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THE RIGHTS OF JUVENILES IN YOUTH CUSTODIAL INSTITUTIONS
Evaluation of the Youth Custodial Institutions Act



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EXECUTIVE SUMMARY

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EXECUTIVE SUMMARY

1. Introduction

The placement of juveniles in youth custodial institutions is currently in the (political) spotlight. In the last year, a total of three researches on this topic were commissioned by the Ministry of Justice. In addition to the evaluation of the Youth Custodial Institutions Act (YCIA), research was carried out on the experiences of juveniles, parents and professionals regarding the situation that juveniles placed on grounds of civil law are in youth institutions together with juvenile delinquents. Research was also done on civil law placements of juveniles in youth custodial institutions. The evaluation report 'The Rights of Juveniles in Youth Custodial Institutions. Evaluation of the Youth Custodial Institutions Act' (M.R. Bruning, T. Liefwaard & L.M.Z. Volf, Amsterdam: ACK-VU 2004) reflects the findings of the evaluation research on the operation and meaning of the YCIA and related regulations.

2. Evaluation Research

The YCIA came into force on 1 September 2001. It replaces the Judicial Child Care Institutions (Regulations) Decree as well as part of the Youth Services Act and legal status regulations. The scattered and insufficient nature of the regulations for the judicial youth sector had led to a growing need for an integrated regulation of the substantive and procedural aspects of the placement of juveniles in youth custodial institutions. This is why the YCIA was drawn up as a framework Act on the execution of deprivation of liberty in youth custodial institutions.

The YCIA is in line with the Prisons Act and the Hospital Orders (Framework) Act, which also deal with deprivation of liberty and placement in institutions. Paramount in the YCIA are, besides safety, the importance of the upbringing and the treatment of juveniles. Based on these grounds, the civil rights of juveniles in youth custodial institutions can be restricted. Deprivation of liberty involves restrictions of civil rights, but it also means that a juvenile acquires certain rights that are directly connected to the deprivation of liberty, e.g. rights pertaining to the provision of care, education and upbringing in the institution, leave arrangements, contact with the outside world, and inspection and complaints procedures.

The youth custodial institutions are in the first place intended for juveniles in conflict with the law who are faced with pre-trial detention, detention or the measure of placement in a youth institution. They are additionally used for juveniles under guardianship or family supervision. Juveniles can be placed in a youth custodial institution on the basis of a family supervision order, a care order, or by the guardianship institution that exercises the guardianship of the minor. Juveniles placed on grounds of civil law and juvenile delinquents deprived of their liberty are placed together in the same youth custodial institutions and fall under the same regime. There are private institutions and state institutions. The institutions can be divided into remand homes and treatment centres.

An important objective of the YCIA is to strengthen the legal status of juveniles in youth custodial institutions. To this end, the YCIA contains clearly defined and verifiable rights and duties. The rights and duties concern the most important objectives of the deprivation of liberty (and thus the functions of a youth custodial institution): safety, upbringing and (social) rehabilitation. In order to be able to monitor restrictions of civil rights, the YCIA provides for the right of complaint.

During the (verbal) discussion of the bill, it was agreed with the Lower House that the implementation of the regulations would be completed three years after the entry into force of the YCIA. For this purpose, it was further agreed that an evaluation of the law would be carried out.

The evaluation was accomplished by means of six sub-researches, which made use of a combination of different methods of data gathering. These methods are presented per sub-research. The six sub-researches consisted of: legal research; a statistical analysis; file research; a round with written questionnaires (to youth institutions, juvenile court judges, the Public Prosecutions Department, family supervision institutions, Child Care and Protection Board, Youth Probation and After-care Service, specialised lawyers); a round of interviews (in depth interviews with juveniles, management, team and group leaders, and family supervisors); and an expert meeting.

The main objectives of the evaluation research were to acquire a deeper understanding of the manner in which the YCIA is implemented and to determine whether the YCIA's objectives are being reached. In addition, based on the findings, recommendations were to be made, if necessary.

The two research questions of the evaluation were formulated as follows:

- How did the implementation of the YCIA go and how does the YCIA work in practice?
 - In what way is the YCIA applied in practice?
 - Does this meet the improvements that were intended by the YCIA?
 - Can any problems be identified in the implementation that were not foreseen by the legislator?
- Are the interests of juveniles in youth custodial institutions sufficiently protected by the YCIA?

