

SUMMARY

Evaluation of the Child Protection Act 2015: new thresholds for child protection orders in the context of a faltering system.

1 INTRODUCTION AND OBJECTIVES OF THE STUDY

This research report evaluates the reform of the Dutch legislation on child protection proceedings: the Child Protection Act 2015. This new law came into effect on the first of January 2015 and aims to better protect children by prioritizing their best interests when deciding on child protection orders. The new Act's main goal was to develop a more efficient and effective child protection system. To this end, both the legal basis for a supervision order with or without an out-of-home placement and the legal basis for a care order (the discharge of parental responsibilities by a third party (natural or legal person) having custody of the child) were amended.

When the Child Protection Act 2015 was introduced, Regioplan was commissioned by the WODC (Research and Documentation Centre) to develop a framework to evaluate the Act. Five main goals were determined for this Act:

- to ensure that the child's need for protection is decisive when choosing between a supervision order and a care order (focusing on the development of the child);
- to broaden access to child protection orders;
- to prevent improper use of a supervision order;
- to provide a transparent and goal-oriented implementation of the supervision order;
- to guarantee stability and continuity in the child's upbringing.

In addition, it has been established how these goals should be achieved and which indicators can be used to assess this. On the basis of this framework, Regioplan carried out a first assessment regarding the implementation of the Act. Subsequently, the Verwey-Jonker Institute carried out an interim evaluation of the Act in 2018, using the evaluation framework of Regioplan and the associated indicators as a basis. This current study aims to conduct a final evaluation of the Child Protection Act 2015. To this end, new research has been conducted to examine whether, and if so, to what extent, the objectives of the Child Protection Act 2015 were achieved. As in the interim evaluation, the evaluation framework established by Regioplan is also used in this final evaluation.

In recent years it has also become apparent that various factors cannot be viewed separately from the implementation of the Child Protection Act 2015. This concerns both

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legal factors that influence the implementation of child protection orders (such as ambiguity about parts of the revised Act or developments in case law) and contextual factors that influence the revised child protection legislation and its application, such as current concerns about the youth care system since the introduction of the Youth Act ('Jeugdwet') which was introduced simultaneously with the new Child Protection Act in 2015. Therefore, in this final evaluation of the law, the aforementioned goals and context factors have been evaluated in more detail.

2 RESEARCH QUESTIONS AND METHODOLOGY

This final evaluation of the Child Protection Act 2015 focuses on the following questions:

1. Have the objectives of the Child Protection Act 2015 been achieved?
2. How is the implementation of this Act progressing and are there any bottlenecks or points for attention in that regard?
3. To what extent is the Child Protection Act 2015 in line with the Youth Act and developments with regard to its implementation?

In order to answer these research questions, various sub-studies were carried out: a) a file study; b) case law review; c) literature review; and d) interviews and focus group discussions. An overview of these research methods is presented below:

Sub-study	Overview of research method:
a) File study	Analyzing files (N=202) at: <ul style="list-style-type: none">- The Child Care and Protection Board (N=102)- Certified Institutions (N=100)
b) Case law research	Relevant Journals and case law <ul style="list-style-type: none">- Published between January 2015 and August 2021
c) Literature review	Relevant academic law literature <ul style="list-style-type: none">- Published between January 2015 and December 2021
d) Interviews and focus group discussions	Interviews (N=56) with: <ul style="list-style-type: none">- Professionals at the Child Care and Protection Board (N=12), child protection workers working at certified institutions (N=15) and judges (N=6)- Foster parents (N=15), parents (N=3) and children (N=5) Two focus groups with: <ul style="list-style-type: none">- Experts in the field of child protection (N=13)

3 RESULTS

In the following paragraphs, the main findings of this study will be described and the results of all sub-studies will be presented in an integrated manner. First, the results for each of the five goals of the Child Protection Act 2015 are presented, followed by the main findings concerning factors that may influence the implementation of the Act. However, first it should be noted that current problems in the Dutch youth care system were found to have a huge impact on the implementation of the Child Protection Act 2015. These enormous problems in fact prevent successful implementation of the Act, even if amendments should be introduced. The recent urgent concerns about the inadequate child protection system are severe and are strongly confirmed in this research project. Emergency measures and urgent action are necessary.

