



NETHERLANDS NETWORK FOR
HUMAN RIGHTS RESEARCH

Radboud University



Universiteit
Leiden
The Netherlands



Maastricht University

PROGRAMME

Children and young adults in contact with the law: Systemic vulnerabilities and institutional responses

16 April 2021

- 09.45-10.00 Opening
- 10.00-10.30 Keynote speech by Professor Ann Skelton, University of Pretoria and visiting professor Leiden University, member of the UN Committee on the Rights of the Child
- 10.30-10.40 Q&A audience
- 10.40-10.50 Coffee / Tea break
- 10.50-12.40 Panel 1: Institutional responses to ‘hidden’ and ‘emerging’ vulnerabilities in the criminal justice system*

Presenters:

- Dr. Anna Pivaty, Radboud University, *Out-of-court disposals in the Netherlands and the position of child suspects*
- Dr. Ingun Fornes, University of Bergen, *The dualistic approach in the Norwegian youth justice system: Challenging the protection against double jeopardy?*
- Dr. Dorris de Vocht/Dr. Christina Peristeridou, Maastricht University, *Children in conflict with the criminal law and remote justice*
- Eva Schmidt, LL.M, BSc, Leiden University, *Culpability in development: Young adults under the Dutch Act on Adolescent Criminal Law*
- Lore Mergaerts, LL.M, MSc, Leuven University, *Conceptualising vulnerability in the context of police investigations in an interactional and dynamic way*

Discussant: Professor Stefaan Pleysier, Leuven University

- 12.40-13.30 Lunchbreak
- 13.30-15.00 Panel 2: Vulnerabilities based on a different ethnic, religious or cultural origin and responses from legal institutions*
- Presenters:
- Dr. Stephanie Rap, Leiden University, *The right to effective participation of refugee and migrant children: views of professionals and children*
 - Dr. Iris Sportel, Radboud University, *"We always want to hear people are sorry". Dutch judges about culture, ethnicity, and religion in court cases on migrant children in the Netherlands*
 - Nina van Capelleveen, LLM, Leiden University, *Tackling radicalisation of children: Balancing fundamental rights, child protection and public safety*
 - Dr. Yannick van den Brink, Leiden University, *Equality in the Youth Court. Meaning, perceptions and implications of the principle of equality in youth justice*
- Discussant: Dr. Caroline Lanskey, University of Cambridge
- 15.00-15.50 Panel 3: Pitching new research ideas**
Invited PhD candidates and post-doc researchers will pitch their research ideas on related topics.
- Chaired by: Professor Masja van Meeteren, Radboud University / Leiden University
- 15.50-16.00 Presentation Draw-up
- 16.00-16.15 Final discussion & closing

*Per presenter: 15 min. presentation, 5 min. discussion; end of panel: 10 min. wrap-up by discussant.

** Per pitch: 5 min. pitch, 5 min. discussion.

KEYNOTE SPEECH BY PROFESSOR ANN SKELTON

Upper age limits and beyond

The Convention on the Rights of the Child applies to every person under the age of 18 years, and some states made reservations regarding this upper age limit when they ratified the CRC, as the upper age limit of their child justice systems was lower. Urging states to raise the upper age limit has therefore been an important part of the Committee's monitoring task. In General Comment 24 on the rights of children in child justice systems, the CRC Committee opens the door to extension of some of the principles of the Convention to young adults. This presentation will engage with several issues such as children who turn 18 while in the system, the appropriate age at the time of sentencing, and the issue of anonymity of children and young adults.