3. Summary of Conclusions and Findings

The conclusion that the YCIA is working reasonably well seems justified. The YCIA is in any case seen as an improvement of the legal status of juveniles in youth custodial institutions. That does not alter the fact that, in various areas, there are more or less serious problems in the implementation of the YCIA in practice. A short overview of the most glaring findings, and bottlenecks and points for attention, upon which the recommendations (see part 4) are based, is given below.

The institutions (management, team and group leaders, and Supervisory Committee) indicated that they were reasonably to very well prepared for the coming of the YCIA. This, however, does not apply to the chain-partners (Child Care and Protection Board, family supervision institutions, juvenile court judges, the Public Prosecutions Department, and the Youth Probation and After-care Service). Their preparation was lacking in many respects.

The juveniles themselves do not know very much about the YCIA as such, but in general they are well aware of their rights and the (house and group) rules that apply inside the institutions. According to the management and team and group leaders, the juveniles are informed (of the main lines) of their rights and duties on admittance.

The general opinion about the YCIA can be said to be positive. The institutions are positive about the YCIA in terms of it being a workable instrument, but they are not very satisfied with the implementation of the YCIA as a whole. There seems to be a tension between the desire for clear rules, on the one hand, and the need for sufficient room to take appropriate pedagogical measures, on the other. Coping with this tension requires certain skills that will vary from one group leader to another. This is an important problem for the daily practice which deserves further attention.

A few particular aspects that came up were placement, files and statistical data. In general the institutions and family supervision institutions are reasonably satisfied with the functioning of the selection functionary. The other chain-partners consider their influence of importance, but indicate that they have little knowledge of the functioning of the selection functionary. Particularly the family supervision institutions, juvenile court judges and the juveniles have problems with civil law and penal law placements of juveniles together in the same youth institution. The institutions are milder about this situation. Attention must be drawn to the increase in the number of juveniles under the age of twelve (under-twelves) in youth institutions. Although the YCIA stipulates, and the Minister of Justice has emphasized, that, in decisions concerning juveniles, the placement's title must be taken into account, this does not seem to be sufficiently known or taken into consideration in practice.

With regard to files, it has become apparent that, in cases where a juvenile is transferred, the file is usually not sent along. The structure of the file is usually in compliance with the recommendation of the Custodial Institutions Service, which is based on article 66 of the Youth Custodial Institutions

Regulations (YCIR). The content of the files is for the most part in compliance with the conditions of article 63 YCIA.

As to the placement and treatment plans, it is not always clear who are involved in the preparation of the plans. Because plans and evaluations are frequently part of the report on the treatment consultation or of a review report, it is difficult to distinguish the plan from the evaluation. It was not always possible to determine whether or not the plans were in compliance with the conditions laid down in the YCIA and the YCIR. It is clear, however, that the term treatment plan is interpreted differently by the various youth institutions.

Finally, as regards the statistical data, it was established that, although a great deal of information exists relevant to understanding the application of the YCIA, the utility of the information is problematic: the data come from various sources that give different figures; a comparison between the period 1999-2001 and 2002 cannot be accurately made due to a change in policy on the gathering of area codes; and, finally, some important data on the application of the YCIA are not (yet) available or cannot be found in the existing sources. From the available data does emerge that: the number of schooling and training programmes (STPs) in the first full year of the YCIA's application lags behind the number planned; there is a clear increase in the number of complaints; and the total number of imposed corrective measures and disciplinary punishments has increased.

In observance of the objectives of the YCIA, the legal status of juveniles has been given special attention. The juveniles appear to be reasonably to very well informed about their rights and duties relating to the placement in a youth custodial institution. The (remaining) interviewees are unanimously of the opinion that a good legal status is of great importance for juveniles in youth institutions. Most respondents (especially management, team and group leaders) are of the view that the YCIA has improved the legal status of juveniles. The regulations are clearer and more accessible for juveniles than under the former law. The YCIA has also led to a heightened sense of the legal status of juveniles by the staff of the institutions. Generally speaking, the accorded rights are realised in practice, although practical problems do present themselves on certain points.