Goal 1: The child's need for protection is decisive when choosing between a supervision order and a care order

The primary aim of the Child Protection Act 2015 was to focus on the needs of the child when deciding on a specific child protection order. To achieve this goal (1) the legal basis for the supervision order has been amended; (2) a new child protection order for termination of parental responsibilities (care order) was introduced; and (3) the petition for a supervision order must include information on whether the order has been discussed with the child.

Amendment of the legal basis for a supervision order

The legal basis for a supervision order has been amended in two ways, clarifying both the lower limit (threshold) as well as the upper limit of the order. To clarify the lower limit, the part in the legal basis for the supervision order that stated 'that the supervision order could only be imposed when other means of eliminating development threats for the child have failed or will fail', was changed into a requirement stating that the necessary support for the child is not or is insufficiently accepted by the parents.

The research has shown that this part of the new legal basis is being stretched in practice. In particular for situations in which parents do accept support, but are unable to benefit from it, the criterion has proven difficult to match the threshold for a supervision order. After clarification of this criterion by the Dutch Supreme Court, it has become clear that the current legal basis also applies to these situations. Therefore, in daily practice, the old legal criterion is still being used.

"In the beginning there were discussions about parents who do accept help, but that is less so now. It is now clear that it is about whether the help is successful or not." (judge)

In addition to the lower limit, the upper limit criterion for a supervision order has also been clarified. The upper limit is determined by the term 'an acceptable period of time for the child'. When considering whether to proceed with a supervision order or to terminate parental responsibilities (care order), the central question is whether parents can be responsible for the care and upbringing of the child within a period of time that is acceptable for the child. To assess what period is acceptable for a specific child, a case-by-case process is needed based on factors such as the age of the child and the parenting skills of the parents. However, it is not always easy to determine this; the acceptable period of time for the child is a complex concept that leads to interpretation questions. For instance, child protection workers seem to be confused with the two-year time period regarding the extension request for a supervision order (which must be submitted to the Child Care and Protection Board for review after two years). It is also unclear why this criterion is included in the legal threshold for the supervision order in general, while in fact it only applies to out-of-home placements in combination with a supervision order.

An important bottleneck for the application of the 'acceptable period of time' requirement is current problems in the child protection system. Due to long waiting lists and shortages in the range of available care, it is often not feasible to provide sufficient help within the acceptable period of time. This means that judges must base their decisions about termination of parental responsibilities on the mere passage of time and not on the availability and effectivity of family and child support. Because the acceptable period of time is set shorter for younger children, these concerns are even more problematic for this group in particular.

"Waiting lists are a bottleneck. What if no help was available within the 'acceptable period of time for the child'? What to do then?" (child protection worker)

The new care order for termination of parental responsibilities

A second means of focusing on the protection needs of the child is the introduction of a new threshold for a care order. The legal basis for a care order resembles the supervision order threshold and includes the term 'acceptable period of time'. Here, the law provides that a termination of parental responsibilities (care order) can be imposed if there is no justified expectation that parents will be able to resume responsibility for the child's care and upbringing within a period of time that is acceptable to the child.

The application of this threshold in the event of a termination of parental responsibilities appears to be accompanied by many dilemmas in daily practice. Consider, for example, the aforementioned problems in the current child protection system (what to do if insufficient support has been received at the end of the term?). And is termination of parental responsibilities desirable if a child is not placed in a stable family setting, but for example in a residential institution? Although the threshold for terminating parental responsibilities

may be reached in such a situation, the court is allowed to reject a request for a care order if the measure is not deemed to be appropriate or disproportionate in a specific situation. In addition to the lack of a stable new place for the child, this can also be the case when a child is almost 18 years old or when parents agree with the arrangement of the child living elsewhere. In practice, therefore, reticence is noted when ruling on a termination of parental responsibilities.

An important bottleneck with regard to the application of the ‘acceptable period of time for the child’ concerns the decision about the child’s perspective that has been developed in practice. With that decision, often called the ‘perspective decision’, the certified institution not only decides upon the prospects of the child – returning home or permanently placed in care – this also has far-reaching consequences for the family assistance that the certified institution deploys. For example, contact with parents can be reduced when the perspective decision entails that the child will no longer go home. Judges however are not informed about the perspective decision and are confronted with the abovementioned consequences months later, for instance when a care order is submitted to the court.

