QUESTIONNAIRE

The Young Offender in the Criminal Justice System

During the September 2006 Congress in Siófok, the Third Study Commission studied the problems of persons suffering from mental disorders who face criminal prosecutions. In furtherance of our study of different approaches and solutions to the unique problems faced by particular identifiable groups in criminal justice systems, we turn this time to the situation of young offenders (juvenile delinquents). We hope to integrate certain themes that evolved from our earlier discussion, in particular, the difficulties associated with balancing the necessity of imposing societal norms of accountability and the objective of identifying and responding to the particular needs of accused persons whose faculties or levels of responsibility are diminished. In gathering the responses to this questionnaire, and then summarizing the main lines of discussion at our next session in Trondheim, Norway, we hope to (i) develop a deeper knowledge of the problems concerning young offenders within criminal justice systems; and (ii) study solutions that might usefully and effectively meet their particular needs.

1. Young Offender Legislation: Do special legislative provisions exist in your justice system for offenders who are not adults? **YES**, legal provisions exist in our justice system for offenders who are not adults. If yes, please indicate to which age group they apply (for example, ages 12-17):

   Law concerning juvenile crime in the Dutch Criminal Code (Title VIIIA) must be applied in cases where a juvenile is between the ages of 12-18 years old at the time of committing the crime (Article 77a Penal Code). Children under the age of 12 are considered to be below the age of criminal responsibility (Article 486 Code of Criminal Procedure).

   Under certain conditions persons aged between 16 and 18 years of age may also be subject to the general (adult) provisions of the criminal code. This all depends on the personality of the offender, the circumstances concerning the case and the severity of the offence (Article 77b Penal Code). Since 1995, the severity of the offence is considered sufficient for application of the general provisions of the criminal code. Having said this, the resultant legal proceedings remain bound by the provisions of juvenile criminal law.

   Juvenile criminal law can also be applied to adolescents aged between 18 and 21 (seldom) if the personality of the offender or the circumstances that surround the case make this necessary (Article 77c Penal Code). For example if the person shows signs of mental retardation or has committed typically “juvenile” offences. Criminal proceedings which arise under the provisions of juvenile criminal law are in line with general criminal law.

2. Publication Bans: In your justice system applicable to young offenders, do legislative provisions exist that prohibit the publication of information that may disclose the identity of adolescents charged with offences? **YES**, in our justice system legislative provisions exist regarding the publication of information that may disclose the identity of the persons charged with offences.

   If yes, does the legislation provide for exceptions? **YES**

   If yes, what are they?
In the Netherlands the presumptio innocentiae governs the status of the suspect. Persons suspected of a crime are referred to in official publications in general terms such as age, sex etc. Personal details that could disclose their identity are not given. In principle, no information is provided in cases involving juveniles **prior** to the court session, as these are not heard in public (article 495b Code of Criminal Procedure). Article 495b under 2 provides the provision that the presiding judge can decide to hold the court session in public though, when the importance of a public hearing outweighs the privacy of the juvenile suspect. An exception on providing information can be made for cases already known to the media through statements made by the Public Prosecutor or the defense. In that case, summarized information will be provided at the request of the media. This official information does not include the disclosure of the persons identity, as any digression regarding the presumptio innocentiae can compromise the outcome of the case. In addition the media can request the presiding judge/judge to grant special admission (regeling bijzondere toelating). This must be requested at least 24 hours before the session via the contact officer. The presiding judge/judge will decide on this request. Once judgments are in the public domain, information on the judgments and the sentence being demanded by the Public Prosecutor can be provided in the same manner as indicated. All judgments are rendered anonymous, by blacking out the complete address and the name up to the initials.

3. **Recourse to Alternative Measures:** In your justice system, do alternative measures programs exist for young offenders for the purpose of avoiding penal consequences? **YES**, in our justice system alternative measures exist to avoid penal consequences. **If yes**, at what stage in the proceeding are these programs available? (i) in the discretion of the investigating officer at the initial investigation stage; (ii) in the discretion of the prosecutor after a charge is laid; (iii) in the discretion of the investigative judge during the pre-trial investigation; (iii) in the discretion of the judge at trial. On what basis?

