Chapter 45

Juvenile Justice and Adolescence: A Comparison within the Kingdom of the Netherlands

Annemarie Marchena-Slot

Abstract

Despite a common origin, notable differences can be found concerning juveniles and adolescents when comparing the five sanction systems of the Kingdom of the Netherlands. This chapter addresses these differences, taking into the account the reservations made by the Kingdom to article 37(b) and (c) CRC in relation to domestic laws on the topic. What is striking, however, is that everywhere in the Kingdom 16- and 17-year-olds can be sanctioned as adults even though juvenile justice systems for children aged 12 to 18 are in place in all jurisdictions. To be more CRC-compliant, it is strongly recommended that all laws should be revised in this regard to make the reservation to 37(c) CRC obsolete. Regarding adolescents, it is concluded that no country in the Kingdom has special provisions for people over the age of 18 differing from those for juveniles and adults. Adolescents can be sentenced as juveniles when certain criteria are met; in the Netherlands the provision includes 22-year-olds; in Curaçao, Aruba and Sint Maarten the cut-off age is 20. From a CRC perspective, special provisions in domestic law for all adolescents aged 18 to (at least and including) 23 are recommended.

1 Introduction

The UN Convention on the Rights of the Child (CRC)¹ provides special provisions for children. Article 1 defines a child as ‘every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier’. In all jurisdictions within the Kingdom of the Netherlands (hereinafter, the Kingdom) childhood ends at the age of 18 years, when majority is attained.² When comparing the juvenile sanction systems of the different countries of the Kingdom, notable differences can be found. In particular,

¹ Adopted by the UN General Assembly on 20 November 1989 (A/Res/44/25).
² See Art. 1:233 Burgerlijk Wetboek Nederland (Civil Code of the Netherlands), Article 1:233 Burgerlijk Wetboek van Curaçao; article 1:233 Burgerlijk Wetboek van Sint Maarten; article 1:233 Burgerlijk Wetboek van Aruba; article 1:233 Burgerlijk Wetboek BES.
these differences concern juveniles who reach the age of majority and (thus) adolescents, more so since the constitutional reforms of 10 October 2010.3

Since these reforms, the Kingdom of the Netherlands consists of five jurisdictions. Apart from its European territory, the country the Netherlands, its Caribbean territory now consists of the countries Curacao, Aruba and Sint Maarten, each with its own government.4 Caribisch Nederland (the Netherlands in the Caribbean or the Dutch Caribbean) consists of the islands of Bonaire, Sint Eustatius (Statia) and Saba. In legislation the islands are often abbreviated as ‘BES’. They are public bodies of the Netherlands.5 Their position is similar to that of Dutch municipalities;6 however, they have their own legislation in many areas.

This chapter first addresses the common origin of juvenile justice in the Kingdom, after which the reservations made by the Kingdom to the CRC are discussed in relation to the domestic laws on the topic (Sections 2 and 3). In Section 4 the issue of ‘adolescence’ and criminal responsibility is considered in general. This serves as a bridge to the core of the chapter, Section 5, which examines criminal legislation in the various countries of the Kingdom and the differences between their sanction systems for juveniles and adolescents. Conclusions are presented in Section 6.

2 The Common Origin of Juvenile Justice in the Kingdom

All juvenile criminal law in the Kingdom has a common origin that goes back to the introduction of special sanctions for juveniles in the justice system in the Netherlands in 1901, when a trio of acts concerning children was introduced that entered into force in 1905.7 These laws were later also adopted in

3 The constitutional structure of the Kingdom of the Netherlands is laid down in the Charter of the Kingdom of the Netherlands: Statuut voor het Koninkrijk der Nederlanden (Stb. 1954, no. 503, last amended 1 November 2010, Stb. 2010, 775 (hereinafter, Statuut)).
4 Art. 1(1) Statuut.
5 Art. 1(2) Statuut.
6 With adjustments for their small size, their distance from the Netherlands and their geographic situation in the Caribbean region.
7 In February 1901 three acts regarding juveniles were introduced in Dutch legislation. One consisted of changes and supplements to the Civil Code’s provisions on paternal authority and custody, Wet tot wijziging en aanvulling van de bepalingen in het Burgerlijk Wetboek omtrent vaderlijke macht en de voogdij en daarmee samenhangende artikelen van 6 februari 1901 (Stb.1901, 62). The second act brought about changes in the punishments and criminal procedure law for young persons, Wet houdende wijziging in de bepalingen betreffende straffen en de strafrechtspleging ten aanzien van jeugdige personen van 6 februari 1901.