“The ‘perspective decision’ is a kind of shadow trajectory that parents know nothing about, and which is not reviewed by a judge. Although such a decision was made quite some time ago, parents still think that children can return home.”
(judge)

The child’s views in the petition

The last instrument that is linked to the first goal of the legislative reform, to focus on the protection needs of the child, is the obligation to state in the petition whether the request has been discussed with the child, and if so, what his or her response to that was.

This study shows that in practice a distinction seems to be made between children who are younger than twelve years of age and children who are older than twelve years of age. With regard to the latter group, in many cases, the child’s views are indeed included in the petition. This happens much less often when children have not reached the age of twelve. The Child Care and Protection Board does, however, speak with almost all children in the context of their own investigation, also when they are younger than twelve years old. This is important and the certified institutions could follow this example, as the youngsters who participated in this study clearly indicated that they feel unheard.

“That’s the legal system, isn’t it? That you hear the story from both sides? Why is that not true for youth care?!” (youngster)

Goal 2: Broaden access to a child protection order

The second goal of the revised Child Protection Act concerns broadening access to child protection orders. To this end, both the mayor (in case of a supervision order) and certified institutions (in case of a care order) have been given the possibility to enforce that the judge considers whether a child protection order is necessary, despite a decision of the Child Care and Protection Board not to submit such a request to the court. The second revision to reach this goal relates to the option for parents to request the court for a supervision order if the Board does not proceed with a request. The third revision concerns the court's *ex officio* power to include brothers and sisters in the supervision order.

This study showed that the abovementioned revisions are rarely used in practice. Nevertheless, the added value of the new authority of the mayor to request a supervision order was mentioned in the interviews. The authority of the children's judge to place siblings under supervision is also appreciated, despite its limited practical significance. The new possibility of certified institutions to request a termination of parental responsibilities (care order) appears to be of most added value in practice. On the one hand, the research shows that this option is not often used. On the other hand, this can be explained by the fact that the Child Care and Protection Board often agrees with the request of the certified institution. If not, these parties usually agree through constructive consultation. In general, there is a feeling that this possibility gives certified institutions a stronger position towards the Child Care and Protection Board. Finally, it should be noted that the new possibility of parents to request a supervision order is in fact not broadening, but narrowing access to child protection for parents. Until 2015 parents were authorized to request a supervision order. Since 2015 they are only authorized to do so if it is clear that the Child Care and Protection Board will not request a supervision order.

“If the Child Care and Protection Board and the certified institution disagree and are both convinced that they are right, an objective party should be able to look at it.” (child protection worker)

Goal 3: Preventing improper use of the supervision order

The third goal of the Child Protection Act 2015 is to prevent supervision orders from being extended for years in a row. These orders can be imposed for 12 months after which extension is possible, yet the supervision order is intended as a *temporary* measure. To this end, both the lower limit and the upper limit of the order have been clarified. When parents and children accept support, a child protection order is no longer necessary and it was the intention of the legislator that support would be scaled down from a mandatory to a voluntary basis. However, if the child protection order will not yield sufficient improvement within a period of time that is acceptable for the child and the child no longer lives at home, the supervision order should be scaled up to a care order. With this aim in

mind, the Act also states that if a supervision order combined with an out-of-home placement order is extended after two years, the extension request must be accompanied by a recommendation from the Child Care and Protection Board in which it is explained why a supervision order is still the appropriate measure.

Clarification lower and upper limit supervision order

With regard to the clarification of the lower limit, it has already been concluded under the first goal that supervision orders are often imposed and extended in situations of parents accepting the necessary support. Long-term supervision orders with a yearly renewal are therefore common in practice. With regard to the upper limit, it appears that there are many obstacles to a termination of parental responsibilities. On the one hand, this has to do with current problems in child protection practice; children who are placed out of home do not immediately end up in a stable family environment. On the other hand, there are also situations in which it is evident that the child can no longer live at home, but a care order terminating parental responsibilities is nevertheless considered too far-reaching (for example when parents attach great importance to their parental responsibilities and permanently accept an out-of-home placement of their child). This results in a reluctance in practice to request or pronounce a care order.

Advisory task of the Child Care and Protection Board after two years of supervision order with out-of-home placement

Opinions on the assessment task of the Child Care and Protection Board after two years of supervision order combined with an out-of-home placement were divided in this study. On the one hand, it is valued that an independent party monitors the implementation of a long-term supervision order. On the other hand, there are many concerns about the limited interpretation that the Child Care and Protection Board gives to this task. The assessment is usually limited to a 'check' using relevant documents of a certified institution, although in some regions the Board gives more substance to the investigation task.

