, who might want to steer the juvenile in the right direction, for instance if he forgot to tell something important.

2.16.13. Is the child allowed to consult his/her defense attorney or his/her family during the hearing?

The child is sitting next to the lawyer and may in this manner consult him during the hearing, for instance if something is not clear. He is not allowed to consult his family.

2.16.14. Who is allowed to address the child? Only the judge, both the judge and the parties (prosecutor and defense attorney) or just the parties (prosecutor and defense attorney)? Is there an order of who interacts with the child?

See under 2.16.12. Moreover, as touched upon under 2.8, in cases regarding certain (serious) offences, victims and/or (surviving) relatives have a right to speak at the hearing. While exercising their right to speak, they may also address the defendant.

There is a certain order during the hearing. After opening the hearing as described under 2.16.10, the judge gives the floor to the public prosecutor to read the indictment and briefly set forth the facts of which the juvenile is suspected. Subsequently, the facts and personal circumstances will be discussed. To this end the judge will ask the juvenile questions. He may also consult other professionals present, such as experts from the Child Protection Council and/or juvenile probation service (see also under 2.16.15). After this, usually the parents are given the opportunity to add what they feel is useful (see Article 496 sub-section 2 CCP). If victims and/or (surviving) relatives are allowed and want to exercise their right to speak, they are given the opportunity to do so. Subsequently, the public prosecutor presents his opinion of the case and explains the sanction he demands. After that, the lawyer or the juvenile get the opportunity to speak. In this plea, a response is given to the public prosecutor's demand and anything that may help the defense can be brought forward. Both the public prosecutor and the lawyer or juvenile are given the opportunity to speak again – and respond to each other once more – after that. Finally, the judge will ask the juvenile whether he wants to say anything else. In each criminal case the defendant gets to speak last, although he is not obliged to say anything (Article 311 sub-section 4 CCP).

2.16.15. If other professionals (such as social workers or probation officers) are attending the hearing, what is their role? Are they allowed to speak to the child?

Experts from the Child Protection Council, the juvenile probation service or the Netherlands Institute for Forensic Psychiatry and Psychology can, if they have issued advice in the case and/or (in the case of the probation service) are already involved in counseling the child, can elaborate upon their reports and answer any questions that the judge and/or public prosecutor may have. If other social workers are granted access, they may also provide information on the child; moreover, knowing what was discussed during

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the hearing may contribute to their work with the juvenile in the future. They are allowed to speak to the child.

2.16.16. If some professional presents a report during the hearing, is the child allowed to interfere or correct the information or conclusions?

Prior research based on observations during hearings of criminal cases involving juveniles has demonstrated that juveniles are almost always given the opportunity by the judge to respond to the reports of experts; the judge usually asks one or more questions about it (Rap & Weijers 2011). Moreover, as has become clear under 2.16.14, the juvenile and/or his lawyer may express his opinion at various times during the hearing.

2.17. Do you consider that the hearing is structured in a formal way or is it more open to a dialogical interaction with the child?

The order of the hearing as described under 2.16.14 is (legally) fixed. However, hearings in criminal cases involving juveniles are more informal in nature – especially cases tried by a single judge – than hearings involving adult defendants. An example of this is the fact that, as mentioned under 2.16.15, social workers that are present during the hearing may present information, even though they have not been called or appointed as experts (Bruning, Van den Brink & Punselie 2020).

2.17.1. How would you characterize the tone of the dialogue and the general attitude of the hearing? Must the child answer strictly to the questions or is he/she allowed to freely speak about what has happened? The interaction is focused on the wrongful act or, additionally, is it open to contextualize the child´s behavior, his/her family condition, educational process, social experiences, and to express some aspects of his/her subjectivity? What promotes such dialogue, what hampers it, in your opinion?

Hearings in criminal cases involving juveniles tend to be clearly pedagogical in character. Not just the offense is discussed; much attention is also paid to the personal circumstances of the child. The juvenile has the opportunity to express his views during several moments in the hearing.

Prior research based on observations as already mentioned under 2.16.16 has found that sometimes – although not always – attention is paid to introducing the professionals involved at the start of the hearing, and explaining the process (Rap & Weijers 2011). This research also found that for first offenders and juveniles with markedly below-

average intelligence, these explanations were usually provided; in these cases, attention was paid as well to the use of simple language and checking whether the juvenile has understood the most important issues. Ideally, the lawyer will already have explained to the juvenile what happens during the hearing beforehand, but the research showed this is not always the case. The researchers also heard that legal jargon and difficult 'general' language were used regularly; this occurred more often when the judge also tried criminal hearings involving adults and less frequently when the judge handled child protection cases in addition to juvenile criminal cases. Public prosecutors also regularly used legal jargon. Paying attention to these issues (providing sufficient explanation and/or checking whether the lawyer has already provided explanation; avoiding legal jargon and 'general' language that is unnecessarily complicated) is beneficial for the participation of the juvenile.

