Procedural Rights of Juveniles Suspected or Accused in the European Union

NATIONAL RESEARCH REPORT I THE NETHERLANDS

DEFENCE for CHILDREN

PROCEDURAL RIGHTS OF JUVENILES SUSPECTED OR ACCUSED IN THE EU

NATIONAL RESEARCH REPORT | THE NETHERLANDS

This research was carried out in the framework of the European project: “Procedural Rights of Juveniles Suspected or Accused in the EU”. This project is co-funded by the Justice Programme of the European Union. The content of this publication does not, by definition, provide the vision of the European Commission, nor does this publication imply, that the content is supported by the European Commission.

Authors A.E. Barendsen & M.A. Vegter, both jurists and employed by Defence for Children.
In the implementation of the research and assembly of the report, the authors were assisted by Minon Rodenburg and Charlotte Vanderhilt.

The research in The Netherlands was coordinated by Defence for Children International The Netherlands – ECPAT The Netherlands.

The original report was produced in Dutch. The English translation of the report was conducted by a third party.

Contents

I. Introduction

When a child is suspected of a criminal offence, it is important that he/she understands the criminal process which he/she becomes involved in. If this is not the case, the child's right to a fair trial, as protected by Article 6 of the European Convention on Human Rights, is at stake. For this reason, the European Union has established several Directives which contain minimum rules regarding the protection of the procedural rights of persons suspected of a criminal offence. The Directives apply to both adults and children. The Directives refer to minimum standards formulated in common. These standards should lead to a more efficient cooperation and more confidence in the various European criminal justice systems.

This report is written within the framework of the European project 'Procedural Rights of Juveniles Suspected or Accused in the European Union (PRO-JUS)'. The research that has been conducted in The Netherlands by Defence for Children has also been conducted in the project partner countries: Belgium (Défense des Enfants Belgique), France (Hors la Rue), Spain (Rights International Spain) and Hungary (Terre des Hommes Hungary). The project is coordinated by the Terre des hommes Regional Office for Central and South East Europe based in Hungary.

The PRO-JUS project aims to examine the situation of children, who are suspected or accused in a criminal proceeding, but do not have the nationality of the country in which they are suspected or accused. The reason for this is that they are potentially particularly vulnerable which may influence the exercise of their rights from the European Directives:

1. Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings;
2. Directive 2012/13/EU on the right to information in criminal proceedings;
3. Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

Through the implementation of its activities, the project aims to increase the knowledge and capacity of law enforcement and legal professionals, in order to ensure that the rights of children, without the nationality of the Member State in which they are suspects, are respected. This is done by means of comparative country research. In addition, the project aims to ensure that the three procedural Directives, in the interests of *all* children, are implemented concurrently in the 15 Member States. To this end, the findings from this research will be widely disseminated. Moreover, national and international initiatives for advocacy will be developed to attain this objective.

The project seeks to examine if the above mentioned European Directives on rights of children in criminal proceedings in The Netherlands and the other partner countries are complied with. It assesses to what extent the laws and regulations, policy and practice are in line with the rights contained in these Directives. The project focuses, in the case of The Netherlands, on non-Dutch children (children who do not possess Dutch nationality). The purpose of the research is to determine whether the procedural rights of children, who do not have Dutch nationality and who come into contact with criminal law, are sufficiently guaranteed. Are the European Directives properly translated into legislation and policy? More importantly: do the regulations ensure that the legal status of the child is sufficiently protected in practice?

Key Terms and Definitions

Lawyer/counsel	The Directive refers to the right of access to a lawyer. This means 'a person who is qualified in accordance with national law and authorized to give legal advice and to provide legal assistance to suspects'.[1] The Code of Criminal Procedure (hereinafter repeatedly referred to as 'CCP') for technical reasons refers to counsel. In the Dutch draft law for the implementation of this Directive, the term counsel is used for the same reasons. In this report it is chosen to adhere closer to the text of the Directive and use the term lawyer.
Child (minor)	Any person who has not reached the age of 18.
Minor (child)	Any person who has not reached the age of 18.
Dutch	Persons with the Dutch nationality.
Non-Dutch	Persons who do not have the Dutch nationality.
Suspects/accused	The Directive provides rights to suspects and accused persons. In The Netherlands, people who are listed in some other legal systems as the accused fall under the term 'suspect'. That is why this report only refers to 'suspects' instead of 'suspects and accused'.

Hypothesis and problem statement

One of the principles of this research has been that it is difficult for children to ensure that their rights are respected and observed. On the one hand through lack of legal competence, on the other hand because of their specific position as a child.[2] Their vulnerability[3] may, during a police investigation or criminal proceedings, be further increased by social and administrative conditions, such as having a different nationality, membership of a marginalized minority group or other personal circumstances such as suffering from the effects of traumatic experiences or medical conditions. Previous research indicates for example that there is a gap between legal standards and practice, of the situation of children with the nationality of the country in which they reside and foreign children, and the situation in urban and rural areas.[4]

In order to defend oneself, a suspect must be able to sufficiently understand his/her lawyer when consulting with him/her, have a functional understanding of the proceedings against him/her and he should be able to provide support in the preparation of the defence. A language barrier can thus be an initial and major obstacle. In addition, it requires certain skills of a lawyer to be able to deal well with children, especially if there are also certain cultural differences that must be bridged.

Although it is difficult to give an accurate picture of the prevalence of children with another nationality, who are suspected of criminal offences in the different EU Member States, estimates indicate[5] that in most Member States, children with a different nationality are faced with the criminal justice system.

1 See consideration 15 Directive 2013/48/EU.

2 Golub, S. en Grandjean, A.,Promoting equitable access to justice for all children. UNICEF Insights, Issue 1/2014 (2014).

3 The vulnerability of a child is not only based on age. The vulnerability of a child is the extent to which one child can avoid threats to his/her security or limit its impact. It describes how the age, the physical, intellectual and social development, emotional functioning, role within the family and the ability to protect oneself can increase the risk of serious harm or limit it. The vulnerability of a child covers various aspects; age is only one of them. The following aspects should be assessed: the ability of the child to protect his/herself, the age of the child, the child's ability to communicate, the chances of serious harm given the developmental level of the child, the degree of provocation in the behaviour or character of the child, the behavioural needs of the child, the emotional needs of the child, the particular physical needs of the child, the visibility of the child for others/access by the child to others who can offer protection, the composition of the family, the physical occurrence/stature and strength of the child, the resilience of the child and the ability to solve problems, possible previous victimization of the child and the ability to recognize abuse and neglect.

4 Gyurkó, Sz. (ed) - Nemeth, B.: Comparative situation analysis of juvenile justice systems in 20 CEE countries in accordance with the four relevant Terre des hommes scopes, Budapest, Tdh. 2016 (not published yet)

5 In France in 2015, for the city of Paris only, the 'Judicial Protection of Juveniles' indicates that 2,297 cases of children were referred to the prosecutor for minors, among which 1,199 cases affected foreign children for an amount of about 400 different children (Source: Internal document of the Judicial Protection of Juveniles, Service Territorial de Milieu Ouvert Paris Center, 19 April 2016). In Spain, the data obtained in 2015 reveals that 18,134 children aged 14-17 years were arrested or investigated for the commission of a criminal offence, out of which 3,927 were foreigners (Source: Ministry of the Interior, 2015 Statistical Annual Report, p. 297, available here: http://www.interior.gob.es/documents/642317/1204854/Anuario-Estadistico-2015_126150729_VF.pdf/808a7398-2d25-4259-b450-974dc505f2e3). In Hungary in 2015, the total number of juvenile offenders was 7,785 and out of this 195 were foreigners (Source: ENyUBS, 2016. Ministry of Home Affairs. http://bsr.bm.hu). In the Netherlands in 2015, the police interrogated 37,017 minors (Source: National Police Database). In 2014, 1,380 children were placed in judicial juvenile institutions, out of which 19.2% were of foreign descent (Source: Department for Judicial Youth Detention Centers (2015), *JJI in getal 2010-2014'.* The Hague: Ministry of Security and Justice).

The main question of the research reads, therefore, as follows:

'*Can non-Dutch children who are suspect in criminal proceedings actually exercise their rights that have been granted to them in the EU Directives 2010/64, 2012/13 and 2013/48 – both in theory and in practice?'*

Methodology

The purpose of this research was to gain insight into the extent to which the rights of three EU Directives in The Netherlands are guaranteed, specifically with regard to children who do not have the Dutch nationality. It concerns the right to:

1. interpretation and translation in criminal proceedings (2010/64/EU);
2. information in criminal proceedings (2012/13/EU);
3. access to a lawyer, have a third party informed upon deprivation of liberty and contacts with consular authorities (2013/48/EU).

We wanted to obtain insight with regard to the factors that contribute to the realization of the rights in the Directives, or factors that detract from this realization. For this purpose desk research was conducted and semi-structured interviews were held. The information from the five national reports is based on data that was collected according to a research method commonly agreed upon.

Desk research
In the framework of the desk research, research is conducted into national laws and regulations on the relevant rights from the European Directives. In that respect, for example, it is examined whether the Directives concerned have been transposed and how they have been transposed. In addition, the policy which is directed at the assurance of the rights from the Directives is examined. In addition to research on national regulations and policy, the necessary literature was studied that could give further insight into the way the right to information, interpretation and translation and access to a lawyer is handled in The Netherlands.

Semi-structured interviews
In addition to desk research, interviews were held and a number of surveys were distributed. For this purpose, questionnaires were created. These were prepared in joint consultation with the project partners, to enable comparison of the results. The purpose of the interviews was to find out if difficulties were occurring in practice, which did not emerge from the study of regulations and policies. The interviews were also used to find out if there are factors that contribute to or detract from the ensurance of the rights of the European Directives that were scrutinized.

Respondents
In The Netherlands a total of twelve interviews were held with justice professionals (Public Prosecution Office and police), interpreters and lawyers. From the judiciary a contribution was delivered consisting of completed surveys (four). The respondents were fully informed in advance about the project and the use of the information provided by them. One of the agreements was that the information would be treated confidentially and anonymously. This is also the reason why there are no names or specific functions mentioned in this report.

The research was designed to include children as respondents in the research. However, it was very complicated to attract children who are experts by experience as respondents. An attempt was made to contact children via different channels. In some cases, indirect contact was made with a child, but in those cases the child did not want to cooperate with the research. Despite the efforts, ultimately no children were found who were willing to participate in the project. This is a major setback of the project.

Limitations

The number of interviews that were held in the framework of this research is limited. The research group is too small to generalize statements. The results do provide an indication of the experiences and insights of the target group and, hence, create an illustrative picture.

However, by far the most important limitation with regard to the implementation of the research and the results is that it has not been possible to interview children who are experts by experience. This is a major setback as their input could have provided valuable information with regard to the exercise of their rights in practice. This is, of course, a major limitation of this national research, because it was deemed of particular interest to learn from the children themselves what they have encountered during the criminal proceedings against them, and what went well during that process and should remain unchanged in their eyes.

II. Contextual Overview: The Netherlands

II.1 Description of the juvenile justice system in the Netherlands: a brief overview

The Criminal Code includes special provisions for children and young adults.[6] The general rule is that these provisions apply to children between twelve and eighteen years old.[7] Children under the age of twelve years are not prosecutable under Dutch criminal law.[8] For them, there is an irrefutable presumption of incompetence. However, children under the age of twelve do not fall entirely outside of the scope of criminal law. Article 487 of the Code of Criminal Procedure provides that certain provisions of the Code of Criminal Procedure apply in the case of a child under the age of twelve if there is a reasonable suspicion that the child has committed a serious offence. This concerns a *limited* number of investigative powers and coercive measures that can be applied by the police and the judiciary. In short, these provisions specify that children under the age of twelve can be held, searched, questioned and stopped for the purpose of investigation or interview and that their items may be confiscated.[9] Despite the fact that children under the age of twelve cannot be prosecuted for a criminal offence, there are opportunities under civil law. They can obtain the necessary assistance via the civil rights process, whether or not in a voluntary framework.

Application of adult criminal justice on 16-and 17-year-olds
The Court may decide to declare juvenile justice inapplicable with respect to sixteen-and seventeen-year-olds and impose a sentence derived from adult criminal law.[10] This exception can be used if it is grounded on (a) the severity of the committed offence, (b) the personality of the offender or (c) the conditions under which the offence is committed. The life sentence is, however, excluded.[11] Hereby, it should be noted that the PIJ measure[12] may be converted into a TBS-measure.[13] In paragraph II 1.3 the PIJ measure is discussed further.

Application of juvenile justice to eighteen-to twenty-three-year-olds
The upper limit of juvenile justice is in principle eighteen years, but with the introduction of the Adolescent Criminal Act of 1 April 2014 the judge has the possibility of also applying juvenile justice to children of eighteen to twenty-three years.[14] The Adolescent Criminal Law can be applied where appropriate on the basis of (a) the personality of the offender or (b) the conditions under which the offence has been committed.[15]

6 Title VIII A CC.
7 Art. 486 CCP Cf. art. 77A CC.
8 Art. 486 CCP.
9 Arts. 486-509 CCP.
10 Art. 77b CC.
11 Art. 77b paragraph 2 CC.
12 PIJ stands for "placement in a judicial youth detention center", i.e. a custodial treatment order under penal law.
13 Art. 77tc CC. The TBS is a custodial treatment order under adult penal law. This order can be prolonged by the court (i.e. every two years) indefinitely.
14 Art. 77c CC. This possibility readily existed, however with the Adolescent Criminal Act the age limit was raised to 23 years. This concerns only the applications of sentences
15 Art. 77c CC.

II.1.1 The juvenile justice process

The regular provisions of criminal law apply to children, unless it is specified otherwise in Title II of Book 4 of the Code of Criminal Procedure ("criminal procedure in cases concerning children").[16] The right to legal assistance, the right to information and the right to interpretation and translation are discussed in the chapter below.

Arrest
The police may arrest a child suspect and hold him for up to a maximum of six hours at the police station.[17] The hours between 24:00 and 09:00 do not count.[18] Therefore, a child may only be held for a maximum of fifteen hours. This period, may be extended once with six hours, for the purpose of establishing the identity of the child.[19] Photos and fingerprints may be taken.[20] With children, the police must, of their own accord, notify a family member or a household member as soon as possible of the deprivation of liberty.[21]

Detention
The Acting Public Prosecutor may give an order for pre-trial detention (also known as police custody).[22] This is only possible for offences for which pre-trial detention is permitted.[23] This form of pre-trial detention can last up to 3 times 24 (= 72) hours, where a one-time extension of up to three days is possible.[24] However, the child must within three days and fifteen hours (during arrest) be presented in front of a magistrate judge for the review of the legality of the detention.[25]

Pre-trial detention
The magistrate judge can - upon request by the Public Prosecutor- issue an order for remand in custody.[26] This is the beginning of the pre-trial detention. The goal is to prevent recidivism until the court session.[27] Pre-trial detention is only permissible in the case of serious offences punishable by four years or more and in case of a number of specific offences. The order can also be issued when there are urgent reasons and/or there are serious objections against the suspect.[28] Pre-trial detention may only last up to fourteen days.[29] The magistrate judge shall of his own accord test whether suspension is feasible, possibly under special conditions.[30] Children may be placed in a judicial youth detention centre to serve the pre-trial detention.

Continued remand in custody
The Public Prosecutor can request the judge for an order for continued remand in custody.[31] This is a continuation of the pre-trial detention. The continued remand in custody can last for a maximum of 90 days.[32] An order for continued remand in custody may not be issued for longer than 30 days, in case the child has not been heard about the case.[33] The court must consider whether suspension is possible.[34]

Night detention
Sometimes young people may qualify for night detention, such as for the purpose of serving pre-trial detention.[35] The child, during the day, goes to school/work or has another meaningful daytime activity. During the night, the child remains in the institution. The child signs a contract, where the child agrees with the imposed conditions.

16 Art. 488 CCP.
17 Art. 61 paragraph 1 CCP. This period may be prolonged to 9 hours, see *Kamerstukken II* 2015-16, 34 159, nr. A, p. 7.
18 Art. 61 paragraph4 CCP.
19 Art. 61 paragraph2 CCP.
20 Art. 55c paragraph2 CCP.
21 Art. 27 Official instruction for the police, the Royal military police and other investigators.
22 Art. 57 CCP.
23 Art. 58 paragraph1 CCP.
24 Art. 58 paragraph2 CCP.
25 Art. 59a CCP.
26 Younger children are brought before a magistrate judge who is also a juvenile judge: art 492 CCP.
27 Minister of Safety and Justice, *Factsheet of youth in the juvenile criminal law p*rocess, March 2014, p 3.
28 Art. 67 CCP.
29 Art. 64 paragraph1 CCP.
30 Art. 493 paragraph1 CCP. See art. 27 Decree on the implementation of juvenile justice for an enumeration. The general conditions in art. 80 CCP must be taken into account.
31 Art. 65 CCP.
32 Art. 66 CCP.
33 Art. 493 paragraph 4 CCP.
34 Art. 493 paragraph 1 CCP.
35 Art. 493 paragraph 3 CCP.

Child Care and Protection Board
The police immediately notify the Child Care and Protection Board of the pre-trial detention (police custody) of a child.[36] In this way the Child Care and Protection Board can provide "early assistance". The Board is not obliged to offer assistance. If the Board does report, the Public Prosecutor is obliged to take note of the report before requesting pre-trial detention.[37] If the Prosecutor brings the case to the court, he is obliged to request a report from the Board regarding the personality and the living circumstances of the child.[38]

ZSM-Methodology
Since 2011, the Public Prosecution Office operates with a new methodology - ZSM[39]- through which an acceleration of the settlement process is implemented. In the new approach, different chain partners work together, so that information is available faster for a settlement decision. More information with regard to ZSM follows in paragraph V.3.1.

II.1.2 Out-of-court settlement

When a child is suspected of and charged with an offence it may occur that the offence is settled out of court. This means that the case is not brought before a judge, but that the Public Prosecution Office or an investigating officer imposes a sentence or measure. The imposed penalty or measure must be in the best interest of the child and must be an appropriate reaction to a committed offence.

Punishment order issued by the Police (PBS)
Investigating officers are authorized to apply a punishment order - of up to €350,- - to adults for an offence which is punishable by six years of imprisonment or less.[40] For children older than twelve years, a punishment order including a fine, may only be imposed for minor offences.[41]

The HALT-settlement
HALT is a form of out-of-court settlement, based on art. 77e of the Criminal Code (hereinafter referred to as CC). Participation with a HALT-project can prevent a criminal conviction. This has the great advantage that the child does not get a criminal record. In some cases, the investigating officer may propose to the child participation with a (HALT-) project. This proposal must be provided in writing.[42] This involves cases that are simple in nature, involving behaviour of low severity causing nuisance.[43] In principle only "first-offenders" who have acknowledged committing a criminal offence are considered for a HALT-project. This regulation applies to youth aged twelve to eighteen and participation is voluntary. For children under the age of sixteen parents need to agree with the transfer to HALT, for serious offences as well as misdemeanours.[44] If the child accepts the offer, the HALT-office makes a concrete proposal for participation in a determined project. This consists mostly of work aimed at damage restoration and for the common good. Participation in an activity with a pedagogic character is possible as well. The HALT-settlement is limited to a maximum of 20 hours.[45]

Each HALT-settlement is as much as possible connected to the character of the criminal offence and the circumstances under which it was committed.[46] The Public Prosecutor may provide instructions on this matter. If the project has been completed successfully, the investigating officer notifies the Public Prosecution Office in writing and there will be no prosecution.[47] The Public Prosecution Office provides guidelines for uniform processing, but it is the police who decide whether a project has been carried out appropriately.[48] In this phase the child suspect does not have the right to appointment of a lawyer.