Certain alternative sanctions are laid down in the Dutch juvenile justice system. As to your query on stages: different forms are possible at different levels. The police can refer to a so-called HALT project and the public prosecutor and the judge have the possibility to apply so-called task penalties (community service) which consist of learning- and or working schemes. Here is an outline of the different available forms of alternative sanctions:

**HALT**

HALT is short for 'the Alternative' (= H(et) ALT(ernatief)). At the police level this unique form of diversion is offered to juvenile first offenders, who have committed specific minor offences.

Juveniles who volunteer for this procedure agree on a project that normally includes damage compensation and/or working or learning up to 20 hours. Even though the Halt-procedure is included in the Dutch penal code, it can be regarded as an alternative to the formal justice system because charges are officially dropped after a successful Halt-procedure. The person never reaches prosecution level and a criminal record is therefore avoided.

Legal basis: This possibility is laid down in the criminal code (article 77e). Details regarding the way the HALT bureaus operate have been laid down in a legal regulation and in the unitary guidelines by the state prosecution service.
The offences that are considered for a Halt-arrangement are indicated in directives. Besides this, national guidelines from the Public Prosecutor exist for the enforcement of the Halt-arrangement (the Halt-arrangement Indication).

STOP

The under twelve’s.

In 1999 Halt started a programme for children under the age of 12: the Stop-reaction. This new initiative evolved from a ministerial policy paper called Children and criminality (Ministry of Justice / DPJS, February 1997). A package of measures was recommended. One of these recommendations was to develop a Halt type procedure, for the so-called under twelve’s. Stop was introduced nationally on August 1st, 2001. The Stop-reaction falls under the jurisdiction of the Public Prosecutor.

Children up to 12 years of age, who have been taken into custody by the police, cannot be prosecuted due to legal age limitations. However, if they have committed a Halt-worthy offence both they and their parents are offered a so called Stop-reaction. The Stop-reaction aims to change the behaviour of children at an early stage to deter further criminal behaviour. The Stop-reaction helps parents react to what has happened in a clear and effective manner. The child learns what it did wrong and how to avoid it happening again. Participation in the programme only occurs by parental consent and active participation of the parents.

COMMUNITY SERVICE

Community service is aimed at the following: The work – task to be performed should appeal to the young offender’s sense of responsibility in regards to the offence he/she committed. The communal nature of the work should change his or her social behaviour for the better. The kind of jobs done under this scheme should promote the needs of society at large and be of educational value. Community service can be imposed by the judge on a person who admits guilt and offers community service in lieu of a (partial) sentence. Failure of completing the service can result in the provisional detention sentence being reversed at request of the public prosecutor (article 77p). In contrast to adult penal law, community service can be imposed on a juvenile for minor offences (overtredingen/misdemeanors).

WORK TO COMPENSATE DAMAGES

A connection between the crime and the damage done should be made explicit during the course of this scheme. This sanction is rarely administered in practice. This is imposed by a judge.

LEARNING PROJECTS

Learning projects are meant to provide practical and social skills and are imposed by a judge together with a provisional sentence. They are geared towards the provision of teamwork as well as one-on-one care. Depending on the nature of the offence which has been committed, the juvenile is required to go on one of three different kinds of scheme which have been developed and made available throughout the Netherlands:

The Focus on the Victim Learning Project (Slachtoffer in Beeld)
This project is suitable in cases of theft, robbery or assault. The scheme is aimed at ensuring that young offenders understand the consequences of their actions towards their victims. The victim, however, does not personally take part in the project.

**The Sexual Education Learning Project (Seksuele Vorming)**

This project may be useful in cases of sexual abuse where the person is a first-time offender and where violence was not involved. The scheme is aimed at helping the young offender to come to terms with his or her own sexuality and the sexuality of others.

