

Summary

Adolescent Criminal Law (ACL) was implemented on 1 April 2014 in the Netherlands. The goal of ACL is to stimulate the flexible application of juvenile and adult law in criminal cases against individuals from 16 up to and including 22 years old. In most of the cases, this concerns the application of juvenile law on young adults aged 18 to 22. Such a distinct approach to young adults not only exists in the Netherlands, but also in other European countries. Since little is known on how the situation in the Netherlands relates to the situation in other countries, the goal of this report is to provide an overview how other European countries deal with young adults in the justice system and to compare this to the Dutch approach. This study is part of a broader research program Monitoring and Evaluation of Adolescent Criminal Law of WODC.

Research questions

The goal of this report is to gain insights in the distinct approach of young adults in the justice system in other European countries and to compare these approaches with the Dutch approach towards young adults. The research questions are:

- 1 Which European countries have a distinct approach towards young adults in the justice system?
- 2 What does this distinct approach entail during the different phases of the criminal proceedings (prosecution, trial and sanctioning)?
- 3 Are there specific criteria that need to be met to be eligible for this distinct approach?
- 4 What are similarities between the Dutch distinct approach and the distinct approach in other European countries?
- 5 What is known about the extent that a distinct approach has been applied in other European countries?
- 6 Which sanctions or interventions are applied on young adults who committed a crime in other European countries?
- 7 What is known about the effectivity of the sanctions and interventions applied on young adults who committed a crime in other European countries?

The first three research questions will be answered for as many European countries in the Council of Europe as possible. Questions 4 to 7 will be answered for four European countries that are considered relevant for the Netherlands, namely Austria, Germany, Portugal and Sweden.

Methods

To answer the research questions, we have made use of a (1) scoping literature review and a (2) qualitative multiple case study. The aim of the literature review is to retrieve general information about the distinct approach of young adults in the criminal law system in European countries. The qualitative case study, in which experts are questioned about their country's situation, is meant to gain more detailed information of the distinct approach of four European countries. These

interviews are used to fill the gaps in the knowledge retrieved from the literature review.

Scoping literature review

To gain an overview of the existing literature on the approach towards young adults in the justice systems of European countries, we conducted a scoping literature review. Studies were included if they met the following inclusion criteria:

- Discussed the approach towards young adults in the criminal justice system. Explicit age boundaries were not formulated, but should at least overlap the age boundaries for young adults in the Dutch justice system (18 to 23 years).
- Discussed at least one phase of the criminal proceedings (prosecution, trial and sanctioning).
- Concerned a country that is member of the Council of Europe.

Furthermore, only studies published after 2000 and written in English were included. To localize studies, scientific research databases were searched using several pre-determined keywords. Subsequently, studies that met our inclusion criteria were used to search additional studies by looking into the studies they cited (snowballing method) and the studies that cited them (cited-by method).

Because only studies in English were included, there was information missing on some countries. Therefore, experts from these countries were asked whether their country has a distinct approach in their justice system. Based on the literature and this brief expert survey, research questions 1 to 3 were answered.

Qualitative multiple case study

The second part of this report concerns a qualitative multiple case study of four countries that are considered relevant for the Dutch policy towards young adults. These countries are Austria, Germany, Portugal and Sweden. The aim was to select two countries whose approach towards young adults is comparable with the Dutch approach, namely countries where young adults can be sanctioned in juvenile law (Austria and Germany), and to select two countries who do have a distinct approach towards young adults, but whose approach is less comparable with the Dutch approach (Sweden and Portugal), for instance mitigation of sentences. For each country, at least two experts were asked to complete a questionnaire with twenty questions on their country's approach towards young adults. Some of these questions were already answered by the literature review. In that case, the experts were asked to validate these answers. This information was used to summarize a country's approach towards young adults in a document, which was sent for validation to a third expert. The information from these countries are compared with the Dutch situation.

Results literature review

The literature review yielded 59 studies with relevant information, of which 17 had a specific focus on young adults in the justice system. These studies contained information on 38 European countries. After experts were contacted for additional information on their country's situation, the number of countries extended to 45. Including the Netherlands, there is information on 46 countries of the 50 countries of the Council of Europe. There was no information available on Andorra, Liechtenstein, Monaco and San Marino.

Most countries have a distinct approach towards young adults

The justice system of 34 of the 46 countries have a distinct approach towards young adults older than 18 at the time of the offence. The other countries do not have a distinct approach for this group of young adults, though in some of these countries it is possible to sanction young adults older than 18 year according to juvenile law if they committed the crime when they were younger than 18 years.