36 Art. 491 paragraph 1 CCP.
37 Art. 491 paragraph 2 CCP.
38 Art. 494 paragraph 4 CCP.
39 ZSM stands for as '*Spoedig, Selectief, Slim, Samen en Simpel mogelijk*', meaning as 'Rapidly, Selective, Smart, Together and Simple' as possible.
40 With a maximum of €350,-.
41 Art. 257b CCP & art. 3 paragraph 2 Administrative Law Enforcement Traffic Regulations (WAHV).
42 Art. 77e paragraph 2 CC.
43 See Decree instructions for HALT-offences for an answer to the question which facts lend themselves to a HALT settlement.
44 Directive and framework for criminal procedure youth and adolescents, including penalties.
45 Art. 77 e paragraph 4 CC.
46 Directive and framework for criminal procedure youth and adolescents, including HALT penalties.
47 Art. 77e paragraph 5 CC. Notice that the project is completed voids the right to prosecution.
48 Art. 77e paragraph 5 CC.

Appointment of a lawyer only takes place if the Public Prosecutor imposes community service of more than 20 hours or a fine of more than €115.[49] In the relevant Directive of the Public Prosecution Office states that if the police propose HALT, the lawyer of the child must be informed. If the investigating officer has already established, prior to the interrogation of the child, that the offence constitutes a fact eligible for HALT-settlement and that the child may qualify for the HALT-settlement, this is communicated to the lawyer who will provide legal assistance to the child. Therefore children often do not know that if they refuse a HALT-settlement, they risk prosecution.

Punishment order issued by the Public Prosecutor ('Prosecutor's model')
The Public Prosecutor also has the authority to issue a punishment order.[50] This can be done in case of a misdemeanour or a serious offence which is punishable by no more than six years in prison. Often a conversation will first take place at the office of the Public Prosecutor (OTP), where the child and possibly his parents and lawyer are invited to discuss the content of the intended punishment order. The Public Prosecutor may also issue the punishment order if the content thereof is not agreed upon. The child may appeal against this. An alternative is that the Public Prosecutor still sues the child. With the punishment order all penalties and measures included in art. 257a CCP can be imposed.[51] Community service imposed by a punishment order may not exceed the duration of 240 hours if it concerns a work sentence and 480 hours if it concerns a study sentence or a combination sentence.[52]

In case of a (proposed) community service of over 20 hours a lawyer should be appointed ex officio.[53] The imposed sanction must be prepared and supported by the Child Care and Protection Board.[54] The Public Prosecutor may include in the punishment order an instruction to the effect that the child will adhere to directions that are imposed by a certified institution.[55] In this way the necessary support and guidance can be provided. This is part of the juvenile probation services which monitors that activities are proposed that are directed at an adequate offer of assistance and support for the children that have come into contact with the police and judiciary.

II.1.3 Judicial settlement

When an official record is sent to the Public Prosecutor and the child is summoned to appear at the court session this is called judicial settlement. In principle, the court session takes place behind closed doors.[56] Children are obliged to appear,[57] as well as parent(s) with parental authority.[58] The latter requirements may be waived when the parent(s) with parental authority have no known domicile or residence in The Netherlands or when their presence is not in the best interests of the child.[59] In principle, children have the same rights in court as adults.[60] Among these rights is, for example, the authority to ask questions of witnesses,[61] to independently answer questions asked by the juvenile judge and the right to remain silent.[62]

Child Care and Protection Board
The Child Care and Protection Board can be present at the court session when special permission has been granted.[63] The Board can clarify reports and findings that were already released. The Court may order additional investigation by the Board with regard to the person and living conditions of the child suspect.[64] In anticipation thereof the inquiry is suspended. Parallel to a juvenile criminal case a civil court case may be pending in which waiver of parental authority or a child protection measure, such as supervision, is requested. The juvenile criminal case may be suspended in anticipation of the outcome of those proceedings.[65]

49 See art. 77f paragraph 1 sub b CC jo. art. 489 paragraph 1 sub a CCP and Directive and framework for criminal procedure youth and adolescents, including penalties.
50 Art. 257a CCP jo. 77f CC. This is hardly applied in practice.
51 As far as not otherwise provided by art. art. 77f jo. art. 77h etc.) CC.
52 Instructions for community service, under "Principles", par 1.
53 Art. 489 paragraph 1 CCP.
54 Art. 77o paragraph 1 CC.
55 Art. 77f paragraph 1 sub a CC.
56 Art. 495b CCP (District Court), art. 500 paragraph 1 CCP (Canton Court), art. 501 CCP (Court of Appeal).
57 Art. 495a CCP.
58 Art. 496a CCP.
59 Art. 496a paragraph 3 sub b and c CCP.
60 Second book, Title VI CCPs.
61 Art. 292 paragraph3 CCP.
62 Art. 273 paragraph2 CCP.
63 Art. 495b paragraph 1 CCP.
64 Art. 498 CCP.
65 Art. 14a jo. 348-349 CCP.

Penalties & Measures

In case of a conviction various penalties and measures may be imposed. Within the legal limits, the judge has a wide discretion regarding the type duration and modality of the sanction. Just as in adult criminal law a distinction is made between penalties and measures. Criminal offences are divided into misdemeanours (minor offences) and serious offences. For misdemeanours only a fine or community service can be imposed. For serious offences also juvenile detention, a custodial sentence, may be imposed. All combinations of penalties and measures are possible[66] and some penalties and measures can be – in whole or in part – conditional.[67] The applicable probationary period can be up to two years.[68]

Main penalties

The main penalties consist of a fine, community service or juvenile detention. The fine amounts to at least €3,- and €350,- as a maximum.[69] Community service can consist of a work or study punishment or a combination of both.[70] The duration of community service can be 200 hours as a maximum, unless it concerns a combination of work and study punishment. In that case the maximum duration is 240 hours. In certain cases, it is not allowed to impose community service.[71] Children can have up to twelve months of juvenile detention imposed, if they are younger than sixteen years at the time they committed the offence. The maximum is 24 months if the child was sixteen years or older at the time of committing the offence.[72] A conditional release is possible in case of an imposed juvenile detention.[73] These penalties be, in whole or in part, imposed conditionally.[74] In case of conditional sentences, general or special conditions can be imposed.[75]

Additional penalties

The Criminal Code also contains additional penalties. These can also be imposed as a single sentence, without the imposition of a main sentence.[76] The additional penalties are the forfeiture[77] and driving disqualification.[78]

Measures

Juvenile justice includes a variety of measures.[79] The first one is the PIJ-measure, which stands for "placement in a judicial youth detention centre", which is a custodial treatment order under penal law. This may be imposed by the Court in case the child at the time of committing the offence, suffered from a developmental disorder or a mental capacity disorder. The PIJ measure consists of at least two years of treatment and at least one year of mandatory probation. Extension is possible: maximum of two times with a duration of up to three years.[80] If the child fails to comply with the terms of the aftercare the Court may impose a time-out. The child is then temporarily placed in a judicial youth detention centre.[81] In certain circumstances, the PIJ-measure may also be converted into a TBS measure.[82] A PIJ-measure can only be imposed if a criminal offence carries a prison term of four years or more or in case of some specifically defined offences.[83] The **behavioural measure (GBM)** is a non-custodial measure which has a duration of at least six months to a maximum of one year. This may be extended once, with the same term, as it was imposed.[84] The GBM is meant for children for whom a behavioural measure in the framework of special conditions as part of a conditional sentence, was considered to be too light and a PIJ-measure too severe.

66 Art. 77g CC.
67 Art. 77x CC.
68 Art. 77y paragraph 1 CC.
69 Art. 77l CC.
70 Art. 77m CC. For details on the implementation of community service, please refer to the Decision with regard to implementing community service.
71 Art. 77 ma CC.
72 Art. 77i CC.
73 Art. 77j paragraph 4 CC.
74 Art. 77x CC.
75 Art. 77z CC.
76 Art. 77h CC.
77 Art. 77h paragraph 3 sub a CC.
78 Art. 77h paragraph 3 sub b en art. 77r CC.
79 Art. 77h CC.
80 Art. 77t CC.
81 Art. 77tb CC.
82 Art. 77tc paragraph 1 CC.
83 Art. 77s paragraph 1 sub a CC.
84 Art. 77w CC.

There is always support of the juvenile probation services during this measure. If there is no proper cooperation with the measure imposed, the judge may order replacement in a judicial youth detention centre.[85] Further, the measure "removal from society"[86] may be imposed, through which certain things can be withdrawn,[87] a judge may order "seizure of illegally obtained advantage",[88] a damages compensation measure[89] or a freedom restriction measure.[90] The restriction of freedom measure gives the judge the discretion to impose – for up to two years[91]- an area ban, a contact ban, a reporting obligation or a combination of these.[92]

In case of a conditional sentence general and special conditions may be imposed.[93] In particular, the special conditions give the juvenile judge plenty of space to customize. The special conditions can be combined with electronic supervision.[94] The Public Prosecution Office is responsible for monitoring compliance with the conditions. Assistance and support guidance will normally be assigned to juvenile probation services.[95]

II.1.4 Registration

The registration of judicial data is regulated by the Judicial Data and Criminal Records Act (*Wet justitiële en strafvorderlijke gegevens, Wjsg*). The registration of judicial documentation is done by the Central Judicial Documentation of the Ministry of Security and Justice.[96] Information about serious offences are – dependent on the maximum sentence – usually kept for twenty or thirty years.[97] For misdemeanours, this is five or ten years.[98] The Central Judicial Documentation is also responsible for updating the client-monitoring system juvenile crime. This system serves to support the police, the Pubic Prosecution Office and the Child Care and Protection Board with their duties and to prevent and combat juvenile delinquency.[99] The system includes data on young people under eighteen years of age who have received an official record from the police, or children under the age of twelve years, if they would have received such an official record if they were older than twelve years.[100]

II.2 Non-Dutch suspected children in The Netherlands: profile

It has not been easy to collect data that are specifically on child suspects with a Non-Dutch nationality. The literature review basically did not reveal any figures that are disaggregated according to the nationality of child suspects. In addition, the people with whom interviews were held were not aware of figures on this particular target group. One respondent was of the opinion that the reason for the lack of figures is that the procedural rights of children are insufficiently guaranteed. Another respondent indicated that such figures were not published as "there is always a hassle with regard to ethnicity", which can be politically sensitive. Several respondents indicated that their impression was that this group is not that large. With the data that have been obtained an illustration will be given about child suspects in The Netherlands. For clarity: these figures apply to child suspects in general and are not specifically to child suspects without the Dutch nationality, since there is little to no specific information available about that group.

85 Art. 77wc CC.

86 Art. 77h paragraph 4 under c CC.

87 Art. 36e CC.

88 Art. This measure can be imposed in combination with other measures. The objects that are subject to this measure are listed in articles 36c and 36d CC.

89 Art. 36f CC.

90 Art. 77h paragraph sub 4f CC. The measures are described in articles 38v-38ij CC. Pursuant to art. 77a CC they are also applicable to juvenile justice. These freedom restricting measures aim to protect society and prevent recidivism.

91 Art. 38v paragraph3 CC.

92 This measure may also be imposed where article 9a CC is applied.

93 Resp. art. 77z paragraph 1 and art. 77z paragraph 2.

94 Art. 77z paragraph 3 CC.

95 G. de Jonge & A.P. van der Linden, Handboek Strafzaken paragraph 69.2, p. 32 (digital)

96 Art. 2 Wsjg.

97 Art. 4 Wsjg.

98 Art. 6 Wsjg.

99 Art. 2 Privacy Policy Client-monitoring system juvenile crime.

100 Art. 5 (a) and (b) Privacy Policy Client-monitoring system juvenile crime.

II.2.1 Monitoring juvenile crime and developments

The Central Bureau of Statistics (CBS) recently, in collaboration with the Scientific Research and Documentation Centre (WODC), published a report on the developments with regard to juvenile crime in Dutch society.[101] In the same report, police and justice statistics are published on all child suspects, convictions of children[102] and settlements against children. The data are disaggregated on gender, origin[103] and generation, level of education, living community and school or work participation of the children. It is noted that origin does not need to coincide with the nationality of the suspect. The CBS does not collect crime data by nationality.

Origin

In 2014, a total of 22,640 child suspects were registered.[104] In total, there are 17,610 boys and 5,030 girls registered in connection with suspicion of a serious offence.[105] Of them, 12,290 were autochthon (54%) and 10,350 allochthon (46%).[106] In absolute terms, in the group of allochthonous children the child suspects of Moroccan origin have the largest group with around twelve percent (2,710 people).[107] The number of children that were registered at least once as a suspect, is highest for children who originate from The (former) Netherlands Antilles or Aruba and Morocco; 65 and 64, respectively, of each 1,000 children from the concerning origin group.[108] For children with Turkish origin this is 31 per 1000, for Western immigrants 22 per 1,000 and for autochtonous children 13 per 1,000 children.[109]

Education

If we look at the educational level, we can derive from the WODC report that the majority of the registered children have a lower vocational education (vmbo) background (44%),[110] followed by intermediate vocational education (mbo) (21%), higher general secondary education (havo) or pre-university education (vwo) (19%) and secondary special education (9%).[111] In particular, children with secondary special education as the highest educational level, have a higher likelihood of registration as a suspect.[112] Children with higher general secondary education (havo) or pre-university education (vwo) are least likely to have a police record. In addition, children with only primary education have a relatively low likelihood of a registration, but this is also due to the age distribution within this group.[113]

Income and place of residence

The report also addresses the relationship between the household income of families and the chance that a child of the family is registered with the police as a suspect.[114] The number of suspects is relatively higher among families with a lower household income.[115] The number of child suspects among the households with the highest incomes, is relatively the lowest. The data are also disaggregated on household composition. Out of a total of 22,640 child suspects in 2014, 54% lived at home in a two parent family household and 35% lived at home in a single parent household. Almost 5% lived in an institution such as a facility for mentally handicapped, a care home, psychiatric hospital or penitentiary facility. The number of suspects is relatively highest among children in an institution.[116] In 2014 almost 8% of all child suspects lived in Amsterdam, followed by Rotterdam with 6%, The Hague with 5% and Utrecht with a little over 2%. In total in 2014 almost 22% of all child suspects lived in one of the four largest municipalities.[117]

---

101 Cahier 2016-1 WODC, monitor juvenile delinquent crime in, juvenile crime 1997 until 2015. The report specifically refers to a description and interpretation of the developments of juvenile offenders and suspects, with emphasis on the developments of the last five years, from 2010 to 2015.

102 The report refers to criminal offenders.

103 Definition of origin in the report: characteristic with specifies the country a person is connected to on the basis of the birth country of the parents or of themselves. A first generation allochthon has as an origin grouping the country where he or she is born. A second-generation allochthon origin group has as origin grouping the birth country of the mother, unless that is also The Netherlands. In that case the origin grouping is determined through the birth country of the father.

104 Cahier 2016-1 WODC, monitor developments in the juvenile, juvenile crime 1997 from 2015, p. 57.

105 Cahier 2016-1 WODC, monitor developments in the juvenile, juvenile crime 1997 from 2015, p. 56.

106 The origin of a person in the WODC report is determined on the basis of the country in which he or she is born and the birth country of the parents, whereby it should be noted that in the report, only children have been included, that are also registered with the Municipal Personal Records Database. Illegally residing children or children without fixed accommodation or residences are therefore not reflected in these figures, see p. 17.

107 Cahier 2016-1 WODC, monitor developments in the juvenile, juvenile crime 1997 from 2015, p. 57.

108 Cahier 2016-1 WODC, monitor developments in the juvenile, juvenile crime 1997 from 2015, p. 57.

109 Cahier 2016-1 WODC, monitor developments in the juvenile, juvenile crime 1997 from 2015, p. 57.

110 Cahier 2016-1 WODC, monitor developments in the juvenile, juvenile crime 1997 from 2015, p. 60.

111 Cahier 2016-1 WODC, monitor developments in the juvenile, juvenile crime 1997 from 2015, p. 60.

112 Cahier 2016-1 WODC, monitor developments in the juvenile, juvenile crime 1997 from 2015, p. 61.

113 Cahier 2016-1 WODC, monitor developments in the juvenile, juvenile crime 1997 from 2015, p. 61. The report illustrates that in 2013 77 of each 1,000 young people in this group were registered as a suspect.

114 Cahier 2016-1 WODC, monitor developments in the juvenile, juvenile crime 1997 from 2015, p. 64.

115 Cahier 2016-1 WODC, monitor developments in the juvenile, juvenile crime 1997 from 2015, p. 65.

116 Cahier 2016-1 WODC, monitor developments in the juvenile, juvenile crime 1997 from 2015, p. 67.

117 Cahier 2016-1 WODC, monitor developments in the juvenile, juvenile crime 1997 from 2015, p. 68.

Type of offence

The WODC differentiates between the type of serious offence of which children are suspected. Both boys and girls are most frequently registered for a property offence.[118] The most commonly registered serious offence of children is shoplifting with 5,280 incidents. This is followed by serious offences against the public order and authority and assault both totalling 3,970.[119] Among boys, registrations in connection with vandalism or a public-order offences are most frequent, followed by violent offences.[120] Among girls, this is just the other way around.

II.2.2 Other data

The CBS receives figures from a large number of parties. Most of the following figures are therefore derived from the data available for the CBS. The sources are listed in the footnotes, if necessary with an explanation on how the figures should be interpreted.

Child suspects121

The table below contains data on registered and arrested child suspects of serious offences. These are classified by type of offence, gender, age and origin.[122]

Type of offense		2006	2011	2012	2013	2014*
Total suspects of serious offences	Boys	66,450	42,790	38,480	31,570	28,250
	Girls	17,540	11,690	10,340	8,820	7,640
Suspects of property offences	Boys	28,390	19,650	18,370	15,600	14,510
	Girls	9,710	6,770	5,850	5,130	4,570
Suspects of vandalism and disturbing the public order	Boys	28,200	14,040	12,170	9,070	7,580
	Girls	3,960	2,270	2,040	1,580	1,400
Suspects of violent offences	Boys	17,720	10,470	9,700	8,330	6,880
	Girls	4,630	2,810	2,600	2,130	1,670
Suspects of traffic offences	Boys	2,130	1,720	1,440	1,030	950
	Girls	260	280	220	160	170
Suspects of drug offences	Boys	1,580	1,290	1,280	1,250	1,220
	Girls	300	130	130	120	130

* Provisional figures

Interrogations[123]

The following is an overview of the number of children the police have interrogated, classified by number of unique persons and number of unique interrogations. A distinction is made between interrogations that have taken place during regular working hours and interrogations that have taken place outside regular working hours. The number of interrogations that have taken place between 22:00 and 06:00 are shown separately.