2.17.2. Is it an occasion for the Judge to strictly give the opportunity for each party to speak, according to the rules, in order to take a decision, or a moment that enable some kind of less formal interaction with the child with some kind of feedback on the pros and cons of his/her behavior as part of a negotiation of plea-bargaining, restorative justice or other alternative to the trial?

See also above, under 2.16.14, 2.17 and 2.17.1. There is a certain structure to the hearing that needs to be followed. Prior research based on observations (see also under 2.16.16 and 2.17.1) found that often judges will discuss the consequence of the offense with the juvenile; sometimes the judge also asks whether the juvenile regrets his behavior and whether he has done something, or plans to do anything with this remorse (Rap & Weijers 2011).

In recent years there has been more attention for restorative justice in the context of the juvenile justice system, although it is not yet structurally embedded. In the context of the hearing it should be noted that it is possible that the public prosecutor or judge refers a case to mediation at the request of a professional involved, the defendant or the victim, or on his own initiative. Of course, participation in mediation is voluntary for both the victim and the defendant. If the mediation leads to agreements that are recorded in a written covenant, this can be added to the case file and the judge takes this into account during the imposition of a sentence or measure (Article 51h CCP). Sometimes the

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defendant and victim interact directly during the trial in ways to can be labelled as restorative, for example the defendant by turning around and apologizing, and the victim reacting with understanding or forgiveness.

2.17.3. Is the Judge or any other professional allowed to make any recommendation on how the child should behave?

Lawyers will generally advise juveniles on how to behave during the hearing, e.g. to try to be polite; to take off their hat and/or coat in the courtroom; to throw away any chewing gum beforehand, etc.. Judges may indeed make requests or demands regarding the juvenile's attitude during the hearing.

2.18. Does the child have, during the hearing, the same legal and procedural guarantees and safeguards as an adult? What are the differences?

Some legal and procedural guarantees and safeguards are the same for juveniles as they are for adults, such as the right to remain silent (see under 2.1 and 2.16.10). While the juvenile will usually leave the defense to his lawyer, it is important to note that the juvenile, despite his age, may independently exercise all the powers granted to defendants in the Code of Criminal Procedure and the Code of Criminal Law.

Some of the important differences from hearings with adult defendants have already been discussed. As long as the juvenile has not yet turned 18, he is obliged to appear during the hearing (see under 2.1) and his parents are also obliged to come to the hearing (see under 2.2). The juvenile has the right to be accompanied by his parents or guardian, or a trusted person that is deemed appropriate by the court or a representative of the Child Protection Council, if the court finds that the presence of the parents is contrary to the interests of the child; if after reasonable effort, it is found that the parents or guardian cannot be reached or are unknown; or if the handling of the case precludes the presence of the parents or guardian (Article 496 sub-section 2 and 3 CCP). Moreover, as was discussed under 2.11, cases involving juvenile defendants are generally tried behind closed doors. And finally, the right to funded legal aid during criminal law hearings is more extensive for juveniles than for adults: juveniles are always entitled to this.

2.19. What special protections are available to prevent trauma to the child (because of the nature of a hearing) which are not available in regular criminal court for adults?

See under 2.18 for a summary of the special characteristics of the hearing in a case involving a juvenile, such as the trial behind closed doors (for this last point, see also 2.11). In addition, the court may, on its own initiative, or at the request of the public prosecutor, the defendant, or his lawyer, order that the hearing of the defendant, of a witness or of an expert takes place without the presence of the parents or guardian, unless the case is heard in public (Article 496 sub-section 5 CCP). And finally, the court may determine on its own initiative, or at the request of the public prosecutor, the defendant or his lawyer that questions regarding the personality or living conditions of the defendant shall be asked and discussed without the presence of the defendant, and that the prosecution or defense shall speak on this matter outside the presence of the defendant. Upon the defendant's return to the courtroom, he is informed of what has occurred during his absence (Article 497 CCP).