“Certified institutions often request for extension while actually wanting to request a termination of parental responsibilities. However, an investigation for this termination does not fit in the time frame of the supervision order; this is often still on our waiting list when the request for an extension of the supervision order is submitted.” (employee of the Child Care and Protection Board)

Another problem with this assessment task is that current supervision orders with an out-of-home placement have to be regularly renewed because the investigation of a possible termination of parental responsibilities has not yet been completed or the request for this termination has not yet been dealt with in court. Another special situation arises if the

Child Care and Protection Board advises against extending the supervision order combined with an out-of-home placement because termination of parental responsibilities should be requested. In those cases, it is too late to start another process for termination of parental responsibilities and the supervision order with an out-of-home placement needs to be extended. Thus, fundamental questions exist about the assessment task of the Child Care and Protection Board. With a child protection system under great pressure and a tendency of reluctance to terminate parental responsibilities in light of disproportionality and Article 8 of the European Convention on Human Rights, the question is whether such a role for the Child Care and Protection Board is still necessary.

Goal 4: A transparent and goal-oriented implementation of the supervision order

Various instruments have been added to the Child Protection Act 2015 to stimulate a more transparent and goal-oriented implementation of the supervision order. Firstly, it has been determined that the judge must include the specific risks for a healthy development of the child in the supervision order request. A dispute settlement procedure has also been introduced so that those involved in child protection orders can submit disputes about the implementation of a supervision order to the children's judge. In addition, when implementing a supervision order, a family must be given the opportunity to develop a family group plan. Finally, there are several new options for child protection workers, namely the possibility to be charged with partial custody over the minor, the possibility to request for changes in visitation and contact arrangements, the possibility to have a written instruction for families ratified by the court and the possibility to access and share personal data about the minor without permission from the parents.

The research shows that several new possibilities have added value. For example, professionals are positive about the inclusion of the concrete developmental risks for the child in the supervision order request and the decision. This makes the motivation of decisions more transparent and it also puts the focus of the decision-making process on the best interests of the child. Nevertheless, the formulation of specific developmental risks is also mentioned as a bottleneck, because of language and knowledge differences between behavioral scientists and judges. It can also be difficult to specify developmental risks due to a lack of specific child signals.

“What I personally find very difficult [when formulating the concrete developmental risks for the child] is that you sometimes see no visible child signals. For example, if parents argue a lot, but the child apparently does quite well.”
(employee of the Child Care and Protection Board)

Child protection workers are also positive about the possibility of requesting information about a child from third parties without parental consent. This arrangement is necessary and appears to be widely used, although in practice child protection workers run into problems when third parties (such as general practitioners or mental health services) do not want to disclose information because of their own professional confidentiality. The new option for certified institutions to have a written instruction for the family ratified by the court is increasingly being used in practice. At the same time, there are doubts about the effectiveness of this instrument including the option to add a means of coercion in compliance with a written instruction. There is little or no use of other instruments, including the option of investing partial custody with a certified institution and developing a family group plan.

Finally, the dispute settlement procedure is hardly used, which can be explained by the fact that parents and foster parents are not aware of this option. Moreover, child protection workers are not fully aware of this instrument. Nevertheless, it is considered important that a possible dispute about the implementation of a supervision order can be submitted to the court. This research has shown that this instrument should also be introduced for children who are placed under guardianship as well as for professional foster care homes (‘gezinshuizen’).

“We really miss a dispute settlement procedure for when children are placed under guardianship.” (child protection worker)

Goal 5: Ensuring stability and continuity in decisions about changes in residence in the event of an out-of-home placement of a minor

The fifth and final sub-goal of the revised Child Protection Act is to guarantee the stability and continuity of the minor’s place of residence. In concrete terms, this concerns the prevention of unnecessary transfers of the minor. To achieve this, the revised Act states that movement of children (e.g., to a new family-setting or an institution) who lived with the same foster family for at least one year, must be reviewed by the children’s judge.

This study shows that this new obligation is seen as an added value and contributes to the protection of the family life of the child within the foster family. Nevertheless, it is stated that the implementation of this obligation entails a lot of administrative burdens for certified institutions, which may explain why not all transfers are submitted to the court. Professionals also indicated that they were dissatisfied with the limitation of this

court assessment to placements within the framework of a supervision order and for children placed in foster families. This study shows that it is desirable to also make such a judicial review mandatory in case of care orders (after the termination of parental responsibilities) and in the event of placement in professional foster care settings.

