

Summary

The ‘adolescentenstrafrecht’ (Criminal law applicable to young adults)

Policy theory and initial empirical findings

The so called ‘Adolescentenstrafrecht’ has been active since 1 April 2014 in the Netherlands. With the ‘adolescentenstrafrecht’, the legislature intends juvenile and adult criminal law to be applied to 16 to 23-year-olds in a flexible manner. The purpose of this research is to obtain insight into the policy theory behind the bill at an early stage after the introduction of the legislature. Moreover, we examine trends in criminal cases against 16 to 23-year-olds and, in particular, the application of juvenile criminal law to young adults (18 to 23-year-olds; Article 77c of the Dutch Penal Code). The *bill* ‘adolescentenstrafrecht’ in its entirety consists of 19 parts of which the policy assumptions are described in this study. The bill emphasises the application of juvenile criminal law regarding young adults aged 18 to 23. Whereas the application of criminal law regarding young adults remains the main rule, young adults can be sentenced according to juvenile criminal law when offenders’ personalities or the circumstances in which the crimes were committed provide reasons to do so.

A policy theory reconstruction and an empirical exploration were carried out in this study, which in evaluation studies is known as the evaluation of a Recently Introduced Policy Instrument (RIPI). This is the first evaluation study of the multi-year research programme ‘Monitoring and Evaluation of the ‘adolescentenstrafrecht’. This sub-project does not aim to investigate the functioning or effect of the ‘adolescentenstrafrecht’ in practice. These topics will be dealt with in other sub-projects of the research programme. The research does, however, provide insight into the policy assumptions of the bill and into the question whether, in the initial period after the introduction, the application in practice is in line with these assumptions.

Policy theory reconstruction

The reconstruction of a policy theory focuses on the effect – as presumed by, among others, the legislature – of the various parts of the bill ‘adolescentenstrafrecht’. Parliamentary and policy documents and other relevant literature have been studied. Furthermore, interviews have been conducted with persons who were closely involved in the drafting of the bill.

The Explanatory Memorandum shows that the bill ‘adolescentenstrafrecht’ had the following objectives:

- Increasing the flexibility in the application of sanctions around the age of 18, *the emphasis being on increased accessibility of juvenile criminal law for young adults (18 to 23-year-olds)*.
- More emphasis on security in society and on protection of victims.
- Clearer distinctions between juvenile sanctions.

The target group for the 'adolescentenstrafrecht' has been defined according to the age during offence (16 to 23 years old), problems of the offender and type of crime. Which young adults qualify for juvenile criminal law depends on the personality of the offender and the circumstances in which the crime has been committed. The examination of these conditions has been left to professionals in practice. Forensic advice and consultancy, and demands made by the prosecution prior to the trial play a key role here. The aim is to use a tailored approach in all cases.

The 'adolescentenstrafrecht' centres on expanding the upper age limit for application of Article 77c of the Dutch Penal Code from 21 to 23 years and a few amendments to the Dutch Code of Criminal Procedure, the purpose of which is to facilitate the sentencing of 16 to 23-year-olds according to juvenile criminal law. The main idea behind sentencing young adults according to juvenile criminal law is that some young adults are better sanctioned under juvenile criminal law due to their personality, where the immature development of young adults plays an important role. By placing more emphasis - during the lead-up to the trial - on the (immature) development of young adults (i.e. the demands of the Public Prosecutor, preventive custody and the advice given by the probation service and/or the Netherlands Institute of Forensic Psychiatry and Psychology (NIFP)) the court may impose a 'customised' sanction (a more tailored approach). Just as with minors, young adults must attend for the trial to take place. If the court tries a young adult under juvenile criminal law, enforcement will follow the sanctions system applied or, in other words, a juvenile sanction will be imposed. The educational approach of juvenile criminal law may offer 18 to 23-year-olds more opportunities (re-)education and rehabilitation than when sentenced according to adult criminal law. It is assumed that this approach will reduce the likelihood of recidivism.

Empirical findings

In the second part of this study, developments were examined in the sanctioning of 16 to 23-year-olds during the period from 1 January 2013 to 1 July 2015. Here, too, the emphasis is on trends in the 18-23 age group. This method made it possible to assess at an early state after the introduction of an act whether this act is applied in practice, while also taking general developments in youth crime into account.