Prof. Ann Skelton has worked as a children's rights lawyer in South Africa for over 25 years. She played a leading role in child law reform through her involvement with the committees of the South African Law Reform Commission that drafted the Child Justice Act and the Children's Act. Ann was the Director of the Centre for Child Law for ten years, and initiated its strategic impact litigation work. She is currently a Law Professor at the University of Pretoria, where she also holds the UNESCO Chair: Education Law in Africa. She is an internationally recognised researcher and has published widely on children's rights, education law and restorative justice. In addition to teaching Child Law and Education Law at the University of Pretoria, she teaches International Children's Rights in the Masters in International Human Rights Law at the University of Oxford. She is a visiting professor of the University of Strathclyde and is the first holder of the Rotating Honorary Chair: Enforcement of Children's Rights at Leiden University. She was the chairperson of the Advisory Board of the United Nations Global Study on Children Deprived of their Liberty. Ann is currently a member of the UN Committee on the Rights of the Child, her second term of office started in 2021.

PANEL 1 – INSTITUTIONAL RESPONSES TO 'HIDDEN' AND 'EMERGING' VULNERABILITIES IN THE CRIMINAL JUSTICE SYSTEM

1. Out-of-court disposals in the Netherlands and the position of child suspects

Out-of-court disposals may be viewed as a preferred way of dealing with children who come into conflict with criminal law as they do not involve a criminal trial, which might have a stigmatising effect on the child. Internationally, out-of-court disposals are commonly used as diversion mechanisms in juvenile justice, allowing for more flexible and community-oriented solutions. However, the Dutch model of out-of-court disposal with a prosecutorial penal order, which can also be applied to children, does not necessarily offer these advantages. This paper will revisit the current criticisms of the Dutch model of out-of-court disposals in respect of juveniles, which focus *inter alia* on the lack of formal procedural rights. Instead, it will argue

that criticisms should center upon the potential obstacles towards meaningful involvement of children in the respective decision-making procedures.

Dr. Anna Pivaty is Assistant Professor in Criminal Law at the Faculty of Law, Radboud University, Nijmegen and Postdoctoral Researcher at Maastricht University, Faculty of Law. She is the author of ‘Criminal Defence at Police Stations’ (Routledge) and she has published on suspects’ and defence rights in criminal procedures, legal professionals, and EU criminal justice. Anna’s interest lies in comparative socio-legal research on the ‘invisible’ but impactful elements in the criminal process such as police custody or out-of-court disposals. Her current research focuses on administrative out-of-court disposals in criminal law, procedural fairness, and conflict resolution.

2. The dualistic approach in the Norwegian youth justice system: Challenging the protection against double jeopardy?

‘The Norwegian youth justice system’ is a two-track system where a child in conflict with the law can be met with reactions both in the criminal justice system and in the child welfare system. The possibility to apply measures and reactions towards young offenders in the child welfare system, provides a system where the best interests of the child are paramount in every decision. In this system, it is possible to investigate the underlying causes of the child’s behaviour in more detail and to put in place targeted measures to support the child’s further development. For the youngest offenders, the introduction of the child welfare system led the raising of the minimum age of criminal responsibility from ten to fourteen years, and later to fifteen years. Thus, these offenders will only be met with measures and reactions in a system that is close to a pure welfare model. Offenders over the age of 15 can, on the other hand, be met with measures and reactions in both the child welfare system and the criminal justice system. However, the possibility to impose reactions in several systems leads to challenges with regard to the right not to be tried or punished twice for the same offence, see Article 4 Protocol 7 ECHR.

Dr. Ingun Fornes has a Ph.D in law. Her doctoral thesis was on sentencing youths in the Norwegian criminal justice system. She is a postdoctoral fellow at the Faculty of Law, University of Bergen, Norway, and researcher at www.sifer.no (National competence network in security psychiatry, prison psychiatry and forensic psychiatry).