“It is outrageous that this does not apply to children in professional foster care settings!” (judge)

4 CONTEXT FACTORS WHEN APPLYING THE LAW

In addition to the question of whether the objectives of the revised Act have been achieved, this legislative evaluation also examined the extent to which this Act is in line with the Youth Act and developments with regard to its application.

Problems regarding the Youth Act

This research shows that the preconditions that are necessary for the realization of the goals of the revised Child Protection Act have been under heavy pressure since the introduction of the Youth Act in 2015. The current child protection context is insufficient to properly implement the Act. It has become clear that the revised Child Protection Act cannot be implemented as intended due to contextual factors that are in line with the Youth Act and the associated problems of the decentralization of youth care support. This concerns problems such as financial shortages, tendering problems, long waiting lists and long processing times, shortages of child protection workers, a complex child protection system with different organizations and a high turnover and shortages of youth care services.

Concerns about the youth care system and the implementation of child protection since 2015 have only increased in recent years. These major concerns about a failing child protection system became apparent from the literature review and the case law analysis in this study, but were painfully confirmed during the interviews and the focus groups. It is obvious that the current child protection system is failing and cannot guarantee sufficient quality for families in need of care. This raises questions about the legitimacy of government interference in family life, especially when this leads to a short- or long-term out-of-home placement or a termination of parental responsibilities. After all, such far-reaching interventions in family life by the government can only be legitimized in light of relevant human rights standards if the aim of this infringement – protecting the development of the child – can be achieved. In the current context of the Youth Act and its implementation problems, the revised Child Protection Act cannot be sufficiently implemented.

“I sometimes wave my paper of authorization for placement in care, but then there are no places available. Or I can determine that the family needs specific forms of support, but if there are waiting lists, or the municipality has not purchased that form of help or says it is too expensive.... then my paper cannot be redeemed at that moment” (child protection worker)

Concerns about legal protection

Major concerns about the current state of the Dutch child protection system have also led to a fierce debate over the past few years in the public debate, fueled by the media, about alleged insufficient legal guarantees and legal protection of parents and children in the child protection system, especially regarding out-of-home placements.

These concerns have also emerged in this study. This includes, among other things, the position of parents and children in the context of care orders, the protection of children in professional foster care that is less well organized than for children in regular foster families, the wish for legal support or assistance of parents and children in such proceedings and the weak position of parents and children regarding preventive emergency measures.

“Parents do not experience preventive emergency measures as voluntary.” (child protection worker)

Moreover, there is an increased number of cases involving high conflict divorce issues for which a supervision order and sometimes even an out-of-home placement is imposed. These cases appear to be extremely complex and do not seem to fit well with the threshold for a child protection order. The implementation of such measures is very complicated and often does not lead to improvement, but can even be counterproductive. This also raises questions about the legitimacy of government intervention in family life.

“This [conflicts between ex-partners regarding contact arrangements] is not something that child protection workers can solve.” (parent)

5 CONCLUSIONS

Based on the findings of the study, several main themes have been identified that recur throughout the study. This concerns problems with the threshold for child protection orders; the legal protection of parents and children; the transparency of the implementation of the supervision order and the complex child protection system. The results of this law evaluation have resulted in several recommendations in all these areas.

SUMMARY

This final evaluation of the revised Child Protection Act has extensively examined whether the objectives of the Act have been achieved and to what extent the implementation of this Act is influenced by contextual factors. This summary presents the main findings of this extensive interdisciplinary study. Firstly, it has become clear that there are still various fundamental bottlenecks and caveats that make the implementation of the revised law more difficult, such as problems caused by the introduction of the Youth Act in 2015. These developments result in an insufficient implementation of the main goals of this Act. In addition, crucial bottlenecks within the Act itself have also been identified. The main purpose is to achieve a more effective and efficient child protection system, which means that child protection orders are used with the best interest of the child at the forefront. Conversations with youngsters have shown that there is still much to be gained to accomplish this; they emphasize that they feel insufficiently heard.

“My advice to the government? Make sure that people actually talk with children and not about them.” (youngster)

Currently, insufficient time and resources are available in the child protection system. The use of child protection orders and their justification are therefore under considerable pressure. Only when children and parents can really be supported with sufficient resources, is it justifiable for the government to interfere in family life.