118 Cahier 2016-1 WODC, monitor developments in the juvenile, juvenile crime 1997 from 2015, p. 71.

119 Cahier 2016-1 WODC, monitor developments in the juvenile, juvenile crime 1997 from 2015, p. 74.

120 Cahier 2016-1 WODC, monitor developments in the juvenile, juvenile crime 1997 from 2015, p. 71.

121 http://statline.cbs.nl/Statweb/publication/?DM=SLNL&PA=81947ned&D1=0-1,12,18,22-23,25,54-59&D2=1-2&D3=1&D4=0&D5=7,12-15&HDR=G4,G3,G1,G2&STB=T&VW=T, last accessed: 14 July 2016.

122 The following definitions are used: (1) "Suspect": before prosecution he is the one for whom under the circumstances a reasonable suspicion of guilt can be assumed for having committed a criminal offence, thus, he is the one against whom the prosecution is directed, (2) "registered suspect '" a person who is registered with the police as a suspect of a crime, when a reasonable suspicion of guilt to that crime exists, (3) "arrested suspect" registered suspects against whom an official record of crime was opened.

123 Source: National Police Database.

Interrogations		2010	2011	2012	2013	2014	2015
Total number of interrogated children	Regular working hours	36,414	35,877	32,092	26,923	24,707	23,006
	Outside of working hours	16,539	16,829	14,921	12,131	10,991	10,228
	Between 22:00 and 06:00 o'clock	-	-	6,176	4,914	4,107	3,783
Total number of interrogations of children	Regular working hours	58,569	57,133	51,935	43,399	39,634	37,599
	Outside of working hours	25,531	25,372	23,134	18,520	16,620	15,833
	Between 22:00 and 06:00 o'clock	-	-	8,972	6,977	5,822	5,484

Pre-trial detention (also known as police custody)124

The following is an overview of the number of children that were placed in pre-trial detention (police custody), differentiated by number of unique persons and number of unique cases of this form of pre-trial detention. Furthermore, a distinction is made between this type of pre-trial detentions that have occurred during regular working time and those that have occurred outside of working hours. Here, the number of pre-trial detentions (police custody) that occurred between 22:00 and 06:00 are shown separately.

Pre-trial detentions (police custody)		2010	2011	2012	2013	2014	2015
Total number of children in pre-trial detention (police custody)	Regular working hours	6,465	6,667	6,011	5,565	5,458	5,977
	Outside of working hours	3,987	4,073	3,795	3,431	3,374	3,641
	Between 22:00 and 06:00 o'clock	-	-	1,392	1,254	1,135	1,219
Total number of pre-trial detentions (police custody) of children	Regular working hours	7,707	8,001	7,506	6,873	6,794	7,451
	Outside of working hours	4,501	4,596	4,414	3,943	3,891	4,200
	Between 22:00 and 06:00 o'clock	-	-	1,525	1,355	1,242	1,302

HALT[125]

In 2014, a total of 16,590 juveniles (up to 18 years of age) were issued a HALT-settlement: 12,300 boys and 4,290 girls.[126] The following table lists the data with regard to HALT-settlements from the year 2010, differentiated by age and country of origin.

Age	**2010**	**2011**	**2012**	**2013**	**2014**
12 to 18 years	17,020	17,300	17,510	16,540	16,590
12 years	1,180	1,160	1,160	1,060	970
13 years	2,630	2,540	2,570	2,330	2,290
14 years	3,770	3,690	3,650	3,400	3,500
15 years	3,910	3,850	4,060	3,620	3,520
16 years	3,180	3,490	3,340	3,330	3,420
17 years	2,120	2,300	2,430	2,500	2,670
Other/unknown	240	280	320	310	230

Origin	**2010**	**2011**	**2012**	**2013**	**2014**
Total origin	17,020	17,300	17,510	16,540	16,590
Autochthonous[127]	10,980	11,600	11,480	10,620	10,860
Allochthonous[128]	5,810	5,460	5,850	5,760	5,620
Non-western allochtones	4,450	4,140	4,560	4,420	4300
Morocco	1,130	990	1,140	1,120	1,120
Suriname	920	910	920	880	760
Turkey	780	670	720	720	720
Netherlands Antilles & Aruba	420	400	460	420	430
Other non-western allochtones[129]	1,200	1,190	1,320	1,280	1,270
Westerse allochtoon[130]	1.360	1 320	1 290	1 340	1 320
Onbekend	230	240	180	170	110

125 http://jeugdmonitor.cbs.nl/nl-nl/indicatoren/veiligheid-en-justitie/halt-jongeren-(12-tot-18-jaar)/, lastly checked: 2 June 2016. The data on registered HALT-juveniles, in this table, originates from The Netherlands AuraH HALT registration system. The data with regard to registered suspects originates from the national police database "Integrated Interactive Data Bank for Strategic Business Information" (GIDS). The data on the arrested suspects originates from the Recognition Service System (HKS) of the National Police Services Agency (KLPD). For further information: Suspected of crime; immigrants and indigenous a closer look.

126 A juvenile who has been referred to HALT numerous times is included in these figures, more than once.

127 Person of whom both parents are born in The Netherlands, irrespective of the country where the person himself is born

128 Allochthon originating from one of the countries in Africa, Latin America and Asia (excluding Japan and Indonesia) or Turkey. Persons from the former Netherlands Antilles and Aruba also fall into this category.

129 Allochthon originating from one of the countries in Europe (excluding Turkey), North America and Oceania, or Indonesia or Japan. The allochthons from Indonesia and Japan are considered Western allochthons on the basis of their socio-economic and socio-cultural positions. This refers mainly to persons who were born in the former Dutch East Indies and employees of Japanese companies with their families.

130 Inquiry with the Judicial Youth Detention Centres Services thaught that, in this category contains all birth countries that occur at least once, but not more than four times. It refers to relatively small numbers, where in most cases one or two children have been included per country.

Inflow in judicial youth detention centres[131]

The table below provides information with regard to the inflow into judicial youth detention centres, differentiated by gender, age, migration status and birth country.

Inflow		2010	2011	2012	2013	2014
Inflow JJI total according to gender	Boys	2,333	1,840	1,831	1,427	1,333
	Girls	149	98	87	67	58
Inflow JJI total according to legal area	Criminal law	2,263	1,846	1,869	1,469	1,380
	AMV	219	92	49	25	11
Inflow JJI punishment according to residence permit	Provisional detention	1,888	1,559	1,581	1,213	1,152
	Juvenile detention	325	252	231	206	173
	PIJ	45	33	53	45	38
	Hostage	5	2	4	5	17
Inflow JJI total pursuant to birth country (top 5) in %	The Netherlands	-	77.0	78.0	76.6	80.5
	Former Netherlands Antilles	-	2.8	2.7	4.2	2.9
	Morocco	-	2.4	2.5	3.0	2.9
	Afghanistan	-	2.1	1.9	1.5	1.4
	Suriname	-	1.1	1.1	0.5	1.1
	Other[5]	-	13.0	12.3	12.1	10.9
	Unknown	-	1.7	1.6	1.7	0.4

Age at inflow JJI (%)	2010	2011	2012	2013	2014
12 years	0.1	0.3	0.2	0.3	0.2
13 years	1.3	1.8	1.0	1.5	1.1
14 years	55.5	6.7	5.1	4.6	5.7
15 years	14.4	14.4	16.0	13.8	11.9
16 years	28.5	27.9	27.9	25.8	20.1
17 years	40.8	40.1	38.7	39.1	34.6
18 years	4.3	4.8	6.9	9.3	14.2
19 years	1.9	2.0	1.8	2.2	5.8
20 years	1.3	0.8	1.3	1.8	3.5
21 years	0.6	0.6	0.5	0.7	1.8
22 years	0.6	0.4	0.4	0.5	0.5
23 years	0.0	0.1	0.2	0.1	0.3
24 years	0.1	0.1	0.1	0.1	0.2
25 years	0.0	0.1	0.1	0.1	0.1
Unknown	0.4	0.1	0.1	0.3	0.0

131 Source: Judicial Youth Detention Centres Services (2015), JJI in all 2010-2014. The Hague: Ministry of Security and Justice.

III. EU Directive 2010/64: The Right to Interpretation and Translation in Criminal Proceedings

III.1 The content of the Directive

The Directive 2010/64/EU concerning the right to interpretation and translation (hereinafter: Directive 2010/64/EU) contains minimum rules on the right to interpretation and translation in criminal proceedings and proceedings for the execution of a European arrest warrant (EAW).[132] The goal of the Directive is to ensure that free and adequate linguistic assistance is guaranteed. This way, suspects who do not speak or understand the language of the criminal proceedings, can adequately exercise their right to a defence, such as protected by article 6 ECHR. In this way fairness of the proceedings are guaranteed.[133] The Directive applies to all persons and thus, also to children.

The right to interpretation and translation from the time someone is informed of the fact that he is suspected [134] or accused of a criminal offence. This right applies until the proceedings have been completed, that is, until a final decision has been taken on whether or not the person in question has committed the criminal offence. This includes the sentencing and the outcome of possible appeals.[135] The costs of interpretation and translation shall be borne by the Member State.

Right to interpretation
A suspect who does not speak or understand the language of the criminal proceedings must be assisted by an interpreter, without delay, at all stages of the proceedings.[136] In addition, communication with the lawyer should be made possible, as far as it relates to the proceedings.[137] This right also includes appropriate assistance to persons who have a hearing or speech impediments.[138] A procedure should be used to determine whether the assistance of an interpreter is needed. This means that a procedure must exist according to which it can be checked whether the suspect speaks and understands the language of the criminal proceedings.[139] The possibility of submitting a complaint against failure to provide the assistance of an interpreter, must exist.[140]

Right to translation of essential materials of the case
A suspect who cannot understand the language of the criminal proceedings, must receive a written translation of all essential documents, within a reasonable period of time. [141] Essential materials of the case shall include any decision depriving a person of his liberty, any charge or indictment, and any judgment.[142] With regard to other documents the authorities decide, on a case by case basis, whether these are to be considered as essential.[143] If a request for translation of procedural documents is rejected, the possibility to file a complaint must exist.[144]

132 Art. 1 Directive 2010/64/EU jo. Consideration 32.
133 See consideration 17 Directive 2010/64/EU.
134 'He' may also refer to 'she' as 'his' may also refer to 'hers'.
135 Article 1 paragraph 2 Directive 2010/64/EU. Furthermore, from paragraph 3 it can be inferred that according to national legislation for minor criminal offences a sentence may be imposed by a competent authority other than a criminal court – and if an appeal has been opened against the imposition of this sentence- then the Directive only applies to the proceedings before this Court (as a result of the appeal).
136 Article 2 paragraph 1 Directive 2010/64/EU. Article 2 paragraph 7 Directive 2010/64/EU: When an European arrest warrant is executed, and the person does not speak the language of the conducted procedure, interpretation must be offered during the procedure that meets all the requirements of article 2.
137 Article 2 paragraph 2 Directive 2010/64/EU.
138 Article 2 paragraph 3 Directive 2010/64/EU.
139 Article 2 paragraph 4 Directive 2010/64/EU.
140 Article 2 paragraph 5 Directive 2010/64/EU.
141 Article 3 paragraph 1 Directive 2010/64/EU. Article 3 paragraph 6 Directive 2010/64/EU: when an European arrest warrant is executed, and the person does not understand the language of the conducted procedure, a written translation must be delivered with the arrest warrant.
142 Article 3 paragraph 2 Directive 2010/64/EU.
143 Article 3 paragraph 3 Directive 2010/64/EU.
144 Article 3 paragraph 5 Directive 2010/64/EU.

In exceptional cases an oral translation or summary of the essential materials of the case may be provided instead of a written translation.[145] This is only allowed on the condition that such oral translation or summary does not prejudice the fairness of the proceedings.

Quality of interpretation and translation
The interpretation and translation must be of sufficient quality so that the suspect is well informed and is capable of exercising his right to a defence.[146] For this purpose, Member States should strive for the establishment of a register or registers of independent translators and interpreters, who are properly qualified.[147] This entails, inter alia, that they must observe the necessary confidentiality.[148] If the suspect is of the opinion that the quality is not sufficient a complaint may be initiated.[149] Member States should ensure that those responsible for the training of judges, prosecutors and other judicial personnel involved in criminal matters, pay special attention to communication with the assistance of an interpreter.[150]

Registration obligation[151]
When a suspect is questioned or interrogated (a) with the assistance of an interpreter, (b) has received an oral translation or summary of the essential materials of the case, or (c) has renounced the right to translation, the competent authorities should take note of this in accordance with existing recording procedures under national law.

III.2 The status of the Directive in The Netherlands

The Directive was incorporated into national legislation on the 28th of February, 2013 through the law "Implementation of Directive Nr. 2010/64/EU of the European Parliament and of the Council of 20 October 2010 concerning the right to interpretation and translation in criminal proceedings (OJEU L 280)".[152] This law came into effect on the 1st of October, 2013.[153]

III.3 Rules and policies on the right to interpretation and translation in The Netherlands

Suspects with no or insufficient command of the Dutch language have the right to assistance of an interpreter in The Netherlands.[154] This was already partially arranged, but as a result of the implementation of the Directive, a number of changes have been carried through:

- a general right of access to an interpreter is enshrined in the law;
- a number of specific situations are included in the law in which there is a positive obligation for the State to ensure that the suspect receives free assistance of an interpreter or translator;
- a legal duty is enshrined in the law to ensure interpretation and translation that meets certain quality standards.

145 Article 3 paragraph 7 Directive 2010/64/EU.
146 Article 2 paragraph 8 Directive 2010/64/EU and article 3 paragraph 9 Directive 2010/64/EU. Member States should implement concrete measures for this purpose, see article 5 paragraph 1 Directive 2010/64/EU.
147 Article 5 paragraph 2 Directive 2010/64/EU.
148 Article 5 paragraph 3 Directive 2010/64/EU.
149 Article 2 paragraph 5 guideline 2010/64/EU and article 3 paragraph 5 Directive 2010/64/EU.
150 Article 6 Directive 2010/64/EU.
151 Article 7 Directive 2010/64/EU.
152 Stb. 2013, 85.
153 This is before the deadline of 27 October 2013 from article 9 Directive 2010/64/EU.
154 Art. 27 paragraph 4 CCP. Cf. art. 23 paragraph 4 CCP.

Below is an overview of the Dutch laws and regulations on the right to interpretation and translation. As already specified, suspects with no or insufficient command of the Dutch language have the right to be assisted by an interpreter.[155] The right to interpretation and translation also includes the right to assistance of an interpreter for a suspect who cannot hear or speak or who has a hearing or speech impediment. [156]

Notification of the right to interpretation and translation

The arrested suspect is – if applicable before his first interrogation – notified of his right to interpretation and translation.[157] This must be done in a language which is understandable for the suspect and the notification should be mentioned in the official record.[158]

Communication with a lawyer

When the assistance of an interpreter is necessary to enable the communication between the lawyer and the suspect, it is the responsibility of the lawyer to ensure the interpretation.[159] When the police has already summoned an interpreter for the interrogation of the arrested suspect, they shall inform the suspect of his right to consult with his lawyer prior to the interrogation, and alert the suspect to the presence of the already summoned interpreter, who can be commissioned for the consultation with the lawyer.[160]

Interrogation

When the suspect does not, or insufficiently, understands the Dutch language, an interpreter is required to be present at the interrogation.[161] The interpreter is called upon by the official that conducts the interrogation, unless the law provides otherwise.[162] He must take into account the appointment obligation in the Sworn Interpreters and Translators Act (Wbtv).[163] If a sworn interpreter is not available in time, an interpreter can be commissioned who is not listed in the register. This should be amply noted in the official record of the interrogation.[164] Whenever the reporting officer has doubts with regard to the choice of the language or disagrees about this with the suspect, he will contact the Assisting Public Prosecutor, who will decide.[165] As a criteria for establishing whether or not an interpreter has to be called in, the following applies: "the suspect understands the questions asked and the notifications made, the suspect is able to give his own version of the events on which his statements are required and the suspect is able to include enough nuances in his version of the events". When questions are only answered with "yes" and "no", it must be assumed that the suspect has insufficient command of the Dutch language. In case of doubt, an interpreter is always called in.[166] Also when the suspect specifies that he is unable to issue a statement in Dutch, an interpreter is appointed.[167] Only if the reporting officer or the Assistant Public Prosecutor can reasonably assume that the suspect has command of the language, this does not apply.[168] In the official record a note must be made with regard to the assistance of the interpreter.[169] When it has been decided that an interpreter shall not be called in - despite the request for an interpreter - this is justified in the official record.[170]

155 Art. 27 paragraph 4 CCP.

156 Art. 131b CCP See also art. 3.1 Instruction assistance interpreters and translators.

157 Article 27c paragraph 3 CCP.

158 Article 27c paragraph 4 and 5 CCP.

159 Article 28 paragraph 3 CCP. See also art. 3.6 Instruction assistance interpreters and translators.

160 Art. 3.6 Instruction assistance interpreters and translators.

161 Article 29a paragraph 1 CCP. See also art. 3.1 Instruction assistance interpreters and translators.

162 Article 29a paragraph 2 CCP. See also art. 3.2 Instruction assistance interpreters and translators.

163 Art. 3.2 Instruction assistance interpreters and translators. Appointment obligation: art. 28 Wbtv.

164 Art. 3.7 Instruction assistance interpreters and translators. The unsworn interpreter should – when possible – prior to the interrogation, provide a declaration with regard to behaviour or an integrity statement. If this cannot, due to urgency, occur before the interrogation, it should occur as soon as possible after the interrogation.

165 Art. 3.2 and art. 3.5 Instruction assistance interpreters and translators.

166 Art. 3.3 Instruction assistance interpreters and translators. See also art. 3.5 Instruction assistance interpreters and translators.

