

Summary

Adolescent Criminal Law

Characteristics of the target group, criminal cases and procedural execution

Background

Adolescent Criminal Law (ACL) became effective on 1 April 2014 in the Netherlands. The intention of this legislation is the stimulation of a flexible use of applying juvenile and adult criminal law in cases against suspects and offenders aged around 18 years old. The principle idea behind ACL is that certain young adults are better off receiving sanctions from the juvenile criminal law system, instead of the adult criminal law system. For instance, young adults with developmental deficits should be 'treated' more for their criminal behaviour than merely 'punished'.

Two key changes brought on by ACL are raising the maximum age for juvenile criminal law by two years (from up to 21 years old to up to 23 years old) and increased emphasis on forensic advice provided by forensic experts. The central concept in ACL regarding young adult offenders 'immature development', which thus offers special treatment of young adults in the criminal justice chain, when deemed necessary. Currently, there is little known about the characteristics of 18- to 23-year-olds who have been sentenced with a juvenile sanction.

The current study examines whether the characteristics of the ACL target group as envisioned by the legislator are also found in practise, during the first year of ACL. This study is part of the research programme Monitoring and Evaluation of ACL, which runs from 2014 through 2019, and is carried out by the Research and Documentation Centre.

Objective

The aim of this study is twofold. Firstly, the study aims to provide insight into how the ACL target group is defined by legislators, the criminal justice chain and academics. Also, a comparison was to be made of the perspective that legislator and policy makers have on what the ACL target group is, and how this group is intended by the justice field. After all, a working definition and description of the target group is crucial in selecting suitable young adults to be tried according to juvenile criminal law.

Secondly, the study aims to provide insights into how the actual ACL target group of young adults looks like in practise, based on information collected in the criminal justice chain. Any known similarities and discrepancies between the intended ACL target group and the actual ACL target group provide critical insights for effect assessments. For instance, if discrepancies are severe, it remains to be seen whether suitable interventions were available and provided.

Research method

Multiple research methods and multiple sources were used.

Firstly, a review was conducted of literature addressing how legislators and policy makers envisioned the ACL target group, and how this target group was described within the criminal justice chain. In addition, scientific literature was consulted, which focused on recent research into 'immature' development in young adult offenders in the Netherlands.

Secondly, an empirical study examined characteristics of young adult offenders with a juvenile sanction, comparing them with those with an adult sanction. Three groups were studied:

- 1 18- to 23-year-old offenders with a case registered in April 2014 through March 2015 resulting in a juvenile sanction (i.e., the ACL-group);
- 2 18- to 23-year-old offenders with a case registered in 2015 resulting in an adult sanction (i.e., the simultaneous adult criminal law group, the SIM-group);
- 3 18- to 23-year-old offenders with a case registered in 2010 through 2013 resulting in a juvenile sanction (the historical juvenile criminal law group, the HIS-group).

Relevant offenders were identified through criminal cases settled in the Courts of First Instance. Relevant information was requested from organisations tasked with handling young adults in the criminal justice chain. Sources that were used included RAC-min (i.e., registration system of the Public Prosecutor Service; PSS), IRIS (i.e., registration system of the Dutch Probation Service; DPS) and Pro Justitia reports (i.e., forensic reports of the Dutch Institute for Forensic Psychiatry and Psychology; DIFPP). This data contained characteristics of relevant criminal cases, and personality traits, demographic traits, criminal career characteristics and criminogenic risk factors of offenders. Due to insufficient numbers of PJ reports in the (random) SIM sample for statistical purposes, all known PJ reports of young adults with an adult sanction were obtained from the DIFPP. Furthermore, data was obtained from Statistics Netherlands on resocialisation indicators, such as housing, education and employment.

Results literature study

The literature review showed that both legislators and policy makers provided legal guidelines for what the ACL target group should be, both in article 77c of the Dutch Criminal Code and in the Explanatory Memorandum of ACL (EM, i.e., a document that provides insights in to how and why a bill was formed). These guidelines mentioned: the personality of the offender and circumstances under which the crime was committed. For instance, offenders suffering from immature emotional, social, moral and intellectual development should be tried under juvenile criminal law. Also, specific offenders, such as high frequency offenders and vulnerable young adults, were also mentioned.

But still, these legal guidelines were written only in more general terms. Moreover, no further clarifications were provided by justice professionals in the field. That said, the PPS, the DPS and the DIFPP did develop screening instruments, listing indications and contra-indications as to whether or not a young adult is suitable for juvenile sanctioning. Thus, more concrete guidelines were provided as to what 'immature development' is. Despite lacking a clear legal definition, several of the examples of suitable offenders mentioned in the EM were observed in practise, such as

offenders of serious crimes, intellectually impaired offenders, and those with issues in multiple life areas.

Examining a selection of scientific literature revealed that a clear definition is still lacking in the academic community as to what immature development in young adults precisely is, and as to how immature development plays a role in the desistance or continuation of crime into young adulthood. A possible working description of such immaturity concerned the development of functions and processes that are not yet under control by young adults themselves, and are relevant for exhibiting or suppressing criminal behaviour. Ascertaining whether this description is usable on the individual level requires further research.