Data from the registration system of the Public Prosecution Service (RAC-min) have been used. This study focuses on criminal cases that have been settled by the *court* in the first instance. It does not include cases that are heard on appeal, nor cases settled by the Public Prosecution Service. During the research, it appeared that the application of juvenile criminal law to

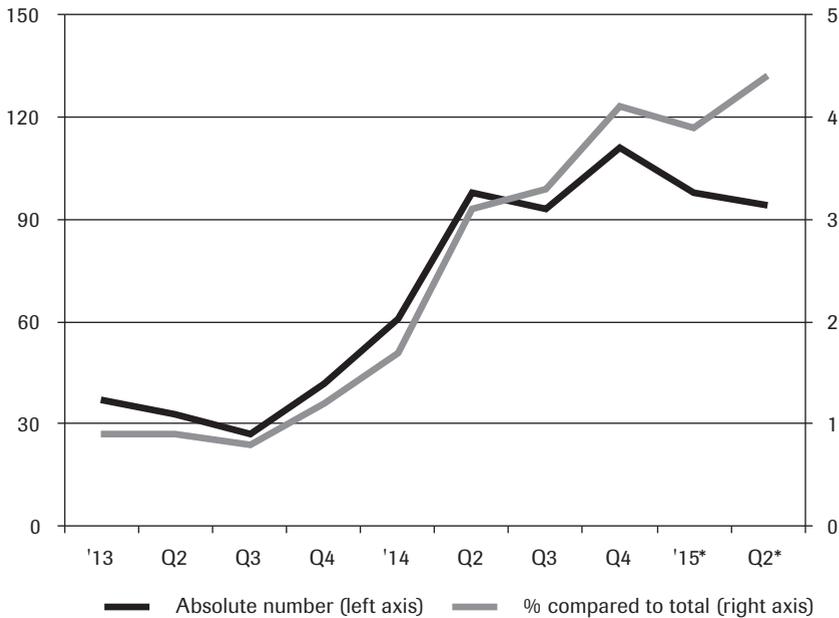
young adults (Article 77c of the Dutch Penal Code; the same applies to Article 77b of the Dutch Penal Code) is not reliably registered. During the study it was decided to also conduct a validation study that will be reported on separately. The findings of this validation study have been implemented in the methodology of the current study. In order to examine the advice given by the probation service (the three Dutch probation organisations) and the NIFP for young adults who have been tried under juvenile criminal law, RAC-min data were used to compile two groups whose results were compared; one historical group (criminal cases in which Article 77c of the Dutch Penal Code was applied before the introduction of criminal law applicable to young adults) and a group of young adults subject to juvenile criminal law after the introduction.

With respect to 16 and 17-year-olds and 18 to 23-year-olds, the absolute and relative numbers of cases settled in the first instance decreases over time. This trend is in line with the general decrease in the number of suspects and juvenile offenders (under criminal law)—a decline that started in 2008 in the Netherlands. Relatively speaking, property offences are the most frequently committed crimes among both age groups, followed by violent crimes. The most common sanction among 16 and 17-year-olds is community service, followed by a suspended prison sentence. Among 18 to 23-year-olds, the most common sanction is community service, followed by a prison sentence and fines. The application of adult criminal law to 16 and 17-year-olds (trial in the first instance) is uncommon, only a few dozen times per quarter, and less than 10 times per quarter since the end of 2014. It concerns 1-3% of all criminal cases against 16 and 17-year-olds. The trends are fluctuating and show a decrease in the application of Article 77b of the Dutch Penal Code since the last quarter of 2014.

While the total number of criminal cases against 18 to 23-year olds is decreasing, the application of juvenile criminal law to young adults (Article 77c of the Dutch Penal Code) shows an increasing trend (see figure S1). In absolute numbers, it concerned fewer than 40 cases per quarter before the introduction; this number increased in the first quarter of 2014 and is around 100 cases per quarter after the introduction. Relatively speaking, it concerned less than 1% of the number of criminal cases against young adults before the introduction, compared to (over) 4% of all criminal cases against young adults after the introduction—this number has more than quadrupled. The increase is irrespective of the general decrease in the number of criminal cases against young adults settled by the court in the first instance. This shows that attention for and the trial of young adults under juvenile criminal law has increased with the arrival of criminal law applicable to young adults. The increase mainly concerns criminal cases against 18 to 21-year-olds. Although the number of criminal cases in which juvenile criminal law was

applied to young adults aged 21 and 22 has more than tripled, its share remains limited.

Figure S1 Application of juvenile criminal law to 18 to 23-year-olds during the period 2013 - Q2 2015, in absolute numbers and as a percentage**



* Preliminary figures.

** Relative compared to the total number of criminal cases against 18 to 23-year-olds.

Source: RAC-min, revised by the Research and Documentation Centre (WODC)

The criminal cases against young adults in which juvenile criminal law is applied mainly concern cases in which violent offences were committed, followed by property offences. In the majority of these cases, a (suspended or non-suspended) prison sentence is imposed. The share of community services has increased after the introduction of criminal law applicable to young adults in the application of Article 77c of the Dutch Penal Code.