Different age limits for distinct approach

The 34 countries who have a distinct approach towards young adults in their justice system differ in their definition of a young adult. In most countries, the minimum age is 18 years old, except for Portugal and Scotland who both have a minimum age of 16 years old. The maximum age for the distinct approach is in most countries 21 years. Two countries have a maximum age of 20 and three countries have a higher maximum age, ranging from 22 to 25. In the Netherlands, the maximum age is 23 years old. Countries also differ in the moment they measure the age. In most countries, it concerns the age at the moment of the offences, whereas in some countries it concerns the age at the moment of the trial.

Different criteria for distinct approach

Not only the age of the young adults matters in the decision whether he or she is eligible for a distinct approach in the justice system. Although some countries apply the distinct approach on all young adults, in other countries there are criteria that have to be met in order to become eligible for the distinct approach, such as:

- an individual characteristic of the suspect (in the Netherlands, for instance, the personality of the offender e.g. immaturity; in other countries, a decision is based on e.g. the accountability of the suspect);
- the circumstances of the crime;
- the expected effectivity of the distinct approach;
- the severity of the punishment or offense.

Distinct approach both material as procedural

The way the distinct approach is organized differs between countries, and can be divided into four categories:

- placement in a separate detention center or in a youth detention center;
- mitigation;
- other sanctions than adults sanction, for instance sanctioning following juvenile law;
- the application of distinct justice procedures for young adults.

The first three categories can be considered as material, as it is about sanctioning of young adults or the way sanctions are implemented. The fourth category is about the procedural aspect of criminal law. Multiple categories of a distinct approach can be present within a country's distinct approach.

Results in depth comparison of four European countries with the Netherlands

Four countries were investigated in more detail. Two of these countries (Germany and Austria) were included because they are somewhat comparable to the Nether-

lands in terms of criminal justice system. Sweden and Portugal have organized the criminal justice system differently from the Netherlands when it concerns the treatment of young adults in the criminal justice system. In the Netherlands, the starting point for young adult suspects of a crime of 18 up to and including 22 years of age is 'adult criminal law, unless' and can be sanctioned under juvenile criminal law under specific conditions. In Germany, young adults aged between 18 and 21 are sanctioned according to the juvenile law, though some legal conditions are present (see below). In Austria, the distinct approach applies to all young adults between the ages of 18 and 21 at the time of the crime, whereby they are procedurally subject to juvenile criminal law, but are punished under adult criminal law. In Sweden and Portugal, young adults are subject to regular adult criminal law, but there is the option of reducing sentences (Sweden) or offering alternatives to prison sentences (Portugal)

Different motives, but all countries acknowledge its importance

Although the countries all have a separate approach to young adults, the motivation and implementation of this distinct approach has been different in each country. The introduction of the approach in Germany and Sweden took place earlier than in the Netherlands (1953, 1935 / adjustment in 1988 and 1965 / adjustment in 2014, respectively). In Portugal and Austria, the distinct approach was introduced later than in The Netherlands (1982 and 2001 respectively).

The Netherlands and Germany implement the distinct approach of young adults from a development perspective, whereby (some) young adult suspects / offenders of a crime are not yet considered fully developed. Sweden mainly looks at accountability, from which they conclude that young adults cannot be held responsible to the same extent for the crimes they committed. Portugal focuses on the social development of young adults and the importance of work and training among the young adults. In Austria, the distinct approach is based on the idea that crime among young adults may increase temporarily due to the age-specific problems associated with the transition to adulthood. Although formulated differently, all countries entail a distinct approach to reckon for the development of young adults. Sweden, however, is currently considering abolishing the distinct approach of young adults.

Age limits differ between countries

The minimum age of the distinct approach of young adults in criminal law is 18 years in the Netherlands. This minimum age is comparable with Germany and Austria. The age of adulthood is also set at 18 in those two countries. Sweden has a less clear minimum age. Young people from the age of 15 are criminally liable and fall under the same system as adults. This has to do with the fact that there is no separate juvenile criminal law in Sweden. Portugal also sets a lower minimum age than the Netherlands, namely 16 years. From the age of 16, juveniles are seen as young adults and a separate criminal justice regime applies. The maximum age of the distinct approach in the Netherlands has recently been raised, making young adults up to the age of 23 eligible for the distinct approach. All four countries use the limit of 21 as the maximum age, comparable to the Dutch situation before the age limit in 2014 was raised.