167 Art. 3.2 Instruction assistance interpreters and translators.

168 Art. 3.5 Instruction assistance interpreters and translators.

169 Article 29a paragraph 3 CCP.

170 Art. 3.3 Instruction assistance interpreters and translators.

As for the choice of the language, the suspect must be interrogated in a language that he understands, which is not necessarily his mother tongue. It is determined which language(s), dialect(s) the suspect understands or prefers to speak. The choice of language is justified in the official record of the first interrogation and, in principle, applies to the entire investigation.[171]

Translation of materials of the case

For a number of materials of the case, it applies that the relevant parts thereof must – ex officio – be translated in writing if the suspect has no or insufficient command of the Dutch language.[172] If an order for pre-trial detention (police custody) is issued, the suspect must receive, as soon as possible, a written notification in a language he understands about the criminal offence he is suspected of, the grounds for the order for this form of pre-trial detention and the period of validity.[173] The same applies for an order of pre-trial detention or extension of the term of validity thereof.[174] A punishment order issued by the Public Prosecutor because of a serious offence is translated, at least the parts indicated in article 257a paragraph 6 CCP. This concerns the name and the address of the suspect, a description of the offence and the qualification thereof, the imposed sanction, the day the punishment orders are issued, the way in which the order can be appealed against and the way of implementation.[175] A punishment order issued by the Public Prosecutor because of a misdemeanour does not have to be translated. The reason for this is that a punishment order issued by the Public Prosecutor because of a serious offence cannot be considered to fall under the category of minor offences, such as indicated in article 1, paragraph 3 of the Directive 2010/64/EU. The reasoning behind this is that the Directive does not oblige translations of punishment orders, as these in principle fall under the category "minor offences". Because of the fact that this cannot always be stated with regard to punishment orders issued by the Public Prosecutor because of a serious offence, that category is still selected to fall within the scope of the Directive.[176] The difference between punishment orders based on a misdemeanour and punishment orders based on serious offence does not alter the fact that for all punishment orders – hence, including punishment orders issued for a misdemeanour - the Directive applies with regard to the processing of the appeal by the judge if the suspect decides to oppose an issued punishment order pursuant to 257e CCP and subsequent articles.

If the suspect initiates an appeal he is notified in writing of the court session, in conformity with the requirements of article 260 paragraph 5 CCP.[177] The suspect who does not have command or has insufficient command of the Dutch language, is immediately provided with a written translation of the summons, without delay, or he is informed in writing of the place, date and time where and when the suspect has to appear at the court session as well as a brief description of the offence and the following notifications: (1) the convocation of some other parties, such as the victim or a survivor, (2) the right to call upon witnesses and experts and the way in which this can be done, (3) the possibility of objection against the summons and (4) the possibility that the Court may order personal appearance in court.[178] The content of an order extending custody for interrogation, is conveyed to him orally and does not need to be translated in writing.[179] The suspect who has insufficient command of the Dutch language, may request in writing – and motivated - that materials of the case are translated in a language that he understands.[180] During the preliminary investigation this request is directed at the Public Prosecutor. Objection against a negative decision is possible within fourteen days with the magistrate judge.[181] During the examination at the court session the request shall be directed to the court in question.[182]

171 Art. 3.4 Instruction assistance interpreters and translators.

172 Art. 4.1 Instruction assistance interpreters and translators.

173 Art. 59 paragraph7 CCP. See also art. 4.2 Instruction assistance interpreters and translators.

174 Art. 78 paragraph6 CCP. See also art. 4.2 Instruction assistance interpreters and translators.

175 Art. 257A paragraph 6 CCP. See also art. 4.4 Instruction assistance interpreters and translators.

176 *Kamerstukken II* 2011-12, 33 355, nr. 3, p. 7.

177 Art. 257f paragraph 1 CCP. See also art. 4.4 Instruction assistance interpreters and translators. This applies regardless whether reference is made to the punishment order as a misdemeanor or a serious offence.

178 Art. 260 paragraph5 CCP The article applies accordingly to appeals, see art. 412 SCCP, and forfeiture procedures, see art. 511B paragraph 4 Sv and forfeiture procedures of appeals, see art. 511g paragraph 2CCP. See also art. 4.3.1, art. 4.3.4 and art. 4.3.5 Instruction assistance interpreters and translators.

179 Art. 61 paragraph 8 CCP.

180 Article 32a paragraph 1 CCP. See also art. 4.1 and art. 4.6 Instruction assistance interpreters and translators

181 Article 32a paragraph 3 CCP.

182 Article 32a paragraph 2 CCP.

In many cases, according to the Indication assistance of interpreters and translators, an oral translation of (essential) materials of the case will suffice, where the principle is that the suspect has the opportunity to go through the most important parts with his lawyer, in the presence of an interpreter.[183] The suspect may request a copy of the judgment. In that case, notification of the judge's decision and the consequences for him is provided to him in writing. These written notifications fail to appear in case the suspect was present at the delivery of the judgment and it was interpreted for him, or if the judgment has already been provided to him in an understandable language, pursuant to article 366 (4) CCP.[184] Documents that are sent to a suspect residing in a foreign country are translated into the language of the country in which the suspect resides, if it can be assumed that the suspect has no or insufficient command of the Dutch language. The suspect is informed about the fact that he may ask for translation of the essence of the materials of the case in his mother tongue or another chosen language, a request that, in principle, will be granted.[185] A sworn translator is commissioned, who is registered in the register, unless he is not available on time. In that case a non-registered translator can be commissioned and notification is made of this choice and the explanation thereof in the official record.[186]

Investigation measures

The magistrate judge may call upon an interpreter in the framework of the execution of certain investigative tasks.[187] If there is no interpreter available in the sense of the Sworn Interpreters and Translators Act, the magistrate judge swears in the interpreter before he begins to interpret.[188]

Court session

The Public Prosecutor ensures that an interpreter is called upon to appear at the court session, if the suspect has no or insufficient command of Dutch.[189] With regard to the summons it applies that the suspect should be provided a written translation thereof, in a language he understands.[190] The suspect may call witnesses and experts and may request from the Public Prosecutor to provide him with the assistance of an interpreter at the court session.[191] For suspects who cannot or insufficiently hear or speak an appropriate interpreter is called upon to assist the suspect.[192] When an interpreter is required, the court session is not continued without the presence of this interpreter.[193] When it only becomes evident during the court session that an interpreter is required, the court orders that the interpreter is called upon.[194] The interpreter may not participate in the investigation in another capacity – to ensure his independence – and if the interpreter is not a sworn interpreter in the sense of the Sworn Interpreters and Translators Act, the president swears in the interpreter before he can begin his work.[195] The suspect may challenge the interpreter. The request to challenge must be decided upon as soon as possible.[196] The judge is obliged before the court session to ask the suspect, who is being assisted by an interpreter at the court session, if he will be present at the passing of the judgment. If the suspect declares that he will not be present, no interpreter will be called upon for the court session during which the judgment will be delivered. If he declares to be present, the interpreter is notified by the judge about the date and time the judgment will be delivered. This notification serves as a convocation.[197]

183 Art. 4.6 Instruction assistance interpreters and translators.

184 Cf. art. 4.5 Instruction assistance interpreters and translators.

185 Art. 4.7 Instruction assistance interpreters and translators.

186 Art. 4.8 Instruction assistance interpreters and translators. The unsworn interpreter should – when possible – prior to the interrogation, provide a declaration with regard to behaviour or an integrity statement. If this cannot, due to urgency, occur before the interrogation, it should occur as soon as possible after the interrogation.

187 Article 191 paragraph 1 CCP.

188 Article 191 paragraph 3 CCP.

189 Article 260 paragraph 1 CCP.

190 Article 260 paragraph 5 CCP

191 Article 263 CCP.

192 Article 274 paragraph 1 and 2 CCP.

193 Article 275 CCP.

194 Article 276 paragraph 1 CC.P

195 Article 276 paragraph 2 and 3 CCP.

196 Article 276 paragraph 4 CCP.

197 Article 325 CCP.

Deliberation and Decision

When the suspect is assisted by an interpreter during the court session and the interpreter is present at the court session during which the judgment is pronounced, the judgment is interpreted.[198]

Quality of the interpretation and translation

The Sworn Interpreters and Translators Act contains provisions that serve to ensure the quality and integrity of sworn interpreters and translators. The law determines that there is a register of court interpreters and sworn translators.[199] The register falls under the responsibility of the Minister of Safety and Justice.[200] The Minister may keep an "alternative list" with information of interpreters and translators, who have a recent certificate of good behaviour and who have not been able to demonstrate that they have the required competences due to a lack of training or a lack of independent experts who can test their knowledge.[201]

Competences

The Act specifies that interpreters and translators must comply with requirements spelled out in secondary legislation. The Act provides a list of competences upon which the requirements must be based. The following competences apply: attitude of an interpreter and translator, integrity, language proficiency of the source language and target language, knowledge of the culture of the country or region of the source language or target language, interpreter skills and translator proficiency.[202] Registration is for a period of up to five years and may repeatedly be renewed at the request of the interpreter or translator for an additional period of five years.[203] Sworn interpreters and translators have a confidentiality obligation with regard to information they receive within the framework of their work.[204] The interpreter – on penalty of cancellation – must be sworn in within two months from registration.[205]

Obligatory use of registered interpreters

The Act specifies that a number of services and organizations have an appointment obligation within the framework of criminal law and immigration law. This means that they, in principle, are only entitled to commission sworn interpreters or translators. This concerns the Administrative Jurisdiction Division of the Council of State, the courts of the judiciary, the Public Prosecution Office, the Immigration and Naturalization Service, the Police and the royal military police.[206] However, an alternative list exists which can be used when there is no sworn interpreter or translator available and it is not possible to wait until one is available.[207] Deviation of the appointment obligation is recorded and explained.[208]

Complaints

Complaints about the behaviour of an interpreter or a translator can be submitted to the complaint committee which was established to this end.[209] In The Netherlands this can be done at the complaint commission of the Sworn Interpreters and Translators Act Office.[210] The interpreter or translator at first has the possibility to concede to the complaint. If this is satisfactory for the complainer, further processing of the complaint by the commission is waived. Complaints must in principle be lodged within a year after the fact has taken place which is complained about.[211] In 2015, nine complaints were dealt with by the complaints committee of the Wbtv Office.[212] In 2014 there were sixteen complaints.[213]

198 Article 362 paragraph 3 CCP.

199 Art. 2 Wbtv.

200 Art. 2 paragraph 2 Wbtv.

201 Art. 2 paragraph 3 Wbtv.

202 Art. 3 Wbtv.

203 Art. 8 paragraph 1 Wbtv.

204 Arts. 29 and 32 Wbtv.

205 Art. 12 paragraph 1 Wbtv jo. art. 9 paragraph 4 Wbtv.

206 Art. 28 Wbtv.

207 Art. 28 paragraph 3 Wbtv.

208 Art. 28 paragraph 4 Wbtv. The unsworn translator should – whenever possible – provide a declaration or an integrity statement prior to the interrogation. If this cannot be done, due to urgency, occur before the interrogation, it should occur as soon as possible after the interrogation.

209 Arts. 16-27 Wbtv.

210 In principle, this refers to interpretors and translators who are listed on the alternative list of the Rbtv. The regulation applies to interpreters and translators who are not listed in the Rbtv or on the alternative list, but who have provided an interpreter service for the Immigration and Naturalization Service (IND). The IND has authorized the Wbtv Complaints Commission of the Wbtv Office to address the complaints with regard to the interpreting and translation services, provided on behalf of the IND.

211 Art. 19 paragraph 1 sub b Wbtv.

212 The complaints were submitted by: lawyers (1); IND (1); Court interpretation and translation agency (1); Police (4); mediator interpreter and translation services (1); Translation Agency (1). All complaints were related to interpreters and translators registered at the Wbtv office.

213 The complaints were submitted by: lawyers (3); IND (2); Court interpretation and Translation agency (3); individuals (2); fellow interpreter/translator (4). Eleven complaints related to the appointment obligation.

Sanctions
The registration may be cancelled if serious facts or circumstances are demonstrated concerning the integrity or proficiency of the sworn interpreter or translator.[214] The period for which the cancellation applies, is recorded and amounts to a maximum of ten years.[215] In recent years there have been eight cancellations.[216]

III.4 The practice regarding the right to interpretation and translation in The Netherlands (interviews)

In the framework of the research interviews were held with twelve respondents and in addition surveys with the same questions were completed by four other respondents. This paragraph contains the most important findings obtained through these interviews and surveys regarding the right to interpretation and translation. In paragraph IV.4 the findings regarding the right to information are presented and paragraph V.4 contains the findings regarding the right of access to a lawyer, the right to have a third party informed upon deprivation of liberty and the right to communicate with consular authorities and third parties.

The interviews show that in principle there is no difference in treatment of child suspects with the Dutch nationality and child suspects without the Dutch nationality. This does not play a role in the decision to commission an interpreter or a translator. There appears a mixed picture with regard to the right to interpretation and the right of translation. With regard to the right to interpretation there do not seem to be any problems with the timely accessibility of an interpreter. Telephone interpreting services are used frequently, which means that an interpreter can be available within a couple of minutes. According to one of the respondents an unwritten rule applies with the Police that an interpreter should be present within half an hour. Challenging of interpreters is an exception and little is known with regard to complaints against interpreters.

Multiple interviews have revealed that the child concerned has a good command of Dutch and that the interpreter in these cases was of more importance for the parents than for the child itself. Generally, there appears to be a 'better safe than sorry' attitude when it comes to the decision to appoint an interpreter:

> *"When it comes to interrogation, you must ensure that there is no room for doubt".*

That is the case because it is also important for the investigators that the suspect understands the proceedings well. Otherwise, the Public Prosecution Office runs the risk that evidence is excluded.

With regard to the right to translation, there is more criticism. The interviews reveal that there is disagreement with regard to the necessity to translate certain materials of the case, which seems to be largely instigated by the costs brought about by these translations.

Criteria for the selection of interpreters
There seems to be consensus about the fact that in case of doubt an interpreter should be commissioned. In practice, it is predominantly left to the reporting officer to determine if it is necessary to call upon an interpreter. This corresponds to the information obtained during the desk research. This means that differences can exist between regions or even within certain police stations. The Indication assistance of interpreters and translators provides the reporting officer with certain pointers by stating that the criteria for determination are as follows: "the suspect understands the questions asked or notifications made, the suspect is able to give his own version of the events on which his statements are required and the suspect is able to include enough nuances in his version of the events". When questions are only answered with "yes" and "no", it must be assumed that the suspect has insufficient command of the Dutch language. In case of doubt, an interpreter is always commissioned.

214 Art. 9 paragraph 1 Wbtv.
215 Art. 9 paragraph 2 Wbtv.
216 Per year: 2015 (0); 2014 (6); 2013 (1); 2012 (0); 2011 (1).

In case the suspect indicates that he is unable to make statements in Dutch, an interpreter is called upon as well. The fact that almost all respondents reported that in case of doubt an interpreter is always called in, poses the question whether the absence of more specific criteria in practice leads to a deterioration of the legal position of child suspects.

Telephonic versus face-to-face interpretation

There is a difference of thoughts with regard to telephonic interpretation. A number of respondents indicated that although telephone interpreting enables that an interpreter is rapidly available, it constitutes a disadvantage as compared to *face-to-face* interpreters, as part of the communication is lost. Others have stated that an interpreter is, in principle, nothing more than a service-hatch for what is said and that for a well-trained interpreter it should not make a difference if the interpretation was conducted *face-to-face* or by phone. One of the respondents noted that the possibility of setting up a head office was being investigated, through which video connections can be made with an interpreter, as this has the advantage of, to a certain extent, enabling registration of non-verbal communication.

Independence interpreters/confidential conversations with lawyers

An interesting issue raised by a number of respondents concerns the independence of interpreters who interpret both during the interrogation and at during the confidential discussion between the child suspect and his lawyer. It seems to occur on a regular basis that an interpreter who is called up for the interrogation is also commissioned as interpreter for the consultation assistance which is provided to the child suspect. More than that: according to the Indication assistance of interpreters and translators the child should be explicitly alerted to this possibility when he is informed about his right to consultation assistance. It may also occur that this interpreter also operates as an interpreter if the interrogation is interrupted for consultation between the child suspect and his lawyer. Although an interpreter in theory does not act as more than a service-hatch, an interpreter may be brought into a difficult situation because of this. After all, information can be discussed between the lawyer and child suspect with the intent that this remains confidential and is not to be shared with the investigating officers. A suspect is not obliged to answer, nor can the suspect be expected to make statements that jeopardise his defence. Although a number of interpreters indicated that this would not pose a problem for a good interpreter, others noted that it can be difficult to do this. One interpreter who gives training to other interpreters mentioned that through his facial expressions or mimicry an interpreter always unintentionally gives away more than one would expect. It can, therefore, not be guaranteed that no additional information is provided other than the verbatim information that is being interpreted.

Quality of the interpreters

To guarantee the quality of interpreters a register was created in which interpreters can only be registered when the quality requirements are met. More detailed quality requirements are not specified by the European Directive. A number of parties have an appointment obligation to ensure that, in principle, only registered interpreters are commissioned and the quality is, hence, as good as possible. It appears from the desk research that the number of complaints about interpreters is low. Nevertheless, from multiple interviews it has arisen that from time to time there are doubts regarding the work of the interpreter. Some lawyers have specified that an interpreter sometimes seems to use many extra words to translate something, which gives the impression that more is said than solely that what is to be translated. The difficulty here is, of course, that the lawyer does not have command of the language of the interpreter and the work of the interpreter, by consequence, insufficiently controllable. It is also interesting that several interpreters have indicated that an interpreter can be registered too rapidly in the register. The educational requirements that are set are not sufficient to guarantee qualitative interpretation. For example, it is reported that an HBO-education as an interpreter stands in stark contrast to a university interpreter education. One interpreter indicated that the police regularly sends interpreters away, due to the poor quality of their interpreting work.

> *"My criticism of the practice? I think you can ask for education. The requirements to be registered should be strengthened."*

A number of interpreters also noted that interpreters should have knowledge of the development of and interaction with children.

Part of the interpreters appear to have moved up from the so-called alternative list to the register, just by virtue of a lapse of time and without taking any additional actions.

Deaf children or children with hearing or speech impediments

The right to interpretation for deaf children or children with a hearing impediments seems to be an exception to the general consensus that this right is well established for child suspects. A sign language interpreter indicated that far too often these children are considered to receive sufficient assistance of a family member or acquaintance, whereas they are not equipped at all to operate as an interpreter. According to this interpreter, this is not an adequate solution and these child suspects have the right to assistance of a qualified and specialized sign language interpreter. The reason for this is that there should be knowledge about the (language) development of these children, a development that is different from that of children with adequate hearing.

Translation of documents

With regard to the translation of documents, there does not appear to be clarity among the respondents as to which documents should be regarded as essential. The summons is the most consistently named document that should be translated in any case. Generally, it is noted that actually most materials of the case can be classified as essential, but that it is at the same time impracticable to translate everything. Not least because of the costs. The current policy is that documents up to 2500 words, in principle, are translated upon request. An investigating officer indicated that all materials of the case are, in principle, relevant, but that translation of all materials is rare. As a child suspect you must understand what you are being suspected of. If the lawyer thoroughly goes through the documents with the suspect, there is not an immediate problem. Yet, it is not uncommon that reference is made to a specific page from the official record which states that the suspect has made a certain statement; in that case it is difficult for the child to defend himself against this allegation if he has no translated documents. A number of lawyers notes that – especially in large cases and in particular with the Public Prosecutor - it is difficult and that one ''sometimes has to beg" to have certain documents translated. One lawyer indicated that it is not always a problem not to have certain documents translated for the suspect, as the suspect still does not benefit from a literal translation due to the language use. One interpreter noted that the judgment is rarely translated.

Judges point out that they check the assistance of the interpreter.