In this regard, one must think of the 'group' principle and the day programme. The minimum hours a juvenile has to be in the group is felt to be too rigid. Furthermore, the ratio between the number of teaching staff and that of the management in an institution needs to be given more attention. The preparation of a placement and treatment plan is considered to be very important. The legally prescribed term of six weeks for the preparation of a treatment plan is not always met and, because there is no prescribed term for a placement plan, these plans fail to come about at all in many cases. A number of bottlenecks were identified as regards leave arrangements such as: a too extreme bureaucratisation when it comes to permission for non-civil law placements; the tension between crisis placements and the leave arrangements for juveniles placed on grounds of civil law; and the distribution of responsibility between the management of the institution and the family supervisor. Although the difference between corrective measures and disciplinary punishments is clear to management and the team and group leaders, the juveniles do not know or are hardly aware of the difference. Experienced as bottlenecks are: the rule that in principle the director and not the group or team leader is allowed to impose the measure; the hearing of the juvenile; and the administrative ado that goes along with the imposition. Because of these problems, in practice regular use is made of the so-called time-out measure. In general the juveniles think this is a good measure.

The use of the mediation procedure when dealing with complaints and conflicts is given content in different ways by the Supervisory Committees. This appears to be because the legal regulations are not clear. In addition, the procedure is found to be too formal and time consuming. The juveniles have hardly any notion of the mediation procedure and it is frequently confused with the visit of the month supervisory director.

The juveniles know that they can submit a complaint. But they have little or no understanding of the procedure and are not or are hardly aware of appeal possibilities.

The possibility to submit complaints does not appear to give problems, although some feel that use is made of this possibility too easily. This is also apparent from the increasing number of complaints that are submitted by juveniles. The number of withdrawn complaints has also increased considerably. A

question that has been asked, but unfortunately cannot be answered, is whether the high number of withdrawn complaints is due to successful mediation.

The number of appeal cases before the Council for the Administration of Criminal Justice and Youth Protection has also increased considerably. However, the total number of appeal cases is not especially high. No use has yet been made of the new appeal possibilities (appeals concerning transfer or placement, leave, parole, participation at STP and temporary release).

Finally, some respondents consider the formal and for juveniles too complex nature of the procedure problematic. The mediation and complaints procedure is actually quite complicated legally and does not seem to be clear on all points.

As regards STP and probation, the implementation of the YCIA leaves much to be desired. Although the difference between the STP and probation is clear to most respondents, in practice the distinction (as regards content) is not or is hardly made. All in all, the STP is actually not used much in practice. Possible explanations are that: too few STP-projects have been approved; the cooperation between chain-partners leaves much to be desired; and there are insufficient financial resources available. Juvenile court judges do not think it is a good thing that the selection functionary decides about the STP. This view was shared by most participants at the expert meeting. In addition, it is necessary and in line with the intent of the STP that return placements in the original institution can take place in cases where the STP has been terminated prematurely.

4. Recommendations

The research team has formulated thirteen recommendations based on its conclusions and findings. These recommendations can be divided into two groups.

The first group of 'General recommendations' includes the following recommendations: measures should be undertaken to strengthen and increase the utility and the accessibility of the rather extensive data collection; the (negative) experiences with the implementation and introduction of the YCIA should be used as lessons learned for the introduction of other extensive legislation such as the Youth Assistance Act; research should be done on the question whether the YCIA provides a sufficient basis for pedagogical work or actually hinders this work (too much); it should be determined how to get the chain-partners more involved; the rule should be reintroduced that juveniles can only be placed in a youth custodial institution on grounds of civil law when they are above the age of twelve; and the placing together in the same institution of juvenile delinquents with juveniles placed on civil grounds should be avoided.

The second group of recommendations focuses on the legal status of juveniles and contains recommendations such as: it should be determined whether or not, and, if so, under what conditions, a flexible implementation of the 'group' principle is desirable; the discretionary powers in leave arrangements for non-civil law placements should be reconsidered; the preparation in all cases, also those where it is now not required, of placement and treatment plans should be made obligatory; the (differences in) use of corrective measures and disciplinary punishments should be further examined; the time-out measure should be regulated by law; the implementation of the mediation procedure should be further examined; the legal regulation of mediation and complaints should be simplified; the implementation of the STP should be intensified and improved; the difference between STP and probation should be reconsidered; after-care should be developed; the effect on recidivism of rehabilitation/reintegration instruments, such as STP and probation, should be measured.

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