Additional criteria not present in each country

The Dutch distinct approach has two additional legal conditions: the personality of the offender and the circumstances of the crime. The system in Germany is most

similar to the Dutch conditions, as both the personality of the offender and the circumstances of the crime are also considered as criteria for applying the distinct approach of young adults. However, in Germany, the starting point is that all young adults can qualify for juvenile criminal law. This implies that the professionals involved must be primarily alert to contraindications for the application of juvenile criminal law, while in the Netherlands the professionals must mainly look at pro-indications. In both Germany and Sweden, there are also procedures or sanctions that are part of the distinct approach, but apply to all young adults within the established age limits. In Austria, the distinct approach apply to all young adults, so there are no further conditions that have to be met.

Public prosecutor less important in other countries

In the Netherlands, the public prosecutor (OM), the three probation organizations (3RO) and the Netherlands Institute for Forensic Psychiatry and Psychology (NIFP) have an important position in the decision to apply of the distinct separate approach to young adults. The OM can decide to consider a distinct approach of a young adult suspect (i.e. bet on prosecution under juvenile criminal law and demand a juvenile sanction). Advisory reports on the young adult are then prepared by the probation service and, where appropriate, by the NIFP. It also examines whether this young adult can be eligible for a juvenile sanction. This seems to differ from the system in Germany and Austria. Part of the procedures that include young adults in Germany and Austria is a report about the suspect's development and circumstances. In Portugal, all parties can request information from the Directorate General of Reintegration and Prison Services (DGRSP), which, if necessary, offers advice that can justify the decision-making process.

At the end, it are the judges who decide

The actual decision to apply a distinct approach for young adults is up to the court in all countries, except Austria. In Austria, the distinct approach applies to all young adults, whereby they fall under the procedural process of the juvenile criminal law, but the sanctioning takes place via the adult criminal law. German young adults are also tried at youth court, and the judge can choose to apply juvenile criminal law instead of adult criminal law. In the Netherlands, Portugal and Sweden, adult court decides to apply adult criminal law or alternative sanctions. In Germany and Sweden, just like in the Netherlands, the decision for a distinct approach has to be justified when it is applied. In Portugal, on the other hand, judges must always justify the decision, also if the distinct approach has not been applied. The implementation in the Dutch system follows the choice of the judge for the criminal justice system. In the other countries there is also the possibility of placing a young adult offender in a separate section of a prison or in a youth institution, also if they are sanctioned according to adult criminal law.

Differences in maximum and minimal sentences for young adults

In the Netherlands, young adults who are sanctioned according to juvenile law can be given much lower sentences than young adults who are sentenced according to adult criminal law, and there is a possibility to apply other measures. In Austria, on the other hand, the maximum sentences are also high for all young adults (around 15 years for a custodial sentence). In Germany, the maximum sentence is the same for all young adults, regardless of whether they are tried according to juvenile and adult criminal law (both 15 years for young adults). This is higher than the

maximum sentences for juveniles, which is 10 years. When young adults in the Netherlands are sanctioned according adult criminal law, no expectations in the sanctions can be made. This differs from Germany and Sweden, where young adults, also if they are sanctioned under adult criminal law, may qualify for a reduction in sentences compared to adults. Furthermore, where there are no minimum sentences in the Netherlands, there are in Germany. When imposing a youth detention the duration is at least 6 months. In addition, there is the possibility of a short-term detention of up to four weeks for which they do not get a criminal record.

Limited information on effectivity

The literature review yielded very limited research results on the effectivity of the distinct approach towards young adults in the justice system.

Strengths and limitations

This study uses English sources and personal communication with experts from the countries concerned. This means that this research depends on the knowledge of these experts. We are not completely certain that we have all the information the distinct approach in the countries investigated, and that some information is missing. In addition, it is possible that a few nuances of the criminal justice systems have been lost due to the translation into English and then the translation into Dutch.

We employed a specific focus on young adults in the justice system, and the information obtained thus provides a good overview of the possibility and the interpretation of the distinct approach in several countries. Though we have to mention that that differences and similarities between juvenile and adult criminal law of the countries concerned have not been systematically examined.

To deal with these limitations, we made use of triangulation. If information was missing from the literature, experts who could provide additional information were contacted. In most countries, the information was retrieved from both the literature and from experts.

Conclusion

The comparison of the Dutch situation with European countries shows that various countries have a distinct approach towards young adults in their justice system. This concerns both material (for instance, placement in youth detention centers, reduction of sentences, sanctioning following juvenile criminal law) and procedural aspects (other procedures in criminal proceedings for young adults than other adults). In some countries all young adults are eligible for a distinct approach, in others it is only a selection of young adults, for instance for those not yet fully developed. The differences and similarities with other European countries found in this study can provide starting points for both research and policy to further evaluate the knowledge and functioning of the distinct approach of young adults.