> *"I also check in the criminal file if, in the previous phase, adequate legal assistance was provided with an interpreter."*

One judge mentioned that in the case of ambiguity or doubt, an inquiry is made with the Public Prosecutor:

> *"I supervise that the child has an adequate defence and adequate assistance by an interpreter during court sessions and I observe whether the child and the interpreter understand each other well. I check in the criminal file if the child, in the previous phase, also had appropriate legal assistance and assistance of an interpreter. And if I discover elements that are not sufficient or receive comments from lawyers about this, I will inquire with, for example, the Public Prosecution Office."*

III.5 Positive-and focus points with regard to the right to interpretation and translation for non-Dutch child suspects

The 2010/64/EU Directive with regard to interpretation and translation is already implemented in The Netherlands. When the current Dutch legislation and policy is assessed in the light of the provisions of the Directive, the conclusion is that these largely meet the requirements of the Directive. Also from the interviews a generally positive picture arises. In general, there seem to be few problems with the right to an interpreter for child suspects. This is different from the right to translation of documents. Moreover, there does not appear to be a difference in treatment of child suspects with the Dutch nationality and child suspects without the Dutch nationality. Still, there are a number of issues that merit attention. Below both a number of positive elements and a number of points of concern regarding the right to interpretation and translation are highlighted.

Positive elements

Wide offer, available in time

It is positive that there are a large number of interpreters available in The Netherlands. For common languages there do not appear to be any problems to arrange an interpreter at short notice. It makes a difference that The Netherlands is a small country where distances are covered easily. There is also an extensive network for telephone interpreters and, hence, the accessibility of interpreters is good. This may even be extended in the future, with additional opportunities to get in contact with an interpreter via video-connection. Sometimes there are exceptions when it comes to languages that are spoken by relatively few people. The question is whether or not this can ever be alleviated completely. The current influx of refugees in Europe, which The Netherlands has to face as well, has resulted in a larger demand for interpreter assistance. The interviews reveal that this increased demand is indeed noticeable, but as of yet has not led to any problems.

Awareness among professionals of the importance of interpreters

The awareness of the relevance of the presence of interpreters seems large. Virtually all respondents specify of their own accord that it is important that an interpreter is arranged when the child suspect has no or insufficient command of the Dutch language. This awareness is also great among investigating officers. Undoubtedly, this is partly due to the fact that the Public Prosecution Office has an interest in the understanding of the suspect about what he is being asked and in the correctness of his statements. This great awareness is undoubtedly the reason why it has been said numerous times: *"when in doubt, we always arrange for an interpreter".*

Quality register

With the introduction of a special register it is expressed that interpreters and translators can be expected to meet certain quality requirements. The importance of quality interpretation and translation work is underlined by the appointment obligation which was established for the Administrative Jurisdiction Division of the Council of State, the Courts of the Judiciary, the Public Prosecution Office, the immigration and naturalization service, the police and the Royal military police.

Points of concern

Requirements of the quality register

Although it is positive that a quality register exists, the mere existence of it does not guarantee that the provided services are indeed of high quality. From the Directive it follows that Member States must ensure that the interpretation and translation is of "sufficient" quality to ensure a fair course of proceedings. It is not specified as to what the quality standards should be. Particular attention is drawn to the relevance of knowledge of the development of and interaction with children. Training on this matter could be offered as part of the education.

From multiple interviews with interpreters it appears that they consider it too easy to be registered in the register. Insufficient requirements are imposed for registration, which calls in question the added value of the register. The number of complaints against interpreters is low. Within the framework of this research it was not investigated what could be the cause for this. It could indicate that the clients of interpreter and translation services indeed have no complaints.

It could also mean that they – for one reason or another – do not report this. In any case it is relevant to examine whether or not the requirements that are currently imposed suffice. It is important to have a register large enough to guarantee plenty of offer. At the same time, admission to the registry should not be so easy that there is nothing left of the quality standards. At the moment when no sworn interpreter or translator is available and it is not possible to wait until one is available, it is currently an option to call in an interpreter or translator from the alternative list. This deviation is recorded and explained. From a quality point of view, it is preferable to clarify which requirements a registered interpreter would have to comply with and to ensure that this is strictly adhered to. In one of the interviews it was put forward that some interpreters who were on the alternative list were at a certain moment included in the registry, just because of a lapse of time. This way the quality of registered interpreters cannot just be taken for granted.

Determining the need for an interpreter
It is often the reporting officer who determines if an interpreter should be called upon. In light of the fairness of the proceedings, there seems to be a lot of awareness as to the necessity of commissioning an interpreter if the suspect has no or insufficient command of the Dutch language. In practice the respondents seem to agree that, in general, this does not pose any real problems. The current pointers from the Indication assistance of interpreters and translators for the decision to call upon an interpreter, seem to be sufficient.

The only group for which it has been reported that there is not always an interpreter called in when this is necessary, are deaf children and children with a hearing impediment. A sign language interpreter specified that it occurs regularly that written communication or interpretation by an acquaintance or family member is considered sufficient. This should not be an acceptable alternative as the language development of these children differs from that of children without a hearing impediment, which is also reflected in their writing skills. In addition, acquaintances and family members have not been trained to interpret and therefore it cannot be guaranteed that the information is conveyed without their own interpretation. In addition, they are often not informed about certain legal language, which is necessary in criminal proceedings.

Independence interpreter/confidentiality communication with lawyer
Another point of concern is linked to the confidentiality of the communication between the child and his lawyer. It occurs that the interpreter, who has operated during an interrogation, also acts as an interpreter during the confidential conversations between the child and his lawyer. Whereas some interpreters indicate that this is not a problem as they are nothing more than a service-hatch, other interpreters report that this actually should not be the case. These respondents indicate that this means that the confidentiality of the conversation between the child and his lawyer cannot be guaranteed.

Translation materials of the case
For a number of materials of the case, it applies that relevant parts thereof must be – ex officio - translated in writing, if the accused has no or insufficient command of the Dutch language. The essential materials of the case, according to the Directive, include in any case detention decisions, the charge or summons, and judgments. The interviews reveal that the materials of the case are not always translated. An interpreter indicates that she regularly notices that judgments are not translated, although this is obligatory according to the Directive. It is unclear if, in these cases, the judgment has been communicated to the child orally. If this is the case, the Dutch State in principle does not have the duty to translate the document.

Regarding the question on what is essential, there is a difference in thought. Yet, it strikes that it is often stated that statements of the child suspects ought to be included. At the same time, it is reported that these statements are rarely translated. According to the law it is possible to file a request for a translation with the Public Prosecutor or the court. Especially when the request has to be directed to the Public Prosecutor the request not seldom seems to be declined a lot of time and effort needs to be devoted to substantiate the request. The current Dutch policy is that requests for translations exceeding 2500 words always need to be thoroughly substantiated. Some lawyers indicate that it sometimes is a task in itself to arrange for a translation. Costs play a role in this matter, which is not entirely incomprehensible. However, such costs should never be the reason that a child suspect is impaired in his means of defence.

Another point of concern is the translation of punishment orders, which are taken by another authority than a court competent in criminal matters. The Netherlands derives from article 1, paragraph 3, of the Directive that, strictly speaking, there is no obligation for the translation of punishment orders issued by the Public Prosecutor. Here the assumption is that punishment orders issued by the Public Prosecutor concern minor offences. Because it cannot be said that punishment orders issued by the Public Prosecutor for offences necessarily encompass a 'minor' offence, it has been determined that these punishment orders do fall under the scope of the Directive. This is in contrast to punishment orders regarding misdemeanours. Both types of punishment orders can be objected and at that moment the obligation to translate does exists. However: when the punishment order for a misdemeanour is not translated, how can an informed choice be made with regard to filing an objection?

IV. EU Directive 2012/13: The Right to Information in Criminal Proceedings

IV.1 The content of the Directive

The Directive 2012/13/EU contains rules concerning the right to information in criminal proceedings (hereinafter: Directive 2012/13/EU) and contains minimum standards for the provision of information on the rights of suspects and the accusation against persons suspected or accused of a criminal offence.[217] The aim of the Directive is to ensure that information is provided when suspects are arrested or detained, so that they can carefully prepare their defence and the right to a fair trial is guaranteed.[218] The right to information applies from the time someone is informed of the criminal offence that he is suspected or accused of. The right applies until the concluding of the proceedings, that is, until it determined final decision has been taken on whether or not the person in question has committed the criminal offence. This includes sentencing and the outcome of possible appeals.[219] The Directive applies to all persons and, therefore, it also applies to children.

Information with regard to rights
Suspects should be provided immediately with information by a written declaration of their rights. This declaration must be drawn up in understandable terms.[220] The declaration must contain all the information he needs to prepare his/her defence and is provided with a view to fairness of proceedings.[221] The Directive determines that a right to information exists at least with regard to the following procedural rights:[222]

a) the right to access to a lawyer;
b) the right to free legal assistance;
c) the right to information with regard to the accusation;
d) the right to interpretation and translation;
e) the right to remain silent.

The information is provided *orally* or *in writing*, in *simple* and *accessible*[223] wording. It shall take into account any specific need of vulnerable suspects. [224]

Written declaration of rights upon arrest
In addition to the information mentioned above, which can be provided orally or in writing, suspects who have been arrested or detained should be provided with a *written letter of rights.* The suspect should be allowed to keep this letter of rights in his possession for as long as he is deprived of his liberty.[225]

In addition to the above-mentioned rights (a through e), the letter of rights should contain information with regard to:[226]

f) the right of access to documents from the file;
g) the right to inform consular authorities;
h) the right of access to emergency medical assistance;
i) the maximum number of hours or days in detention before they are brought before a judicial authority.

217 See consideration 20 Directive 2012/13/EU. The term 'accusation' is used to describe the same concept as the term 'charge' used in Article 6 paragraph (1) ECHR, according to consideration 14.
218 See consideration 22, Directive 2012/13/EU
219 Article 2 Directive 2012/13/EU. Furthermore, from paragraph 2 it can be inferred that according to national legislation for minor criminal offences a sentence may be imposed by a competent authority other than a criminal court – and if an appeal has been opened against the imposition of this sentence- then the Directive only applies to the proceedings before this Court (as a result of the appeal).
220 See consideration 22 Directive 2012/13/EU.
221 See consideration 27 Directive 2012/13/EU. The Directive contains an indicative model for such a declaration.
222 Art. 3 Directive 2012/13/EU.
223 See also art. 4 paragraph 4 Directive 2012/13/EU.
224 Art. 3 paragraph 2 Directive 2012/13/EU. See also consideration 26 Directive 2012/13/EU.
225 Art. 4 paragraph 1 Directive 2012/13/EU.
226 Art. 4 paragraph 2 Directive 2012/13/EU.

Additionally, basic information should be provided on the possibilities of challenging the legality of the arrest, of obtaining a review of the detention and the possibilities of requesting provisional release.[227] The written declaration must be drafted in a language that the suspect understands. If there is no declaration of rights available in such a language, then the content of the declaration must be provided orally in a language that he understands.[228] For this purpose an interpreter can be appointed.

Right to information with regard to the accusation[229]
It is important that the suspect receives information with regard to the offence of which he or she is accused of as soon as possible.

This includes information with regard to
a) the nature and legal classification of the offence;
b) the nature of the involvement of the accused;
c) the right to information about the reasons for the arrest or detention;
d) the right to receive information without delay if changes occur in the provided information.

The right of access to the materials of the case[230]
Suspects have the right of access to the documents of the case. This entails access to all the essential supporting documents which the authorities have and which are incriminating or exonerating for those involved.[231] The (information from these) materials of the case shall be provided and be as detailed as necessary in order to ensure the fairness of the proceedings.[232] It is possible to refuse access to certain documents. However, this can only occur when the right to a fair trial is not jeopardised and if providing access to the documents seriously compromises the life or rights of another person. The access can also be refused if the refusal is strictly necessary to safeguard an important public interest.[233] The decision to refuse must be taken by a judicial authority or at least be subject to a review by a judicial authority.[234] Access to the materials of the case is required to be free of charge.[235]

Registration obligation
When information is provided in accordance with this Directive, the competent authorities should take note of this in accordance with existing recording procedures under national law.[236]

IV.2 The status of the Directive in The Netherlands

The Directive was incorporated into national legislation on the 5th of November, 2015 through the law "Implementation of Directive 2012/13/EU of the European Parliament and the Council from the 22nd of May, 2012 concerning the right to information in criminal proceedings (OJEU L 142)".[237] This law came into effect on the 1st of January, 2015.[238]

227 Art. 4 paragraph 3 Directive 2012/13/EU.
228 Art. 4 paragraph 5 Directive 2012/13/EU.
229 Art. 6 Directive 2012/13/EU.
230 Art. 7 Directive 2012/13/EU.
231 It is hereby noted that certain documents may be refused if the life or rights of another person are seriously compromised or if this is strictly necessary to protect an important general interest, see art. 7 paragraph 4 Directive 2012/13/EU.
232 Art. 7 Directive 2012/13/EU.
233 Art. 7 paragraph 4 Directive 2012/13/EU.
234 Art. 7 paragraph 4 Directive 2012/13/EU and article 8 paragraph 2 Directive 2012/13/EU.
235 Art. 7 paragraph 5 Directive 2012/13/EU. See also consideration 22 and 34 Directive 2012/13/EU. This is without prejudice to the provisions of national law which provides for the payment of fees for copies of documents from the file or for transmission of documents to the persons concerned or their lawyer.
236 See consideration 35 Directive 2012/13/EU.
237 Stb. 2014, 433.
238 Stb. 2014, 434.

IV.3 Rules and policies on the right to information in The Netherlands

Suspects in The Netherlands have a right to (of access to) certain information. In addition, suspects may derive certain procedural rights from article 6 ECHR.[239] As a result of Directive 2013/13/EU, an article was added to the Code of Criminal Procedure, as per 1 January 2015. Additionally, the Law on the Surrender of Persons (*Overleveringswet*) was adapted. Below an overview is given of the Dutch laws and regulations concerning the right to information.

Right to information with regard to the accusation

The Code of Criminal Procedure contains a number of articles, that refer to information, which a suspect is entitled to. Thus, article 27c CCP determines that the suspect, upon his apprehension or arrest, is made aware as to what offence he has been identified of as a suspect. The arrested suspect, is provided, as soon as possible after arrest – and in any case before his interrogation – with written notification of:[240]

a) the right to receive information with regard to the offence of he which he is suspected;
b) the right to legal assistance;
c) the right to interpretation and translation;
d) the right to remain silent;[241]
e) the right to take notice of the materials of the case;[242]
f) the period within which arraignment before a judge will take place;
g) the possibilities for requesting a removal from or suspension of pre-trial detention;
h) possible other rights which are embedded in a general administrative order.

If the suspect is not apprehended or arrested, then the notification with regard to the charge of the criminal offence will take place at the latest before the first interrogation.[243] Prior to his first interrogation, the suspect is to be notified of his right to legal assistance and the right to interpretation and translation.[244] The right to be informed with regard to consultation assistance and assistance during the police interrogation is further regulated in the Instruction legal assistance police interrogation. This Instruction specifies that a counsellor must be present at the interrogation, if the suspect so requests. However, the Instruction does not state any obligation to advise the suspect of this possibility. If a suspect does not or insufficiently understands the Dutch language, the notification is provided in a language he understands.[245] Please refer to the earlier paragraphs on the right to interpretation and translation.

Information in Summons

The summons should mention which criminal offence the suspect is being charged with, where and when this offence occurred and according to what provision that conduct is punishable by law.[246] There must be a period of at least 10 days in between the summons and the day on which the accused is to appear at the court session.[247] The suspect must be notified by the Public Prosecutor of changes to the summons or its cancellation, in writing.[248]

The right to inspection of materials of the case

The suspect has a right of inspection with regard to the materials of the case.[249] This right encompasses the right to inspect those materials that can form the basis of the judgment.[250] Forwarding of file documents will not take place if this seriously harms the interest of the investigation as a result.[251]

239 G. de Jonge & A.P. van der Linden, Handboek Strafzaken, paragraaf 72.1.3.
240 Art. 27c paragraph 3 CCP.
241 As specified in art. 29 paragraph 2 CCP.
242 As set forth in Arts. 30 through 34 CCP.
243 Art. 27c CCP.
244 Art. 27c paragraph 2 CCP.
245 Art. 27c paragraph 4 CCP.
246 Art. 261 CCP.
247 Art. 265 paragraph1 CCP.
248 Art. 266 CCP See arts. 313-314 CCP for those cases where the court hearings have already begun.
249 Art. 23 paragraph5 CCP
250 HR 8 July 2003, *NJ* 2003, 636. If the complainant did not get to inspect the documents that form the basis of a court decision, there may be a substantial nullification of the decision.
251 Art. 23 paragraph 6 CCP.

The Public Prosecutor is responsible for granting access to the file when the suspect requests for this. The suspect may request the magistrate judge to set a time limit within which the Public Prosecutor is to provide information to the accused, when it appears that the prosecutor was at fault for not providing the requested information.[252] The Public Prosecutor can withhold the disclosure of certain materials of the case.[253] When this occurs, the Public Prosecutor, must notify the suspect in writing that the file is not complete and the suspect may, within fourteen days of having been notified, initiate a complaint with the magistrate judge.[254]

There are, however, a number of materials of the case that cannot be withheld from the suspect:[255]

- The official record of his/her interrogation;
- the official record of the interrogations or investigation measures, where the suspect or his/her lawyer must have been present;[256]
- the official record of the interrogation, where the total content is communicated orally to the suspect.

The suspect is allowed to receive copies of the documents to which he is granted access.[257] The Public Prosecutor may decide that a copy may not be provided in the interest of the protection of personal privacy, the investigation and prosecution of criminal offences or on weighty reasons of public interest.[258] This is communicated to the suspect in writing.[259] The suspect may object to such a decision by the Public Prosecutor with the magistrate judge, within fourteen days.[260]

The materials of the case may not be withheld from the suspect when the suspect has been served with the summons or a punishment order issued by the Public Prosecutor is issued.[261] The accused also has the right to request that the Public Prosecutor add documents to the process file.[262]

Registration obligation

Officials responsible for the investigation of criminal offences have the general obligation to document their findings in an official record.[263] The official record shall document the notification of rights.[264]

Law on the surrender of persons

Persons for whom there is an outstanding European arrest warrant, an alert in the Schengen information system, or for whom there is an outstanding warrant through Interpol summoning for their arrest and extradition, must receive a written notification of their rights as soon as possible, including information on:[265]

- the right to a copy of the European arrest warrant;[266]
- the right to be assisted by a lawyer;[267]
- the right to interpretation and translation;[268]
- the right to be heard.[269]

The wanted person who does not or, or insufficiently, understands the Dutch language, must be notified in writing of his rights in a language that he understands.[270]

252 Art. 30 paragraph 2 CCP.

253 Art. 30 paragraph 3 CCP.

254 Art. 30 paragraph 4 CCP.

255 Art. 31 CCP.

256 Unless and insofar from the official record a circumstance arises, which in the interest of the investigation, he must temporarily remain unaware of and in connection thereof, an order as meant by article 50 second paragraph, is issued.