3. Children in conflict with the criminal law and remote justice

In this presentation, we will address the potential impact of remote justice to the procedural rights of juvenile defendants. In response to the current Covid-19 pandemic the use of technology (audio- and visual links) as an alternative to physical presence of defendants has grown exponentially. In comparison to their adult counterparts, juvenile defendants present several particular vulnerabilities that make their effective participation to trial and protection of

defence rights even more challenging. We will shed light to the existing status quo before and after Covid 19 regarding the use of remote justice for juvenile cases, focusing mainly on European countries. Then we shall reflect upon the topic from the broader perspective of legal psychology dealing with the different effects of virtual versus physical presence in courtrooms. Does the use of technology hamper the effective participation to the procedure (for example because it inhibits effective communication or because the element of ‘emotional connectivity’ is lost)? Or can it be also protective for the child (for example because appearing via audio- or video link might be less intrusive or intimidating)? In our conclusion we shall map out possible positive and negative aspects of remote justice for juvenile criminal proceedings with a specific focus on effective participation and procedural rights protection.

Dr. Christina Peristeridou is assistant professor at the department of criminal law & criminology in Maastricht University. She has a broad expertise covering both substantive and procedural criminal law with a focus on legitimacy and fairness. She currently publishes on pre-trial detention and virtual justice; furthermore, she leads a collaborative project aiming at a unique handbook of comparative criminal procedure. Her previous work examined the principle of legality in European criminal law. She is member of the Bar of Thessaloniki, Greece.

Dr. Dorris de Vocht is assistant professor at the department of criminal law & criminology in Maastricht University. She focuses on criminal procedure and procedural rights. She has extensive expertise in comparative criminal procedure as well as juvenile justice and has published profusely on these topics. She has participated in and led several EU-funded projects. Her current research interests lie – inter alia – with virtual justice. She is also a substitute judge at the District Court of Limburg.

4. Culpability in development: Young adults under the Dutch Act on Adolescent Criminal Law

In recent years, (neuro)psychological research into adolescent development has led to increased attention for young adults in the justice system, as this research indicates that traditional age limits do not necessarily match the capacity of individuals to be held criminally responsible. These scientific findings have resulted in legislative reforms in certain countries, including the Netherlands. In the Dutch justice system, adolescents (i.e., 16- to 23-year-olds) can be sentenced either as juveniles or adults. In the context of the implementation of the Dutch act on adolescent criminal law (*Wet adolescentenstrafrecht*) the Dutch legislator stated its aim to create an effective and offender-oriented manner of sentencing which does justice to the offence and which takes into account the personal circumstances of the suspect, including his developmental phase. What this means, however, is not explained very clearly and much is left to the professionals working in practice. While the influence of these individual actors in the justice system is thus undeniably important, procedural aspects also seem to trickle down to the sanction that is ultimately imposed. In this presentation, the influence of the manner in which the criminal procedure is organised will be discussed, as emerges – among others – from the preliminary findings of interviews with judicial professionals.

Eva Schmidt, LLM, BSc is a PhD candidate at the Department of Child Law, Leiden University. In 2018 she received a scholarship from the Research Talent programme of the Netherlands Organisation for Scientific Research (NWO) to conduct her PhD research project, ‘Culpability in Development: Sentencing Adolescents as Juveniles or Adults’. Prior to starting her PhD research, Eva obtained her bachelor in Psychology (specialisation: neuropsychology, cum laude) and master in Legal Research (cum laude) at Utrecht University.

5. Conceptualising vulnerability in the context of police investigations in an interactional and dynamic way

Over the last decade, the procedural rights of suspects during the pre-trial investigation have become increasingly important. In this regard, the increased attention given to the exercise of procedural rights by so-called vulnerable suspects at both European and national levels cannot be neglected. There is, however, a need for more clarity on which persons need to be considered as vulnerable. During this workshop, the concept of vulnerability will be discussed. Based on an extensive analysis of the existing legal and academic perspectives, the need for an interactive and dynamic approach to a suspect’s vulnerability instead of a mere focus on individual characteristics will be demonstrated. Furthermore, the implications for current practice will be discussed.