Results empirical study

The empirical study compared the ACL-group with the SIM-group and HIS-group on various personal and criminal case characteristics, and yielded the following results.

ACL-group versus SIM-group

More serious crimes and custodial sanctions in ACL-group

The ACL-group contained relatively more cases involving serious crimes, such as violent property crimes, in comparison to the SIM-group. The ACL-group also showed fewer traffic offences and other types of crimes (e.g., narcotics offenses). Furthermore, relatively more cases in the ACL-group were sentenced with a custodial sanction, compared to the SIM-group, in which fines were more prevalent.

More problems with housing, education and employment in ACL-group

The ACL-group exhibited characteristics that indicate education and employment issues. Relatively often, those in the ACL-group had only attended and obtained primary education as their highest level of education, when compared with the SIM-group. Moreover, the ACL-group contained relatively more welfare recipients than the SIM-group, in which individuals with a secondary or higher level of education were more prevalent. Furthermore, those in the ACL-group more often lived in institutional settings (which may indicate problems in various life areas) or in unspecified households, whereas those in the SIM-group were relatively more often part of a nuclear family (i.e., two parents with child[ren]).

More indications of immature development in ACL-group

Forensic experts indicated that the ACL-group came across as less mature in both behaviour and appearance, than their chronological age would suggest. In addition, experts reported relatively higher prevalence of minor intellectual impairment, lower intelligence, deficient social development, limited impulse control and defunct aggression regulation in the ACL-group, compared to the SIM-group. That said, absence of information regarding offender's development was relatively high in the population of PJ reports regarding young adults with an adult sanction. With the introduction of ACL forensic experts had to explicitly decide which of the criminal law systems should be applied, when the suspect was found guilty. Whether an indication of advising juvenile criminal law by itself also implies 'immature development' remained unclear.

ACL-group versus HIS-group

Juvenile criminal law primarily applied in cases against 18- and 19-year-olds

Since the introduction of ACL, juvenile criminal law was mostly applied against 18- and 19-year-old young adults, whereas the application is possible for suspects and offenders up to 23 years old. This was also true prior to the introduction of ACL, when 20-year-olds (and a few 21- and 22-year-olds) were also a minority. That said, in the ACL-group, the share of older young adults has grown, virtually tripling in size compared to the HIS-group. Nonetheless, the share of 21- and 22-year-olds in the ACL-group remained modest.

More property and fewer sexual offenses in ACL-group

Although initially not expected, differences were found between the ACL-group and the HIS-group. For instance, the prevalence of offense types differed, as property offenses were more prevalent in the ACL-group and sexual offenses were more prevalent in the HIS-group.

ACL-group lower educated, more dependent on welfare, and more non-nuclear families

The ACL-group also differed from the HIS-group concerning several demographic characteristics. Namely, the ACL-group consisted of lower educated individuals, more young adults dependent on welfare, and more individuals from a non-traditional households, compared to the HIS-group.

Limitations

The study had its limitations. Firstly, the collected data were initially produced for proceedings in the criminal justice chain, and not necessarily designed to be used for research purposes. For a large number of criminal cases, no information was available regarding consultation or advice from the DPS or DIFPP. This may have biased results regarding group characteristics. Secondly, the data suggested that young adults with a juvenile sanction underwent more rigorous screening than those with an adult sanction, as more data was available on young adults with a juvenile sanction. This was not surprising, given the less severe offenses found in adult criminal law, which do not necessarily warrant a lot of recidivism screening, and the emphasis of ACL on forensic expertise. Henceforth, information regarding various relevant indicators was lacking for this group, making comparison of young adults with juvenile sanctions with those with adult sanctions troublesome.

Conclusion

ACL emphasizes special treatment of young adults in the criminal justice chain. To provide more appropriate sentences and treatment to those who need it, the maximum age of juvenile criminal law is raised up to 23 year olds. Furthermore, more weight is given to forensic advice. To properly facilitate a tailored approach in the criminal justice chain, it is vital to know what the ACL target group *should* and *actually* looks like, and whether differences exist between the intended target population and the population of young adults sentenced with a juvenile sanction in practice. General legal guidelines for the intended ACL target group described in legislation mention young adults suffering from immature emotional, social, moral

and intellectual development, which could constitute the 'personality of the offender'. Furthermore, specific types of offenders are mentioned too, such as offenders of serious crimes, high frequency offenders and vulnerable young adults. However, which young adults specifically are suitable is left to professionals in the justice field to decide. One possible consequence of the only more general guidelines is that the target group differs depending on who you ask, potentially resulting in underutilization of juvenile criminal law against young adults. Even though the percentage of criminal cases against young adults with a juvenile sanction is up to 5% in 2016, since the introduction of ACL, this share is still only modest. Despite that there is no clear definition of the intended ACL target group, there seems to be some consensus in the justice field regarding which young adults could belong to the target group. For example, offenders of serious crimes, young adults with minor intellectual impairments, and individuals with issues in multiple life areas are more often found among young adults with a juvenile sanction, compared to those with an adult sanction. Still, the question remains whether the young adults that ACL should target are being reached, and whether those that have been reached actually have benefited from it. It is possible that, in practice, more young adults could benefit from being tried under juvenile criminal law, than is currently the case.