257 Art. 32 paragraph 1 CCP.

258 Art. 32 paragraph 2 CCP.

259 Art. 32 paragraph 3 CCP.

260 Art. 30 paragraph 4 CCP.

261 Art. 33 CCP.

262 Art. 34 CCP.

263 Art. 152 CCP.

264 Art. 27c paragraph 5 CCP. See art. 29 paragraph 3 CCP for the registration obligation to inform the suspect of his right to remain silent. Also, in the Instruction legal assistance police interrogation it is specified that the notification of rights must be documented in the official record.

265 Art. 17 paragraph 3 Law on the Surrender of Persons.

266 Art. 23 Law on the Surrender of Persons.

267 Art. 30 and 62 Law on the Surrender of Persons.

268 Art. 30 Law on the Surrender of Persons, jo. art. 275 and 276 CCP.

269 Art. 24 Law on the Surrender of Persons.

270 Art. 17 paragraph 3 Law on the Surrender of Persons.

Additional changes in connection with the implementation of EU Directive 2013/48/EU
If the law "Implementation of Directive 2013/48/EU of the European Parliament and the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and the right to have a third party informed of deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L294)" is adopted, a number of changes will take place that are relevant to the right to information. For example, it will be added to article 27c paragraph 3, that the suspect has the right to notify a person of his/her deprivation of liberty and the right to inform the consulate of this.

IV.4 The practice on the right to information in The Netherlands (interviews)

As with the right to interpretation and translation, it appears from the interviews held that there is no difference with regard to the information provided to child suspects without the Dutch nationality, in comparison to children with the Dutch nationality.

None of the respondents could precisely indicate the rights the child suspect should be informed of, according to the Directive on the right to information. Police respondents have indicated that a brochure is available in a multitude of languages, which is provided to child suspects. This is confirmed by the lawyers, although they note that provision of the brochure is new and has only occurred for a short period of time. This brochure [271] states - in accordance with the Directive - information with regard to:

- the right to remain silent;
- the right to consultation assistance;
- the right to a lawyer and a short description of the role of the lawyer;
- the right to assistance by the lawyer or a counsellor;
- the right to interpretation and translation;
- the right to notify a third party of the deprivation of liberty;
- the right to contact with consular authorities;
- the maximum duration of the stay at the police station;
- the right to medical assistance.

Not focused on children
Although the brochure is easy to read for adults, it is questionable whether this also to the case for children. This is an often-heard comment from the interviews: do children understand the information that is provided them? In addition, several respondents indicate that often enough information is provided to the children, but as a result of the stressful situation in which they find themselves they do not fully process that information. It is often regarded as the task of the lawyer to be alert that the child suspect has received all the necessary information and that additional explanation is provided as needed. One lawyer specified that he always checks what the child has been told. Another lawyer indicates that the court also always reviews the information provided to the child.

A sign language interpreter specified that for children who are deaf or have a hearing-impediment, adequate information material is not available. They are usually provided with a brochure that is accompanied with a notification that they "have to tell everything". These children turn to people from their nearby surroundings for information, such as a parent or a friend. The respondent indicates that it is important that these persons are aware of the rights of the child.

Inform parents/legal representatives
In the brochure that is provided by the police, it is indicated that the police only call a family member or roommate to inform that the suspect is being held, at the time the decision was made to keep the suspect longer at the (police) station. However, according to the Directive, that right exists from the moment of detention and not only from the moment when it is decided that the suspect will be held longer.

271 Information sheet" You are suspected of an offence" from the Education Administration of the Ministry of security and justice, dated. March 2016 This information sheet should be available in approximately 20 languages and should be printed from the police station in the desired language.

In addition, the impression is made that it is up to the police to decide who is called, but it is the suspect – save exceptions - who is permitted to indicate who he wants to be called. From the interviews it follows that generally parents have already been called when the lawyer or interpreter speaks to the child. One lawyer indicated however, that this varies and the police regulations sometimes complicate that contact is established between the child and his parents/ legal representatives. It is noted by this lawyer that it is up to the lawyer to act when this is the case.

IV.5 Positive-and focus points with regard to the right to information for non-Dutch child suspects

The 2012/13/EU Directive on the right to information has also already been implemented in The Netherlands. National legislation on the right to information largely complies with the requirements of the Directive. The interviews reveal that child suspects – albeit recently – receive a brochure where an explanation is provided with regard to their rights. This brochure can be printed in many languages at the police stations and contains the information that should be provided in the letter of rights, according to the Directive. There does not appear to be a difference in treatment based on whether or not someone has the Dutch nationality.

Following below are a number of positive points as well as a couple of focus points with regard to the right of information to child suspects.

Positive points

Written information in multiple languages

The existence of a brochure in which all necessary rights are described, is very positive. The brochure appears to be available at all the police stations via a digital system, and is available in 20 languages. The brochure does not only contain the minimum information required by the Directive but also additional information about the procedure.

Check to see if information was received

Public Prosecutors as well as lawyers and judges report that they check if the child suspect has received information with regard to his right to be assisted by a lawyer or an interpreter, information on the course of the proceeding and the offence of which he is suspected. That fact that this check is carried out by different parties, is also very positive. In case the child has not received this information, this can then still be given.

Focus points

Information is not specifically focused on young people

The brochure that is available, does not seem specifically focused on juveniles. For older juveniles, the brochure is likely understandable, but it is not as obvious that it is understandable for younger suspects. In addition, there is no information material available for juveniles who do not cope well with regular written information, such as for example for deaf children or children with a hearing-impairment. In the interviews it is indicated that alternative forms of information provision are to be used, based on the fact that their language development is different.

Inform parents/legal representatives

From the interviews it seems that there are no major problems with regard to informing parents or legal representatives about the deprivation of liberty of their child. Still, a lawyer reported that being able to maintain contact with parents does not always go smoothly, due in part to the regulations of certain police stations. On the basis of article 490 jo. article 50 CCP, parents or guardians must have free access to the accused child, unless – at the individual level – restrictions are imposed. Restrictions can only be imposed where this is in the interest of the investigation or the order is absolutely essential.[272]

272 Art. 62 CCP

V. EU Directive 2013/48/EU: The Right of Access to a Lawyer, the Right to have a Third Party Informed upon Deprivation of Liberty and the Right to Communicate with Third Persons and with Consular Authorities

V.1 The content of the Directive

The Directive 2013/48/EU (hereinafter: Directive 2013/48/EU) contains minimum rules concerning (a) the right of **access to a lawyer** in criminal proceedings and in European arrest warrant proceedings, (b) the right to have a **third** party informed upon deprivation of liberty, and (c) to **communicate with third parties and consular authorities** during deprivation of liberty. These minimum requirements assure a fair trial pursuant to article 6 of the ECHR.[273] The Directive applies to all persons and, therefore, also to children.

The rights set out in Directive 2013/48/EU apply from the time someone is informed of the criminal offence that he is suspected or accused of. The right applies until the concluding of the proceedings, that is, until it determined final decision has been taken on whether or not the person in question has committed the criminal offence. This includes sentencing and the outcome of possible appeals criminal offence.[274] The Directive also applies to persons against whom a European arrest warrant has been issued, from the time of arrest by the Member State who executed the arrest warrant.[275] It is explicitly stated that the Directive is fully applicable in any case – regardless of the phase of criminal proceedings – when the suspect is deprived of his freedom.[276]

Use terms lawyer-counsel

The Directive refers to access to a lawyer. This means "a person who, in accordance with national law, is qualified and entitled, including by means of accreditation by an authorised body, to provide legal advice and assistance to suspects and accused persons".[277] The Dutch Code of Criminal Procedure, for technical reasons, speaks of "counsellor". For this report it was decided to adhere to the text of the Directive, for which reason the term "lawyer" is used.

273 Art. 1 Directive 2013/48/EU. See also consideration 12.

274 Art. 2 Directive 2013/48/EU.

275 Art. 2 paragraph 2 Directive 2013/48/EU.

276 Art. 2 paragraph 4 sub b Directive 2013/48/EU.

277 See consideration 15 Directive 2013/48/EU.

a. The right of access to a lawyer

The suspect has right of access to a lawyer:[278]

- prior to an interrogation (consultation assistance);
- when investigations- or other measures are performed in the context of gathering evidence;[279]
- as soon as possible after deprivation of liberty;
- within a reasonable time period before he/she must appear in court.

Member States should ensure that suspects have access to a lawyer without undue delay. In any case, there has to be access to a lawyer during criminal proceedings before trial.[280] With the implementation of this Directive one should take into account the provisions of Directive 2012/13/EU, which mandates that suspects obtain information, without delay, on the right of access to a lawyer.[281] Member States are required to provide general information to help suspects find a lawyer.[282]

Confidentiality communications[283]

The right of access to a lawyer includes a number of elements. The first is to be able to communicate with each other privately.[284] The confidential character of communication with the lawyer is essential for the effective exercise of the right of defence and should therefore, be ensured at all times.[285] The confidentiality of communications does not just apply to meetings in person, but also to the exchange of letters, phone calls and all other forms of communication that are allowed under national law.[286]

Assistance during an interrogation (interrogation assistance)[287]

Lawyers must be present at the interrogation and be allowed to actively participate.[288],The national procedures are to be followed, however these procedures may not prejudice the effective exercise and essence of the right to assistance.[289] Their presence should be noted in accordance with national laws.[290]

Renouncing the right to a lawyer

The Directive requires that clear and sufficient information is given on the content of the right to a lawyer, in understandable terms – orally or in writing – as well as on the possible consequences of renouncing that right.[291] Renunciation of the right to a lawyer can only occur if this is done voluntarily and unequivocally.[292] This can be done orally or in writing, provided that it is documented and the opportunity exists to revoke this decision, at any time.[293]

Exceptional circumstances

In very exceptional circumstances, Member States may temporarily derogate from the obligation to provide access to a lawyer without undue delay the right after deprivation of liberty, in the preliminary investigation stages. This may occur when the geographical distance between the suspect on the one hand and the lawyer on the other hand, makes it impossible to exercise this right immediately after deprivation of liberty.[294] In addition, it is – once again at the pre-trial stage – allowed to temporarily derogate from the right of access to a lawyer when this is (a) imperative to prevent serious negative consequences for the life, freedom or physical integrity of a person or (b) where urgent action by the authorities is necessary to prevent substantial jeopardy to the criminal proceedings.[295] It is important that temporary deviations should be proportionate, should have a limited duration, may not be based solely on the type of criminal offence or its severity and may not impinge on the overall fairness of the proceedings.[296]

278 Art. 3 paragraph 2 Directive 2013/48/EU.
279 Such as (multiple) confrontations and reconstructions of the crime scene, see art. 3 paragraph 3 sub c Directive 2013/48/EU.
280 See consideration 19 Directive 2013/48/EU.
281 See consideration 14 Directive 2013/48/EU.
282 Art. 3 paragraph 4 Directive 2013/48/EU.
283 Art. 3 paragraph 3 sub a Directive 2013/48/EU.
284 See consideration 22 and 33 Directive 2013/48/EU and art. 3 paragraph 3 sub a Directive 2013/48/EU.
285 Art. 4 and consideration 33 Directive 2013/48/EU.
286 Art. 4 Directive 2013/48/EU.
287 Art. 3 paragraph 3 sub b Directive 2013/48/EU.
288 See consideration 25 Directive 2013/48/EU.
289 See consideration 25 Directive 2013/48/EU.
290 Art. 3 paragraph 3 sub b Directive 2013/48/EU. See also consideration 25.
291 Art. 9 paragraph 1 Directive 2013/48/EU.
292 Art. 9 paragraph 1 sub b Directive 2013/48/EU.
293 Art. 9 paragraph 2 and 3 Directive 2013/48/EU.
294 Art. 3 paragraph 5 Directive 2013/48/EU.
295 Art. 3 paragraph 6 Directive 2013/48/EU.
296 Art. 8 paragraph 1 Directive 2013/48/EU.

In addition, temporary deviations can only be allowed if the decision is taken on an individual basis, is properly motivated and is open to judicial review.[297]

b. The right to have a third party informed upon deprivation of liberty and to communicate with him/her[298]

Suspects or accused must – without undue delay – be allowed to inform at least one person of their deprivation of liberty.[299] For children, the person who has parental responsibility for the child, must be informed as soon as possible of the deprivation of liberty and the reason thereof. Exceptions are only allowed when it is not in the best interests of the child to inform that person. If this exceptional situation occurs, then another adult must be informed[300] and be allowed to communicate with the child, such as another family member.[301] Member States may derogate temporarily for the purpose of compelling or proportional operational requirements.[302] It can occur in the same cases where deviation has been made to the right of a lawyer, when this is (a) imperative to prevent serious negative consequences for the life, freedom or physical integrity of a person or (b) where urgent action by the authorities is necessary to prevent substantial jeopardy to the criminal proceedings.[303] If the suspect is a child and there is a deviation from the principle that the parents or another person are informed of the deprivation of liberty, then the authority who is obligated with the protection and the welfare of children is to be urgently informed of the deprivation of liberty.[304] It is important that deviations are proportionate, have a limited duration, and are not be based solely on the type or severity of the offence and may not impinge on the global fairness of the proceedings.[305] In addition, temporary deviations can only be allowed if the decision is issued on an individual basis by a judicial authority or any other competent authority, on the condition that there is a possibility for judicial review.[306]

With regard to the right to a lawyer in proceedings for the execution of a European arrest warrant, this is nearly equivalent to the situation described above.[307] It is worth mentioning that the Member State executing the European arrest warrant is obliged to inform the arrested person of the fact that he has the right to have a lawyer appointed in the Member State which executed the warrant, as soon as possible. That Member State is also obliged to provide assistance with finding a lawyer.[308]

Suspects who have been deprived of their freedom have the right to communicate with at least one person. This right may only be limited or deferred in view of imperative requirements or proportionate operational requirements.[309]

c. The right to communicate with the consular authorities[310]

Persons who are not nationals of the Member State, in which they are deprived of their liberty, have the right to inform consular authorities of the Member State of which they have nationality, of their deprivation of liberty and to communicate with them.[311] They have the right to be visited by their consular authorities, to maintain contact with them and to correspond with them. They may also be represented by their consular authorities, if they so desire.[312]

Children

The Directive contains a few specific provisions with regard to children. These provisions have already been mentioned above. It is also important that the considerations of this Directive state that the provisions of the Directive serve to promote the protection of the rights of children, taking into account the *Guidelines on child-friendly justice* of the Council of Europe.[313]

297 Art. 8 paragraph 2 Directive 2013/48/EU.
298 See art. 5 and 6 Directive 2013/48/EU.
299 Art. 5 paragraph 1 Directive 2013/48/EU.
300 Art. 5 paragraph 2 Directive 2013/48/EU.
301 See consideration 35 and 36 Directive 2013/48/EU.
302 See consideration 36 Directive 2013/48/EU.
303 Art. 5 paragraph 3 Directive 2013/48/EU.
304 Art. 5 paragraph 4 Directive 2013/48/EU.
305 Art. 8 paragraph 1 Directive 2013/48/EU.
306 Art. 8 paragraph 3 Directive 2013/48/EU.
307 Art. 10 Directive 2013/48/EU.
308 Art. 10 paragraph 4 and 5 Directive 2013/48/EU.
309 Art. 6 Directive 2013/48/EU.
310 Art. 7 Directive 2013/48/EU.
311 Art. 7 paragraph 1 and 2 Directive 2013/48/EU. See also consideration 37 Directive 2013/48/EU. If suspects have two or more nationalities, they can choose which consular authorities to inform and with which consular authorities they wish to communicate.
312 Art. 7 paragraph 2 Directive 2013/48/EU.
313 See consideration 55 Directive 2013/48/EU.

V.2 The status of the Directive in The Netherlands

On the 19th of February, 2015, the proposed law "Implementation of Directive 2013/48/EU of the European Parliament and the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in proceedings for the execution of a European arrest, the right to have a third party informed upon deprivation of liberty and to communicate with third parties and consular authorities during deprivation of liberty (OJ L294)" was submitted to the House of Representatives. The House of Representatives unanimously adopted the proposal on the 31st of May, 2016. The preliminary examination by the Senate's commission for Security and Justice took place on the 12th of July, 2016.[314]

V.3 Rules and policies on the right of access to a lawyer, the right to have a third party informed of deprivation of liberty and to communicate with third parties and consular authorities in The Netherlands.

Suspects have the right to be assisted by a lawyer in The Netherlands. Until the Salduz-judgment[315] the right did not immediately exist after arrest: the right to consult a lawyer prior to a police interrogation or have him/her present at the interrogation, did not yet exist. This right has since been established in policy, but not yet in legislation. If the legislation for the implementation of the Directive is adopted by the Senate this brings about a number of important changes.
In the following paragraph an overview is given of current Dutch laws and regulations on the right to a lawyer, the right to have a third party informed of the deprivation of liberty and to communicate with them and the right to have contact with consular authorities (para. V.3.1). The proposed changes are explained separately (para. V.3.2).

V.3.1 Current rules and policies

a. The right to legal assistance:[316]

Consultation assistance and Interrogation assistance
At present, the right to consultation assistance (assistance prior to interrogation) has not yet been established by law.[317] By law it is regulated that the suspect, within the framework of pre-trial detention (police custody), is allowed to be assisted by a lawyer, but the authorities do not have to provide facilities for this.[318] In practice, legal assistance is offered after the completion of a police interrogation and after an order for pre-trial detention (police custody) is issued against the suspect for a criminal offence, for which pre-trial detention is allowed.[319]

After the Salduz-ruling of the ECHR, the judgment of the Supreme Court of the 30th of June 2009[320] and the Instruction legal assistance police interrogation[321] (hereinafter referred to as: the Instruction) that was based on this ruling, a large change occurred in practice. The Instruction states that a suspect has the right to a consultation with a lawyer prior to a police interrogation.[322] This consultation and interrogation assistance applies only to arrested suspects.[323]

314 The preparations will take place together with those for Draft Bill 34.519 Additions tot the regulations on the suspect, lawyer and a number of coercive measures.
315 EHRM-arrest EHRM 27 November 2008, 36391/02 (*Salduz t. Turkey*).
316 This refers to the right to access of legal assistance of a lawyer, not to financed legal aid.
317 In art. 41 CCP it is established that legal counsel is added when the custody or continued remand in custody of the accused has been ordered or advanced, when there is an appeal in a case in which the pre-trial detention of the suspect is ordered.
318 Art. 28 paragraph 1 CCP and art. 57 paragraph 2 CCP.
319 *Kamerstukken II* 2014-15, 34 157, nr. 3, p. 14.
320 HR 30 June 2009, ECLI:NL:HR:2009:BH3079.
321 Stb. 2010, 4003.
322 Unless otherwise stated the information in this paragraph is taken from this Instruction.
323 HR 9 November 2010, ECLI:NL:HR:2010:BN7727and HR 11 June 2013, ECLI:NL:HR:2013:CA2555.