With the 'adolescentenstrafrecht', there is increased emphasis on the advice given by the three probation organisations and the NIFP prior to the trial. It is to be expected that advice is given relatively more often after the introduction. In order to verify this, from the public prosecutor's database cases were selected before and after the introduction of the bill (in order to form a historical group and a group subject to criminal law applicable to young adults respectively). The findings indicate that after the introduction of the 'adolescentenstrafrecht', the probation service more often gives advice in those cases in which Article 77c of the Dutch Penal Code is applied to 18 to 23-year-

olds. The relative numbers of recommendations by the NIFP is similar before and after the introduction. This could be explained by a decline in juvenile crime and/or a decrease in the complexity of suspects coming into contact with the law. A considerable part of the cases in which Article 77c of the Dutch Penal Code is applied is not associated with preventive custody. This could indicate that juvenile criminal law is also applied in less serious or complex cases against young adults than initially intended.

The bill 'adolescentenstrafrecht' also implemented changes to several juvenile sanctions such as a restriction of the application of a 'basic' community service (e.g. only a community service without another sanction) in case of serious violent and sex offences and some other offences. The application of a mere 'basic' community service in case of serious violent and sex offences is limited. With respect to the total number of criminal cases against young adults, it concerns less than 3% of the cases against 16 and 17-year-olds and less than 1% of the cases against 18 to 23-year-olds. However, based on register data the seriousness of the crime is unknown which could bias the results. Another example is making the special conditions in the judgment more explicit in case of suspended juvenile sanctions. For this latter example, on the one hand, the relative number of criminal cases in which a suspended sanction is imposed and 'special conditions merely point to behaviour in accordance with instructions of the assistance organisation' decreased in both age groups. On the other hand, the relative number of special conditions with 'a requirement to report or otherwise' increased.

Limitations

The study has limitations. Only data from registration systems have been used. These systems have a delay regarding when information is available for research. Therefore, these results are preliminary. Moreover, the registrations do not provide clear information about the seriousness of offences. These data also depend on priorities among the organisations managing the systems. Furthermore, the group subject to criminal law applicable to young adults is a *sample* of all young adults who were tried under juvenile criminal law after the introduction of the 'adolescentenstrafrecht'. This limits the generalizability of the results.

Directions for future research

The target group as well as a few key concepts of the 'adolescentenstrafrecht' have only been stated in general terms. A further elaboration is desirable, not only in order to determine the functioning and effectiveness of criminal law

applicable to young adults, but also to determine its usefulness in practice. The detailing hereof, however, falls beyond the scope of this research. First of all, the description of the target group and the emphasis on the importance of advice and demand ensure that the selection of young adults is left to professionals in practice. Although this allows for the intended tailored approach, it also raises questions about whether comparable considerations are or can be made in practice, what it means for the legal equality of young adults and whether there are any regional variations in the application of Article 77c of the Dutch Penal Code. Secondly, the ‘adolescentenstrafrecht’ is not a separate sanction system (although the term suggests that it is), but it concerns a separate treatment of young adults under existing criminal law. This raises questions, for example, about culpability among young adults and how the approach to young adults is organised in other countries. Thirdly, the idea is that the key concept of ‘immature development’ justifies a separate treatment of young adults. It is unclear what this may mean, also because young adults show a large variation in their development (some mature earlier than others). A possible operationalization of incomplete development could concern functions which young adults not yet fully control, and that functions that pose as risk factors for antisocial and criminal behaviour are particularly relevant. Fourthly, it is an assumption that the pedagogical effect of juvenile criminal law also works for young adults. As there is limited research about this, it is unclear whether the specific pedagogical effect is effective for this age group, for there are countless of differences between young adults and minors, including risk factors for criminal behaviour. Examining this effect requires a differentiated approach. Follow-up projects of the Monitoring and Evaluation of the ‘adolescentenstrafrecht’ research programme will answer some of these questions (amongst others).

Conclusion

There is scientific evidence that justifies a separate approach to young adults under criminal law. Moreover, the emphasis on forensic advice before trial is in line with the findings from scientific research that a valid, reliable and in advance screening and selection of the target group is relevant for the effectiveness of an intervention. Criminal law applicable to young adults therefore seems to offer opportunities for reducing crime among young adults. The target group and a few key concepts (‘incomplete development’ and ‘pedagogical effect of juvenile criminal law on young adults’) are described in general terms and the further implementation has been left to professionals in practice. This raises several new questions about the functioning of the ‘adolescentenstrafrecht’ in practice. Follow-up research will have to show the effect of the bill ‘adolescentenstrafrecht’ in practice and the variations that arise, not only locally but also as regarding the characteristics of young adults that

are tried under juvenile criminal law. The empirical research shows that in the first five quarters after the introduction of the 'adolescentenstrafrecht', there has been an increase in the number of young adults that are tried under juvenile criminal law (Article 77c of the Dutch Penal Code), against the background that there is a general decline in juvenile (and adult) crime. This result, including the increase in the advice on young adults by the probation service, indicates that the extended possibilities for a special approach to young adults are used in practice.