Lore Mergaerts, LLM, MSc obtained a Bachelor of Criminology (KU Leuven, 2011), a Master of Laws in Forensics, Criminology and Law (Maastricht University, 2012) and a Master of Science in Psychology and Law (Maastricht University, 2013). After almost four years of being a teaching assistant in the Criminology programme, since 2016 she is a researcher at the Department of Criminal Law and Criminology at the Faculty of Law of KU Leuven. Her PhD research project is funded by the Research Fund - Flanders (FWO) and concerns the conceptualization of vulnerability and the role of the defence lawyer in identifying a suspect’s vulnerability in the pre-trial investigation. Her PhD is to be defended 19 May 2021.

Discussant

Prof. Stefaan Pleysier is Professor of Criminology at the Faculty of Law, KU Leuven. He coordinates, together with Johan Put, the Research line on Youth Justice at the Leuven Institute of Criminology; since October 2016, he is also director of the Leuven Institute of Criminology. His teaching focusses on youth criminology, juvenile justice and research methods in the Bachelor and Master in Criminology. His main research interests likewise include youth delinquency, juvenile justice and the criminalization of behaviour. Stefaan Pleysier was previously a MacCormick Fellow at Edinburgh Law School at the University of Edinburgh, and ‘chercheur invité’ at the Centre International de Criminologie Comparée (CICC) at the Université de Montréal.

PANEL 2 – VULNERABILITIES BASED ON A DIFFERENT ETHNIC, RELIGIOUS OR CULTURAL ORIGIN AND RESPONSES FROM LEGAL INSTITUTIONS

1. The right to effective participation of refugee and migrant children: views of professionals and children

Worldwide, the number of child refugees has more than doubled in the last decade. In this paper the position of children as asylum applicants will be conceptualised, in light of the increased acknowledgement of the child as bearer of rights and active participant in legal proceedings. Child migrants are often not recognised and respected as rights holders and thus as active agents in asylum procedures. However, a one-sided view of these children as vulnerable objects is not in coherence with international children's rights law and standards, including among others the UN Convention on the Rights of the Child, that see all children as autonomous subjects and full bearers of rights. Moreover, recent studies suggest that the right to participation and information is insufficiently safeguarded for children involved in asylum procedures. Through 42 in-depth interviews conducted with professionals working in the asylum procedure in the Netherlands (e.g. immigration officers, lawyers, guardians, judges, government officials, NGO's, etc.) understanding of the practical implementation of this right is sought. Moreover, interviews have been conducted with (un)accompanied children about their experiences as asylum (co-)applicants. In this paper the question is posed how the right to participation can be conceptualised for refugee and migrant children, from a children's rights perspective taking into account both the views of professionals and children?

Dr. Stephanie Rap is Assistant Professor at the Department of Child Law at Leiden University. Her academic interest lies in the field of the effective participation of children in (legal) procedures and decision-making. She studies child participation in diverse (judicial and administrative) procedures and settings, such as in juvenile justice, child care and protection, asylum procedures and in schools. Currently, she conducts a post-doc research on the participation of refugee and migrant children funded by the Dutch Research Council. In 2020 she received the KNAW Early Career Award. In her research she employs an interdisciplinary approach, combining international children's rights and child law with knowledge and insights from criminology, pedagogical sciences and psychology. Moreover, access to justice for children and the implementation of rights in the daily lives of children plays an important role in her research. In her research she collaborates with (inter)national organisations and NGO's. She lectures in the Master of Laws: Advanced Studies in International Children's Rights and the Master Child Law. She is a member of the editorial board of the Flemish Journal on Youth and Children's Rights and the Chronicle of International Association of Youth and Family Judges and Magistrates (AIMJF).

2. “We always want to hear people are sorry”. Dutch judges about culture, ethnicity, and religion in court cases on migrant children in the Netherlands

In this paper, I discuss how Dutch courts deal with cases on children from migrant families. Based on interviews with judges, lawyers, and child welfare professionals, as well as an analysis of judgements and court files, I will discuss how courts take families' ethnic, cultural, or religious backgrounds into account when taking decisions; and what meanings they ascribe to ethnicity, religion, or culture in these cases.