According to the Instruction, the police are required to advise children of the right to consult an attorney prior to the first in depth interrogation (consultation assistance).[324] Lawyers are assigned on the basis of the so-called stand by duty arrangement.[325] It is also possible to choose your own lawyer.[326] The Instruction determine that the suspect must provide sufficient information on this attorney, so he can be notified. In addition, the costs for this lawyer must be paid by the suspect. The stand by duty facility is open from 07:00 to 20:00 o'clock.[327] Outside of these working hours lawyers are not called for consultation assistance. Upon arrival the suspect is entitled to (confidentially) consult with his lawyer for half an hour. The Instruction differentiates between cases by referring to them as A-, B- and C-cases, depending on the gravity of the offence. For so-called A-and B-cases, consultation assistance must always occur in person and be free of charge. For C-cases, consultation via telephone suffices, unless this is considered an undesirable way of consulting. The suspect is given the opportunity to establish contact with his - chosen - lawyer, up to two times. The lawyer has two hours to appear at the station. If the lawyer cannot appear within 2 hours, in A-cases, the Public Prosecutor decides whether or not to begin with the interrogation. In B-cases this is decided on by the Assistant Public Prosecutor. In C-cases, there is no obligation to longer than two hours.

In addition to consultation assistance, children also have the right to so-called interrogation assistance.[328] This may be provided by a lawyer or a counsellor. This applies to all interrogations, not only the first interrogation. The police should advise the child of his rights. It is preferred, according to the Instruction, that children are assisted by their lawyer during the interrogation, but the child may choose to be assisted by a counsellor. The counsellor is allowed to attend the interrogation only if the child suspect requests for his presence.[329]

During the interrogation the lawyer should show restraint. The counsellor may not interrupt the interrogation and may not make contact with the suspect. Lawyers and counsellors who interrupt the interrogation may be removed, following a telephone consultation with the Public Prosecutor.

ZSM

As of 2011, the Public Prosecution Service, employs the ZSM-methodology in juvenile justice cases. The new approach is a multi-disciplinary one in which multiple partners work together to speed up the settlement process. As indicated earlier, the Public Prosecution Service, the police, the juvenile probation services, the Care and Protection Board and Victim Assistance in The Netherlands work together closely within the ZSM-methodology.[330] Cases that are handled via the ZSM approach are relatively simple cases in which a judicial case consultation is held, if a decision is not issued with regard to the subsequent steps within seven days. The manner in which cases can be resolved is listed in the Directive and framework for criminal procedure youth and adolescents.[331] Lawyers are not standard parties with the multi-disciplinary ZSM-procedure.

Renouncing the right to consultation and interrogation assistance

The main rule is that in A-cases it is not possible to renounce consultation assistance. In B- and C-cases, it is - in principle - possible. For children', exceptions apply:

- children between twelve and fifteen years of age who are suspected of a serious offence for which pre-trial detention is allowed, cannot renounce the right to consultation assistance;
- children, sixteen and seventeen years of age, cannot renounce the right to consultation assistance in A-cases. In B-cases, they can renounce the right to both consultation as well interrogation assistance;
- children between twelve and seventeen years of age can renounce both their right to consultation and interrogation assistance in a C-case.

324 Instructions for the introduction of these forms for consultation assistance were a result of the ECHR-judgment of 27 November 2008, 36391/02 (*Salduz t.*Turkey).

325 On the basis of the policy from the Legal Aid Board, lawyers receive a compensation for rendered consultation and interrogation assistance.

326 Art. 38 paragraph 1 and 2 CCP.

327 Notifications that are received after 20:00 are forwarded at 07:00.

328 HR 30 June 2009, ECLI:NL:HR:2009:BH3079, r.o. 2.6. As of recently, this interrogation assistance also applies for adults, see HR 22 December 2015, ECLI: NL: HR: 2015:3608 and the policy letter of the Board of Procurators General of the Public Prosecution Offices d.d. 10 February 2016 relevant "Raadsman bij verhoor per 1 March 2016'.

329 The confidant should also be present within two hours after he is called. If the confidant does not have command of the Dutch language an interpreter does not need to be provided. A person who is above age may appear as a confidant, belong to the immediate circle of the suspect and evidently is not involved with the criminal offence.

330 https://www.om.nl/vaste-onderdelen/zoeken/@24445/factsheet-zsm/, lastly checked on 13 July 2016.

331 Directive and framework for criminal procedure youth and adolescents, *Stc.* 2014, 8284.

The renunciation of consultation assistance is viewed as renouncing the right to interrogation assistance as well. The investigating officer must explicitly notify the suspect, who renounces his right to consultation assistance, of this assumption. Renunciation of the right of access to a lawyer does not automatically mean that the assistance of a counsellor is also renounced. The assistance of a counsellor may also be renounced. The person who has renounced his right to the assistance of a counsellor in a B-case, may revoke this decision at a later point in time.[332] In 2009, the District Court of Amsterdam considered that a child cannot renounce his right to consultation assistance, because as a child he is not capable of overseeing his position and is more likely to succumb under pressure.[333] Later, the Amsterdam Court of Appeal has mentioned in a number of cases that children are only allowed to renounce their right to consultation assistance prior to and during a police interrogation when the child can be considered to understand the meaning of this right and the consequences of renouncing it.[334] The District Court of Haarlem added to this that the interrogator must assure himself that this is the case.[335]

Special cases
The Instruction contains a number of provisions for special cases. It suffices to note that special cases occur when there is an emergency, a suspect who spontaneously starts making statements, new suspicions arise during interrogation, a suspect who was previously released is arrested again, a suspect who has revoked is waiver and the apprehension of an already detained suspect.

Registration
A notification is made of the fact that the suspect was notified about his right to assistance. A notification is also made of possible reactions from the suspect as well as his wish to renounce this right. The Assistant Public Prosecutor, to whom the suspect is presented, checks if the notification was completed. This verification is also reported.

Expertise requirements in juvenile criminal cases
Since the 1st of July 2013 there is a special 'criminal stand by duty' for handling cases of children. With respect to legal assistance of children' extra specialist knowledge is required. The Legal Aid Board has included a number of separate requirements especially in the legal field, including juvenile law.[336]

b. The right to have a third party informed of the deprivation of liberty and to communicate with third parties
A third party is informed of the deprivation of liberty. In the case of children, the legal representatives are informed as soon as possible, withouth the child having to request for this.[337]

C. the right to communication with consular authorities
On the basis of the Vienna Convention on Consular Relations suspects who are nationals of another State have the right to communicate with the consular authorities of that State.[338] A difference with the Directive is that the Vienna Convention allocates rights to the consular authorities, while the Directive explicitly assigns this right to the suspect.[339]

332 In this regard reference is made to art. 28 CCP.

333 ECLI:NL:RBAMS:2009:BK4115, r.o. 3.3.

334 ECLI:NL:GHAMS:BO8217, ECLI:NL:GHAMS:BO8219, ECLI:NL:GHAMS:BO8221 and ECLI:NL:GHAMS:BO8230.

335 ECLI:NL:RBHAA:2009:BK3403.

336 Art. 6a, 6b and 6h Registration condition lawyers 2014 jo. Art. 15 paragraph 1 sub b Law on legal assistance.

337 Art. 27 paragraph 1 official instructions for the police, the Royal military police and other investigating officers.

338 Art. 36 Vienna Convention on Consular Relations.

339 A further development of this regulation would be found in a statement by the Public Prosecution Office, see *Kamerstukken II* 2014-15 34 157, nr. 3, p. 50. This statement is not freely accessible.

V.3.2 Proposed Amendments

This paragraph provides an overview of the proposed amendments for the implementation of the Directive 2013/48/EU.

With regard to the right to a lawyer
A legal basis is introduced for consultation assistance. A legal basis is also created for the presence of a lawyer during an interrogation. This law will apply to any person suspected of committing a criminal act, regardless of whether this person has been arrested or not. Only in those cases in which the suspect is arrested and is deprived of his/her liberty is the State obliged to ensure that the suspect can exercise this right.

A lawyer is arranged for the arrested suspect, unless it concerns a misdemeanour.[340] In that case the suspect may call a lawyer himself.[341] A lawyer is only provided for if the Public Prosecutor imposes community service of more than 32 hours or a fine of more than €200. This implies a raised threshold for access to a lawyer, from 20 hours to 32 hours and from €115 to €200. [342]The lawyer must be present within two hours.[343] The suspect who is detained may consult with his lawyer for half an hour, prior to interrogation. This duration can be extended with another half hour if this does not jeopardise the investigations and the assistant Public Prosecutor has given permission.[344] The right to this consultation may only be renounced once the suspect has been informed of the consequences by a lawyer.[345] The lawyer of the suspect will have the right to be present and to participate in the interrogations, if the suspect so requests.[346] The interrogation can be interrupted for a consultation, but a break should not disrupt the overall progress of the interrogation. The presence of the lawyer is recorded in the official record.[347] If the lawyer does not attend the interrogation the suspect can request a respite for a consultation. He is provided with as much opportunity to do so as possible.[348] If a request for respite is rejected, this is justified in the official record.[349] Secondary legislation will provide guidelines for the way in which the lawyer is allowed to participate in the interrogation[350]. The right to consultation and interrogation assistance may, in the interest of the investigation, be curtailed as an exception, and with only upon consent of the Public Prosecutor.[351] Furthermore, a legal basis is created for the renunciation of the right of access to a lawyer.[352] The suspect must be made aware, by the investigating officer, of the possible consequences of renouncing a lawyer and of the fact that this renouncement may be revoked at any time.[353] Persons suspected of an offence, for which a prison sentence of more than twelve years is allowed and vulnerable persons, may not renounce the right to consultation assistance, but may renounce the right for interrogation assistance.[354] The Draft Bill does not contain any rules concerning the presence of a confidant during the interrogation.

The Assistant Public Prosecutor informs the parents or guardian of a child suspect of the deprivation of liberty of the child, as soon as possible. If this notification is delayed, the Child Care and Protection Board is notified.[355]

With respect to the right to have a third party informed upon deprivation of liberty and to communicate with third parties
The Assistant Public Prosecutor informs a person designated by the accused of the deprivation of liberty.[356] For children it still applies that the legal representative is informed as soon possible. Exceptions may be made if necessary in the interest of the investigation.[357] If these exceptions are applied, the Child Care and Protection Board is informed.[358]

340 The Legal Aid Board designates a lawyer; the suspect may express a preference.
341 Draft art. 28b CCP.
342 Draft art. 491 CCP.
343 Draft art. 28b paragraph 4 CCP.
344 Draft art. 28c paragraph 1 CCP.
345 Draft art. 28C paragraph 2 CCP.
346 Draft art. 28d CCP.
347 Draft art. 28d paragraph 1 CCP.
348 Draft art. 28d paragraph 2 CCP.
349 Draft art. 28d paragraph 3 CCP.
350 Draft art. 28d paragraph 4 CCP.
351 Draft art. 28e CCP.
352 Draft art. 28a paragraph 1 CCP.
353 Draft art. 28a paragraph 2 CCP.
354 Draft art. 28b paragraph 1 jo. art. 488c CCP.
355 Draft art. 488b CCP.
356 Draft art. 27e CCP.
357 Draft art. 488b paragraph 1 CCP.
358 Draft art. 488b paragraph 2 CCP.

With respect to: the right to communicate with consular authorities.
The right to contact with consular authorities already exists and is based on the Vienna Convention concerning consular relations. For technical reasons, it was decided to use the opportunity to embed this right in the new article 27e paragraph 2 CCP.

V.4 The practice on the right of access to a lawyer, the right to have a third party informed upon deprivation of liberty and the right to communicate with third parties and consular authorities in The Netherlands (interviews)

With regard to the right of access to a lawyer, there does not seem to exist a difference in the way this is regulated, for children with Dutch nationality on the one hand and for children without the Dutch nationality on the other hand. From the interviews, a number of possible difficulties have been brought up. These are addressed below.

Confidentiality communications
As mentioned earlier in the chapter on the right to interpretation and translation, sometimes the interpreter who is present at the interrogations is also the interpreter who is present in the confidential conversation between the child suspect and his lawyer. This begs the question whether the confidentiality of these conversations is sufficiently guaranteed.
Apart from this, the confidentiality of the communication seems to be guaranteed, based on some of the interviews, while other respondents have indicated that this is not always the case. Respondents who stated that the confidentiality is not always ensured, indicated that there is not always a room where consultation (such as consultation assistance) with the child suspect can take place, so that the lawyer is forced to sit with the suspect in the cell, to conduct a consultation. It was mentioned as undesirable to have a conversation with a child suspect in these settings. Similar complaints have been made with regard to the accommodation at the courts, stating that the accommodation does not sufficiently guarantee the confidentiality of the communications.

Another point that has been mentioned by the respondents, is the presence of parents in an interview with the lawyer. Several lawyers indicate that children are not always able to speak freely when one or both parents are present. This problem was also pointed out by an interpreter.

Lawyers capable of conducting work?
One lawyer pointed out that the duration of the consultation assistance - half an hour - is much too short. This applies in particular if the conversations need to be interpreted. With this extra step substantial time is lost that otherwise could have been devoted to asking questions, to obtain additional information from the child suspect. No time is left for asking personal questions and gaining trust of the child within such a short period of time.

From the point of view of the interpreters it was brought forward that there is a big difference in quality between lawyers. The one lawyer with children is much more able to adequately interact with the child than the other. A judge noted that lawyers “usually spend quite a lot of work on a case” and that lawyers, therefore, spend sufficient time on the case. One judge indicated that lawyers sometimes lack sufficient knowledge of the (children’s) criminal procedural law.

V.5 Positive - and focus points with regard to right of access to a lawyer, the right to have a third party informed of the deprivation of liberty and the right to communicate with third parties and consular authorities for non-Dutch child suspects.

The Directive 2013/48/EU with regard to the right of access to a lawyer, the right to have a third party informed of the deprivation of liberty and the right to communicate with third parties and consular authorities has to be implemented by the 16th of November 2016. The proposed law with regard to the implementation of this regulation is currently before the Senate. The proposed legislative changes have previously been discussed. Since the Salduz-judgment of the ECHR and the interpretation of that ruling by the Supreme Council, consultation and interrogation assistance for children is regulated in the policy.

This practice was already implemented before the proposed changes in the law, which still need to be implemented. The proposed legal changes are, for the most part, already codified in the modified policy.

From the interviews it appears that the right of access to a lawyer is viewed as self-evident. This demonstrates that the professionals are cognizant of the importance of this right; assistance of a lawyer is vital for a good defence. In addition, with regard to the right enshrined in this Directive, there was no difference in treatment based on nationality. Although this did not come forward in the interviews, it is still important to note that in The Netherlands, a lawyer is not a standard partner involved with the ZSM methodology. This means that child suspects do not always receive legal assistance from a lawyer in at this stage of the proceedings, although, pursuant to the Directive, they do have this right. Following below are the positive points on with regard to the above-mentioned rights as well as a number of focus points.

Positive points

Self-evident

The interviews strongly reveal that the right of access to a lawyer is so self-evident that this is not even considered something that should really be discussed. This is a positive finding as, especially for children, it is important that they can be assisted by an expert provider of legal assistance. The importance of expert assistance for child suspects is further confirmed by the fact that for rendering legal assistance to children in criminal proceedings, separate requirements have been introduced in 2013.

Consultation assistance: renunciation

Children always have the right to consultation assistance and renunciation of these rights is only allowed under certain circumstances. The Directive states: "*Without prejudice to the national law requiring the mandatory presence or assistance of a lawyer, Member States shall ensure that, in relation to any waiver of a right referred to in Articles 3 and 10: a) the suspected or accused person has been provided with clear and sufficient information in simple and understandable language about the content of the right concerned and the possible consequences of waiving it; and b) the waiver is given voluntarily and unequivocally*". It is encouraging that The Netherlands continues to make it impossible for children to renounce in cases where serious offences are addressed.

Focus points

Lawyer at out-of-court settlements.

Some cases may be resolved out-of-court by the Public Prosecution Office, such as the HALT-settlement. In such a case, in The Netherlands, the child does not have the right to an official appointment of a lawyer.[359] Official appointment of a lawyer is only possible if the Public Prosecutor imposes community service of 20 hours or more or a fine of more than €115. It has even been proposed to amend this, raising this threshold: only when community service of 32 hours or more, or a fine of €200 is imposed is a lawyer appointed. The child is allowed to contact a lawyer on his own. However, is the child aware of this? If the child has a lawyer then that lawyer must be fully informed, but that does not always occur. Consultation with a lawyer in the case of an out-of-court settlement may be very useful, as he can inform the child of all the consequences of (not) accepting the proposed offer. Moreover, in cases like these, a first interrogation has usually

359 Directive and framework for youth and adolescents including criminal penalties HALT.

already occurred. After all, only then can it be assessed whether the suspect is eligible for a HALT-settlement.

Lawyer at ZSM

Lawyers are not a standard party with the ZSM-methodology and are also not a party that is automatically involved. The Public Prosecution Office has been criticized for this as it largely undermines the procedural rights of children.[360] A pilot was held, from November 2015 to August 2015, in three regions,[361] where within the ZSM-methodology, a lawyer was automatically appointed during the first consultation (consultation assistance), prior to police interrogation, and during a second consultation, when the Public Prosecutor had decided to settle the case directly or after pre-trial detention (police custody). From the final report on the pilot it appears that suspects positively valued the ZSM- methodology in which the lawyer was automatically included. In addition, it is clear from this evaluation that the possibility to consult with a lawyer is more often invoked, when suspects are made aware that this possibility exists. Also, suspects who initially did not want any assistance, but later accepted it, valued the assistance positively. The right to assistance of an attorney is rarely renounced. Within the pilot project more suspects made use of the right to legal assistance of a lawyer than within the current ZSM-methodology. This was for the most part evaluated positively.[362] According to a lawyer who participated in the pilot, the fact that fewer suspects – almost none of them - renounced their right to legal assistance, after they were made aware of this and advised during a consultation with a lawyer, shows that it is necessary that this information with regard to legal assistance is provided through a lawyer - and not through police and/or Public Prosecution Office.[363] It appears that the Public Prosecution Office also considers the standard involvement of lawyers with the ZSM-methodology, a desirable improvement.[364]

According to the Dutch Bar Association, lawyers have an important role in overseeing the proceedings, in which it is important that the provision of information between the relevant partners and the legal profession is optimal. On the 12th of July 2016, The Ministry of Security and Justice announced that it will address the way in which the structural organization of legal assistance in the first stage of the investigation will be shaped, in a future letter to the House of Representatives.

Consultation assistance: information for non-arrested suspects.

In the proposed law, that is currently before the Senate, the legal right to consultation and interrogation assistance always applies, regardless of whether the suspect has been arrested. However, only in those cases in which the suspect is arrested - thus deprived of his liberty - is the State obliged to ensure that the suspect can exercise this right. In other words - there is a difference with regard to the efforts to be undertaken by the authorities. The Directive allows a difference of treatment. As is clear, from consideration 27 of the preamble, the Member States are obliged to undertake efforts to make available general information — for example, on a website or by means of a brochure at the police station — to assist suspects with finding a lawyer. However, no active steps need to be taken to ensure, that suspects whose liberty has not been deprived, will receive assistance from an attorney. The Dutch Bar Association has, rightly so, criticized the way in which The Netherlands has interpreted this obligation. The Netherlands has a positive obligation to assist non-arrested suspects to find an attorney. After all, a suspect has the right to be assisted by a lawyer. This requires that the necessary framework is created. At a minimum, written information should be provided with regard to the legal position of non-arrested suspect, where a referral is made to the Legal Help Desk. It should also be clarified that the non-arrested suspect can request for (financial) legal aid when he cannot bear the cost of legal assistance itself. It is recommended to include this in policy.