**The Social Skills Learning Project (Sociale Vaardigheden)**

Here the young offender is taught to interact better with other people.

Community service and a learning project can be combined.

**JUSTICE TO YOUNG PEOPLE PROGRAMME**

The objective of the Jeugd terecht Programme is to prevent first-time offending and to reduce recidivism. The ‘Jeugd terecht 2003-2006’ Programme indicates how the Government intends to tackle juvenile crime. It is part of the Government’s Public Safety Programme.

**THE BASIS**

To summarize the aforementioned: instead of penalties for young offenders or various fines, the judge can also impose so-called alternative sanctions which focus on reforming the young offender. The law acknowledges the following three sanctions: community service, work to pay for damages incurred and attendance of a learning project.

Both the public prosecutor and the juvenile judge have a large flexibility in the Dutch Justice system. The system is guided by the principal of opportunity (opportuniteitsbeginsel); the public prosecutor decides if prosecution is needed. Furthermore the judge has no minimum sentences. Both prosecutor and judge can decide to suspend prosecution or impose a suspended sentence. (Articles 77m-o Penal Code)

Since the juvenile criminal law was reformed, the state prosecutor may even drop charges (even without the consent of judge) providing certain conditions are complied with.

Alternative sanctions imposed by the juvenile judge may only be imposed with the express consent of the juvenile (Article 77n Paragraph 3 Penal Code). In fact, the law explicitly requires that the young offender stipulates which kind of sanction is requested to be applied (Article 77m Paragraph 1 Penal Code). An alternative sanction may last for a maximum of 200 hours (article 77m Penal Code). If more than one sanction is to run concurrently, the maximum time is 240 hours. Community service must be carried out within the period of one year. Learning projects must be completed within six months. Even though the Child Protection Board (Raad voor de Kinderbescherming) in the form of the Alternative Sanctions Bureau does much of the preparatory work and supports the projects (article 77o Penal Code), ultimate responsibility lies with the state prosecution service. The Child Protection Board may be called upon to attend hearings on the practical and substantive issues of implementing alternative sanctions. A co-coordinating body for alternative sanctions (Coordinatiegroep Alternatieve Sancties) exists in every judicial district and is made up of representatives of the state prosecution service, judges.
As part of its activities the co-coordinating body publishes guidelines on the implementation of individual sanctions and closely monitors the various Work- and Learning Projects run by independent organizations as part of the youth welfare services.

After the alternative sanction has been completed the Child Protection Board draws up a report. This is then reviewed by the state prosecution service.

4. **Transfer of Young Offender to the Adult Criminal Justice System:** (a) Is such a transfer provided for in your justice system, for example, for certain serious offences or in situations of repeat offences? **YES**

If yes, in what circumstances **IF YES**, at what ages (for example, between ages 16 and 18)?

Under certain conditions juveniles aged between 16 and 18 may also be subject to the general provisions of the criminal code. This depends on the personality of the offender, the circumstances surrounding the case and the gravity of the offence (Article 77b **Penal Code**).

(b) **IF YES**, are the maximum sentences the same as for those provided for an adult found guilty of the same offence?

Besides imposing a prison sentence, remand, community service for a longer period of time, and being committed to an institution (TBS), article 77b Penal Code can lead to other possibilities excluded in juvenile law (such as revoking a drivers license).

At this moment in time the government is working on legislation to **exclude** life sentence in article 77b **Code of Criminal Procedure**. Having said this, a life sentence has never passed on a juvenile.

5. **Type of Sentence Imposed on Offenders between 18 and 21 Years of Age:** Does your justice system provide special sentencing/treatment options for these offenders? **YES**

If yes, what are they?

Should the presiding judge deem it applicable to the suspect between the ages of 18 to 21 years of age, the judge can impose a juvenile type sentence. (article 77c **Code of Criminal Procedure**) Grounds are found in the following:
- the personality of the offender
- circumstances under which the crime took place.