3. Generic questions concerning the improvement of Youth Courts

3.1. In your country, do the judges, prosecutors and defense attorneys benefit from specific initial and continue training on children´s rights in juvenile justice and specifically on child hearing in this setting?

Yes, these professionals benefit from specific initial and continued training (see also under 2.15). For judges trying juvenile justice cases, a course on communication during the juvenile justice hearing, provided by the training institute for the Dutch judiciary and public prosecution service, is recommended, but not required. A course on the basics of juvenile law (i.e. for both juvenile justice and child protection cases), also discussing international children's rights, is obligatory. Periodically, sufficient educational credits must be obtained both by judges and by clerks, although no specific courses are prescribed for this purpose.

Lawyers that want to be registered for juvenile justice cases (to provide funded legal aid) also need to ensure that they follow sufficient training in this area, although there are no specific requirements with regard to training in communication. Lawyers also have to obtain sufficient educational credits periodically, at least half of which relate to legal activities in an area of law that is relevant to their legal practice. The Association of Dutch Youth Lawyers (*Vereniging van Nederlandse Jeugdrechtadvocaten*) imposes even more

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stringent requirements for initial and continued training regarding juvenile law, although again specific topics are not mandatorily prescribed.

3.2.Anything else you would like to add on this topic?

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3.3.Any reform proposals in progress on any of the above issues?

Modernization of the Code of Criminal Procedure

Work to modernize the Code of Criminal Procedure has been underway for about 10 years; this has resulted in the submission of a legislative proposal for a new CCP to the Dutch House of Representatives on 20 March 2023. In this legislative proposal several changes are included that are relevant to some of the issues discussed before. If the act is adopted in the form that was proposed, this means that:

- juveniles younger than 12 years at the time of the offence will be entitled to funded legal aid when they are interrogated. As is currently already the case for juveniles older than 12 at the time of the offence, this right to legal aid cannot be waived.

With regard to juveniles that were 12 years or older at the time of the offence, the proposal for the new CCP entails that:

- the order for pre-trial detention has a shorter maximum duration, i.e. one month instead of the current maximum duration of three months. In principle, this period can be extended by the court at the request of the public prosecutor for periods of up to one month at a time.[9]
- the obligation to appear in person will also apply to juveniles who have turned eighteen by the time of the hearing.

With regard to young adults of 18 years or older but younger than 23 at the time of the offence, the new CCP stipulates that:

- the court may determine, at any time during the proceedings, that the procedural provisions that are applicable to juveniles shall also be applied to the young adult, if

[9] Or three months if the prosecutor intends to request the 'measure of placement in an institution for juveniles' (in Dutch: *PIJ-maatregel*), a long-term treatment measure for juvenile offenders.

reason for this is seen in the personality of the young adult or the circumstances under which the offence was committed.

With regard to the parents, the new CCP stipulates clearly that:

- when the court takes decisions regarding pre-trial detention, the parent shall be summoned.

Maximum duration of juvenile detention

In 2019, parents of three juvenile victims that were killed (in unrelated cases) by juveniles, presented a petition to the Minister for Legal Protection at the time, requesting (among others) an increase in the maximum juvenile detention for juveniles. Recently, the current Minister for Legal Protection concluded – among others based on research that had been conducted for this purpose – that in practice the current maximum durations of juvenile detention suffice and there is no need to increase them.[10] With regard to the maximum juvenile detention for young adults if Article 77c CCL is applied (i.e. currently 2 years, see under 1.7) the final decision regarding a possible increase is postponed, pending some further research which is currently being carried out.

Other

Finally, the Act on Juvenile Justice Institutions will be reformed; the legislative proposal for this is still awaited.

3.4.Any suggestions for improvement from your side?

The implementation of EU Directive 2016/800 entailed important improvements for the procedural position of the juvenile (see for instance under 1.5) and the new Code of Criminal Procedure also includes significant improvements (as described under 3.3). Periodic (e.g., annual) mandatory courses on communication with juveniles for the professionals involved would also be an improvement.

Sources

[10] Letter of the Minister for Legal Protection to the House of Representatives of 27 March 2023.

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Further reading on the Dutch juvenile justice system, in English:

- S. Rap, 'The Role of Social Work Services in Juvenile Justice in the Netherlands', in: R.G. Schwartz & Y. Chen (eds.), *The Role of Social Work in Juvenile Justice: International Experiences*, Raoul Wallenberg Institute 2020, pp. 76-96 (available at https://rwi.lu.se/publications/the-role-of-social-work-in-juvenile-justice-international-experiences/).

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