Consultation assistance: renunciation

It is positive that there are certain cases in which a child may not renounce the right to consultation assistance. In the Instruction legal assistance police interrogation, it now specifies that a suspect may renounce his/her right to consultation assistance in a B-case and, if afterwards he still requests a lawyer, this right may not be denied. This implies that this would be different in a C- case. The latter would be contrary to the Directive, according to which all suspects in any type of case, and at all times, should be able revoke their decision to renounce the services of a lawyer.

360 See for example University Utrecht, "S*nel, Betekenisvol en Zorgvuldig. Een tussenevaluatie van de ZSM-werkwijze*', Utrecht: 2016, p. 16. I. van den Brule, 'Gezocht: rol voor de advocatuur bij ZSM', *PROCES*, 2014-93.

361 Rotterdam, Oost-Nederland and Midden-Nederland.

362 G. Jacobs e.a. (2015), 'Eindrapportage *Werkwijze ZSM en Rechtsbijstand*', Rotterdam: RSM & WODC, p. 6 and 8. See also C. Grijsen, 'De pilot voorbij', Strafblad, 2015-57, p. 406.

363 C. Grijsen, 'De pilot voorbij', *Strafblad*, 2015-57, p. 408.

364 Algemeen Dagblad, 30 April 2015, 'Iedereen is voorstander van snelle 'rechtszaak' via ZMS'.

Furthermore, it should be noted that the current policy in C-cases is that the suspect does not have more than two opportunities to contact his/her lawyer. The question arises as to whether that policy should be considered to be in compliance with the Directive with regard to the renunciation of legal assistance of a lawyer. According to the Directive, renunciation should occur voluntarily and unequivocally. Therefore, the suspect should be well informed. Setting a limit for the number of attempts to reach a lawyer, can in some cases lead to de facto government-enforced renunciation of consultation assistance.

Consultation assistance: duration
Currently, children have half an hour to consult with their lawyer before an interrogation. The lawyers indicate that this time slot is too short to be able to discuss everything, in particular, when the conversation must be interpreted because of a language barrier and precious time is lost to the translation. There is hardly any time to pay any extra attention to the child. The thirty minutes that are available for consultation assistance are insufficient. Children with a poor (or no) understanding of the Dutch language are substantially disadvantaged with regard to the preparation of an interrogation in comparison to children who do not have this language barrier. By definition, less can be discussed with them and the interrogation is, therefore, less well prepared. This disparity in legal status should not exist.

Interrogation assistance: lawyer participation
According to current policy, the lawyer should show restraint during the interrogation. One of the respondents noted that the lawyer is not needlessly present and should therefore be allowed to play a role in the interrogation. Herein, change will originate from the proposed legal amendments which establish the role of the lawyer during the interrogation and in the explanatory memorandum it is noted that the interpretation of this is to be further elaborated in secondary legislation. It is important that the role of the lawyer is such that it contributes to maximizing the legal position of the child suspect. In any case, according to the proposed amendments it will be established by law that the lawyer may participate at the interrogation, and that the interrogation may be interrupted for mutual consultation. This consultation may not disrupt the general proceedings of the interrogation too much.

Difference in knowledge and skills among lawyers
Although special requirements have been set for rendering legal assistance to children, some respondents still indicated that there is a large difference between the knowledge and skills of the different lawyers. The cause for this disparity is not quite clear. The lawyers who have been interviews in the framework of this research, have not followed any special training which addresses the development of children and the way they should be interacted with. In addition to legal knowledge, knowledge with regard to interaction of children and a certain degree of knowledge on the development of children, is to be considered important.

Confidentiality of communications with lawyer
The confidentiality of the communications between the child suspect and his/her lawyer is not always guaranteed in practice, according to respondents. In addition, there is not always a suitable room available for consulting with one another. This applies to police stations as well as to courthouses. When the lawyer has to sit in the cell of the child, where it echoes and use must be made of a telephonic interpreter, it cannot be stated that adequate facilities exist to ensure the confidentiality of such communications.

Another point that touches on the confidentiality of communications between the child suspect and his/her lawyer has previously been discussed in the focus points for interpretation and translation. It concerns the situation in which the interpreter who interpreted the interrogation is used as the interpreter for the confidential conversations between the child and his lawyer. A number of respondents, including some interpreters, have expressed their concern about whether an interpreter can remain neutral during the time he hears confidential conversations between the suspect and the lawyer while interpreting and hears information that is different from what is presented at the interrogation. The confidentiality of communications between the child suspect and his/her lawyer is too important to risk the possible breach of that confidentiality as a result of this dual role of the interpreter. Accordingly, the necessary measures must be established to guarantee the confidentiality in this situation.

VI. Conclusion and Recommendations

In the course of this research it was examined whether the rights of child suspects in The Netherlands, as contained in three European Directives, are sufficiently guaranteed. In brief, the rights concerned are the right to interpretation and translation, the right to information and the right of access to a lawyer. More specifically, the research focused on children who do not hold the Dutch nationality. The objective was to determine whether the procedural rights of these non-Dutch children who come into contact with criminal law are sufficiently secured, both in legislation and policy and in practice.

The research consisted of desk research and interviews with professionals. Based on the design of the research it was anticipated that interviews would be held with non-Dutch children who are (or have been) accused in the criminal process, about their experiences. The expectation was that this could yield valuable information with regard to the state of affairs in practice and the vision of the children on that practice. Unfortunately, it proved hard to establish contact with this particular group of children. This is in part a result of the fact that this group in The Netherlands is relatively small. Additionally, the few children with whom contact had been established, indicated no interest in participating in an interview. The reasons for this were not explained explicitly.

Despite the lack of insight into the experiences of children a multitude of research information was accumulated, which is discussed in detail in the preceding chapters. One of the first things that became is that the assumption that not having the Dutch nationality increases the vulnerability when involved in criminal proceedings, is not necessarily correct. However, it is true that a language barrier increases vulnerability, and that this – logically so - occurs relatively more often in persons who do not have the Dutch nationality. This came forward during the research and is therefore also reflected in this report. However, it is not so that every non-Dutch child, by definition, has insufficient understanding of the Dutch language, nor is it so that every child with a Dutch nationality, by definition, has sufficient understanding of the Dutch language.

From the studied law and regulations and the policy it is not obvious that there is a distinction made between the allocation of rights to Dutch and non-Dutch children, in any way. From the interviews it appears that this; however, does occur in the practice. The opposite was the case. Included in the preceding chapters for each Directive are the content thereof, the current legislation and policy in force in The Netherlands in that area and what has emerged with regard to this in the research. For each topic extensive positive aspects and focus points were described. For that reason, each topic is sufficient and closed with a short summary of the positive points below, followed by a number of recommendations that are derived from the mentioned issues.

Recommendations

Right to interpretation and translation: Directive 2010/64/EU

In The Netherlands there is a register of court interpreters and sworn translators in which interpreters and translators can be registered provided they meet certain requirements. This ensures that quality requirements can be imposed and that monitoring of these requirements can take place. The existing registry contains an extensive supply of interpreters and translators. Problems with finding an interpreter generally only occur when an interpreter or translator is being sought for (tribe) languages that are only spoken by few. Interpreters are generally widely and timely available. This is due on the one hand to the fact that the distances in The Netherlands are relatively small and, on the other hand, that use is made of an extensive and well-functioning network of telephone-interpreters. There is sufficient awareness on the importance of appointing an interpreter when the suspect does not or insufficiently understand the Dutch language. Yet, there are a number of recommendations that can be made:

- Recommendation I: ensure that it is itemized, consulting both interpreters and other stakeholders, which minimum requirements must be fulfilled to be able to offer interpreting and translation work of a "good" quality and adjust the requirements for registration in the register accordingly. In determining the classification of "quality", it is important that the persons for whom interpretation and translation work is being carried out, which includes children, are also included. In this regard, it is advised to research the possibility and the

desirability of offering specific courses on the development of and interaction with children, for interpreters who work with children;

- Recommendation II: ensure that more attention is given to the implementation of a specialized sign language interpreter for children, who are deaf or have a hearing impediment. For this purpose, it is important that officers conducting interrogations have more knowledge of the language development of these groups of children;
- Recommendation III: ensure that the independence of the interpreter is maintained by not using the same interpreter who is used at the police interrogation for the confidential conversation between the child suspect and his lawyer. See also recommendation XV;
- Recommendation IV: ensure that when evaluating a request for translation of a document, the importance of the child suspect being able to understand the information, is a first consideration, not the costs associated with the translation;
- Recommendation V: ensure that punishment orders with regard to misdemeanours can also be translated.

Right to information: Directive 2012/13/EU

As of recently, a brochure is distributed to child suspects at police stations, containing information about their rights. This brochure is available in approximately twenty languages and contains the information required by the Directives and more. Several respondents have indicated that it is verified whether the information was indeed provided to the child suspect. With regard to the right to information, the following recommendations can be made:

- Recommendation VI: verify whether sufficient appropriate information material is available.
  Several respondents have pointed out that they have doubts with regard to the accessibility of the police brochure for children. Moreover, it was pointed out that, with regard to deaf children or children with a hearing-impediment, the available information material is not adapted to their limitations and that they are generally completely deprived of information material that is. Involving this group of children in any modifications of the information material is recommended;
- Recommendation VII: ensure that parents/legal representatives are informed of the deprivation of liberty of their child from the moment when that deprivation of liberty begins, and not from the time the child is released. Ensure that parents/legal representatives have free access to the children.

Right of access to a lawyer, to have a third party informed of the deprivation of liberty and contact with consular authorities: Directive 013/48/EU

The proposed law for implementation of Directive 2013/48/EU is currently before the Senate. Since the Salduz-ruling of the ECHR and the interpretation thereof by the Supreme Court, the right to consultation and interrogation assistance has been regulated through policy, whereby the practice of the policy pre-empts the legislation.[365] The right to a lawyer is generally regarded as self-evident. Among professional's great awareness exists regarding the fact that a lawyer is indispensable for an adequate defence, especially when the suspect is a child. This is highlighted by the fact that since 2013 additional requirements for the provision of legal assistance to children in criminal proceedings, apply. The right to consultation assistance of children applies at all times and can only be renounced in certain cases. The Netherlands even goes beyond what is required by the Directive, making it impossible to renounce legal assistance by a lawyer, in the case of serious offences. This stands in great contrast to the proposal to raise the threshold for the appointment of a lawyer by only allowing for that when community service of more than 32 hours is imposed or a fine of more than €200.

With regard to the right of access to a lawyer, to have a third party informed of the deprivation of liberty and contact with consular authorities, the following recommendations can be made:

- Recommendation VIII: ensure that a child who is confronted with an out-of-court settlement by the Public Prosecution Office – such as a HALT–settlement - is made aware that, even in that type of situation, it is possible to consult a lawyer;
- Recommendation IX: ensure that lawyers are automatically involved in the ZSM-methodology. Offer the child access to a lawyer prior to the police interrogation and when the Public Prosecutor considers settling the case directly or after the pre-trial detention (police custody). Ensure that the information on access to legal representation is provided by a lawyer;

365 It must be noted that The Netherlands have made reservation with regard to art. 40 of the UN Convention on the Rights of the Child regarding cases involving minor offences/ misdemeanors, in that these cases may be tried without the presence of legal assistance, see Trb. 2001, 169.

- Recommendation X: ensure that the child suspect who has not been arrested also receives written information with regard to his legal position. It should also be made clear to this suspect that, under certain circumstances, he can be provided with (financial) legal aid;
- Recommendation XI: clarify that in *all* cases the decision to renounce the right to assistance of a lawyer can be revoked;
- Recommendation XII: extend the maximum duration of the consultation assistance prior to the interrogation, in the event that use is made of an interpreter;
- Recommendation XIII: ensure that the role of the lawyer in the secondary legislation, during the interrogation of a child suspect, is regulated in such a way that the lawyer is able to effectively protect the legal position of the child;
- Recommendation XIV: ensure that lawyers who assist child suspects follows specific trainings and courses which address the development of and interaction with children;
- Recommendation XV: ensure that the confidentiality of communication between the child suspect and his lawyer is guaranteed, by not using the same interpreter for the police interrogation and the confidential conversations between the child suspect and his lawyer. See also recommendation III.

Bibliography

Blackstock e.a., 2013
Blackstock e.a. 'Inside Police Custody', Antwerpen: Intersentia 2013, p. 410 e.v.

Braanker, 2010
M.B. Braanker, 'Verstandig recht, recht naar verstand. De rechtspositie van kwetsbaardere verdachten, in het bijzonder verstandelijk beperkten, na Salduz', *Strafblad* 2010-7, p. 302-319.

Van den Brink en Liefaard, 2014
Y.N. van den Brink en T. Liefaard, Voorlopige hechtenis van jeugdige verdachten in Nederland. Naar rechterlijke besluitvorming conform internationale kinderrechten, *Strafblad* 2014-1, afl. 1, p. 44-55.

Brouwer e.a., 2014
J. Brouwer, Profileren en selecteren binnen de strafrechtspleging; efficiëntie of discriminatie?, *PROCES* 2014/1.

Brouwer, 2015
D.V.A. Brouwer, 'ZSM en de verdediging', *DD* 2015-26 (red.).

Brűle, van der, 2014
I. van den Brűle, €Gezocht: rol voor advocatuur bij ZSM€, *PROCES* 2014/1, p. 92.

Corstens & Borgers, 2014
G.J.M. Corstens & M.J. Borgers. Het Nederlandse strafprocesrecht. Deventer: Kluwer 2014.

Dienst Jusititële Inrichtingen Ministerie van Veiligheid en Justitie, 2014
Dienst Jusititële Inrichtingen Ministerie van Veiligheid en Justitie, JJI in getal 2009-2013, 2014.

Dienst Jusititële Inrichtingen Ministerie van Veiligheid en Justitie, 2015
Dienst Jusititële Inrichtingen Ministerie van Veiligheid en Justitie, JJI in getal 2010-2014, 2015.

Dienst Jusititële Inrichtingen Ministerie van Veiligheid en Justitie, 2016
Dienst Jusititële Inrichtingen Ministerie van Veiligheid en Justitie , DJI in getal 2011-2015. De divisies GW/VB en ForZo/ JJI nader belicht, 2016.

European Union Agency for Fundamental Rights and Council of Europe,
European Union Agency for Fundamental Rights and Council of Europe, Handbook on European law relating to the rights of the child, 2015.

G. Jacobs e.a., 2015
G. Jacobs e.a., Eindrapportage Werkwijze ZSM en Rechtsbijstand, Rotterdam: RSM & WODC 2015.

Grijsen, 2015
C. Grijsen, 'De pilot voorbij. Pleidooi voor een Permanente rol voor de advocatuur binnen de ZSM-werkwijze', *Strafblad* 2015-57, afl. 5, p. 403-409.

Gyurkó, Sz. (ed) - Nemeth, B.
Gyurkó, Sz. (ed) - Nemeth, B. Comparative situation analysis of juvenile justice systems in 20 CEE countries in accordance with the four relevant Terre des hommes scopes, Budapest, Tdh. 2016 (not published yet)

De Jonge & Van der Linden, 2013
G. de Jonge & A.P. Van der Linden. Handboek Jeugd & Strafrecht. Een leer- en praktijkboek over het (internationale) jeugdstrafrecht en jeugdstrafprocesrecht. Deventer: Kluwer 2013.
Van Kempen, 2016

P.H.M.V. van Kempen, 2016
P.H.P.H.M.C. van Kempen, 'Aandacht voor de slechts beperkt capabele verdachte in voor- en hoofdonderzoek – aanbevelingen voor de wetgever', DD 2016/22.

Kooijmans, 2015
T. Kooijmans, 'ZSM en dadelijke tenuitvoerlegging als vorm van snelle afdoening', *DD* 2015-24.

Van der Laan en Weijters, 2015
A. van der Laan en G. Weijters, Daling in geregistreerde jeugdcriminaliteit. Enkele mogelijke verklaringen, *Tijdschrift voor Criminologie* 2015, p. 203-228.

Van der Laan en Goudriaan, 2015
A. M. van der Laan en H. Goudriaan. Monitor Jeugdcriminaliteit. Ontwikkelingen in de jeugdcriminaliteit 1997 tot 2015. The Hague: WODC 2016.

Van der Leun
P. van der Leun en M. van der Woude, Kleurenblind de criminaliteit te lijf? Een bredere blik op selectief criminaliteits-beleid dan etnisch profileren alleen, *PROCES* 2014/1

Liefaard & Van den Brink, 2014
T. Liefaard en Y. van den Brink, 'Juveniles' Right to Counsel during Police Interrogations: An interdisciplinary Analysis of a Youth-Specific Approach, with a Particular Focus on the Netherlands', *Erasmus Law Review* 2014-4.

Meij, 2012
Interview met P. van der Meij, *Opportuun* 2012-11, p. 7-8.

Van der Meij, 2014
P. van der Meij, 'De andere kant van de ZSM-medaille. Het gebrek aan controle op beleid en beslissingen van het Openbaar Ministerie', NJB 2014/1225, p. 1666-1671.

Olcer, 2014
F.P. Olcer, '(Recente) rechtspraak EHRM aangaande de minderjarige in het straf(proces)recht', *Strafblad* 2014-3, p. 3-6.

Ministerie van Veiligheid en Justitie, 2014
Ministry of Security and Justice. *Factsheet De jeugdige in het jeugdstrafprocesrecht*. The Hague: Ministerie van Veiligheid en Justitie 2014

Rapport Commissie Wolfsen, 2015
Rapport commissie onderzoek oorzaken kostenstijgingen stelsel gesubsidieerde rechtsbijstand en vernieuwing van het stelsel, bijlage bij Kamerstukken II 2015/16, 31 753, nr. 110.

Spronken, 2013
T. Spronken, De EU-Richtlijn over het recht op toegang tot een advocaat in strafprocedures, *NJB* 2013/1433, afl. 24, p. 1559.

Van Toor, 2015
D. van Toor, 'De kracht van het verhoor en het belang van een goede verdediging', *NJB* 2015-32, p. 2221-2223.

Vanderhallen, e.a. 2014
Vanderhallen, M. e.a.. *Rechtsbijstand en de waarde van het verhoor*. Maastricht: Maastricht University.

Winkels, 2014
J. Winkels, 'Een kindvriendelijk strafproces?', *NJB* 2014-471.

Procedural Rights of Juveniles Suspected or Accused in the European Union

Terre des hommes
tdh.ch

rights international spain
defendiendo los derechos y libertades civiles

hors la rue
ASSOCIATION LOI 1901
SOUTIEN AUX MINEURS ÉTRANGERS EN DIFFICULTÉ

Defence for Children
DCI-BELGIUM

DEFENCE for CHILDREN