6. **Purpose of Sentencing:** What are the principles that govern the imposition of sentence on a young offender in your justice system? How do these principles vary from the principles that govern the imposition of sentence on an adult? Does general deterrence play a role in the imposition of sentence on a young offender? In what circumstances does a court consider imposing a sentence of incarceration on a young offender?

In The Netherlands a special justice system has been established for juveniles, recognizing the special vulnerability of children. The system is based on education, reform and reintegration. Restorative elements are present in all levels of the Dutch juvenile justice system. At the prosecution and court levels these include alternative sanctions such as community service.

The most important deviation from the criminal rules for adults concerns the various sanctions.

In the criminal system for adults, the imputability of the crime to the offender and the protection of society are the starting points.
For juvenile delinquents, the pedagogical approach and special prevention are given a prominent place in the Dutch system. The juvenile criminal court has to choose from a limited list of special punitive and non-punitive measures; the former include juvenile detention and committal to an institution for young persons for treatment. This pedagogical approach is not only reflected in the criminal procedures, before and during the trial, but also in the execution of the punitive and non-punitive measures. The children sentenced to juvenile detention or committed for treatment will be placed in a judicial institution for juvenile offenders. Repressive interventions are only made when all else has been tried. The most important goal of repressive intervention is to prevent recidivism and improve people’s safety. This is the primary responsibility of the Ministry of Justice. Youth policy comprises prevention and treatment as well as repression.

Offender types.

The purpose of sentencing is geared towards the type of offender. In the Netherlands the approach towards first offenders requires swift action focused on preventing repeat behaviour. When young people first come into contact with the police, especially in the case of very young offenders, criminal behaviour is often a signal that there is something wrong in the family situation. In such cases it is crucial that the parents become involved, so that therefore the underlying problems are identified and that parenting support and assistance is given. Referring a family to the youth care centre as a result of a first contact with the police can be more useful in a pedagogical sense than a “mere” fine or a community service order. But the family must also be aware that it must take action if it wants to avoid this sanction being repeated. (see further under the STOP measure for under twelve’s).

In the case of petty juvenile offenders, the approach is focused on preventing a further backslide into a criminal career. It is necessary to screen these juveniles in order to obtain a good picture of them and their environment so that interventions are targeted properly. Persistent offenders and hard-core juveniles require a more stringent approach. In the case of persistent offenders it is important not only to react to individual – often minor – offences, but to the overall picture. A juvenile who persists in criminal behaviour will have to feel the consequences and be removed from the public domain. In the case of hard-core juveniles, detention must focus on re-education and rehabilitation. An effective judicial youth policy is therefore tailored to an individual, to a group, to high-crime areas and to the institution.

7. Mental illness: Are there special provisions in your justice system to address the particular problems of the young offender suffering from a mental disorder? YES
If yes, please describe them:

Treatment centres

Certain treatment centres are secure, others are (half) open; the juveniles go to a school outside the institution, they can meet friends outside or receive them in the institution, and they can join a sports club. The main goal is treatment and rehabilitation under supervision of the workers of the institution in co-operation with a probation officer.

The following juveniles are placed in the treatment centres:
1. convicted juveniles aged 12 to about 23, sentenced to a non-punitive measure called committed to an institution for young persons. This measure involves treatment for a minimum period of 2 and maximum period of 6 years and can be imposed if the child is mentally or emotionally disturbed, but also if the child needs re-education.
2. children aged from about 9 to 18 placed on civil grounds who have not committed a criminal offence but who have serious behavioral problems, for the purpose of treatment for a longer period. Placements is for a period of one year. At the request of the family supervisor or the Child Care and Protection Board, the juvenile court can extend this stay every year for one year periods.

Thank you! Your responses will be gathered for the purposes of discussion at the meeting of the Third Study Commission in Trondheim scheduled for the fall of 2007.