Judges from the family divisions of Dutch courts need to take decisions on a wide range of topics, dealing with issues ranging from divorce, child custody, and paternity to child welfare and youth criminal cases. In their decision-making in family cases, and especially in child protection cases, the most important concept for judges is ‘the best interest of the child’, which leaves space for different kinds of norms on what good parenting is and should be.

In these court cases, notions of ethnicity, culture and religion are at the same time very present as well as remarkably absent. In the interviews, all judges told stories about specific issues affecting cases of migrant families, such as criminal behaviour by boys of Moroccan descent, single-mother families from former Dutch colonies in the Caribbean, and issues regarding sexuality of Muslim girls. Judges generally attributed these issues to the ethnic, cultural, or religious background of migrant families, although some mentioned socio-economic causes as well. However, ethnicity, culture, and religion tended to remain implicit, silently present in court cases on children, unless there are very strong reasons to address this explicitly. Even when all professionals involved were aware that conflicting values negatively impacted the legal position of migrant children, this was still not addressed explicitly in court hearings or judgements.

Dr. Iris Sportel is Assistant Professor at the Institute for Sociology of Law and the Centre for Migration Law of Radboud University Nijmegen, the Netherlands. She holds a PhD (2014) in sociology of law and gender studies from Radboud University. As a legal anthropologist, her research focusses on how individual actors -- ordinary people, legal professionals, and parties in court procedures -- deal with and experience law and legal institutions, especially in contexts of migration and transnationalism. She wrote *Transnational Families and Divorce, Marriage, Migration, and Family Law* (Palgrave MacMillan, 2016). Currently, she is working on a research project on Religion, culture, and ethnicity in court procedures on children from minority families, financed by a VENI grant from the Netherlands Organisation for Scientific Research (NWO).

3. Tackling radicalisation of children: Balancing fundamental rights, child protection and public safety

In response to children at risk of radicalisation, various interventions can be employed. These interventions vary in intensity and degree of coercion and can have different fields of law as a legal basis: interventions based on administrative law, criminal law and civil law can be employed. These interventions, however, all interfere with the fundamental rights of children, such as the right to personal liberty, privacy and family life. From an international children's

and human rights perspective this presentation will therefore address the question to what extent the legal instruments that are available in the context of radicalising children can be employed to protect the various interests at stake when a child radicalises, namely: (1) protecting the development of the child (2) protecting public safety and, while pursuing these two interests, (3) protecting the fundamental rights of the child against interferences by the government.

Nina van Capelleveen, LLM is a PhD candidate at Leiden University, Department of Child Law. In 2019, Nina obtained a Meijers PhD position for her PhD research ‘Tackling radicalisation of children: balancing fundamental rights, child protection and public safety’. Nina’s research interests – in her PhD research and other research projects – mainly concern the intersection between different fields of law related to children, in particular child protection law and juvenile justice. Before starting her PhD research, Nina followed the master’s programme in Child Law at Leiden University (cum laude), participated in the Pre-PhD Programme of Leiden University and worked as a student-assistant at the Department of Child Law.

4. Equality in the Youth Court. Meaning, perceptions and implications of the principle of equality in youth justice

Equality is a fundamental principle, also in youth justice. Nevertheless, children from ethnic minorities, children with disabilities and children from low socioeconomic backgrounds are vastly overrepresented in youth detention populations across the globe. This presentation combines interdisciplinary theoretical perspectives and empirical findings from interviews with practitioners from two English youth courts to explore the meaning, perceptions and implications of the principle of equality in the specific context of the youth court. Ultimately, this presentation outlines the first contours of a conceptual model of equality in the youth court, which aims to inform policy, practice and future research.

Dr. Yannick van den Brink is Assistant Professor of Child Law and Criminal Law at Leiden University. He is also a NWO Rubicon Research Fellow at the University of Cambridge, Institute of Criminology (United Kingdom), where he is studying the principle of equality in youth justice. In addition to his academic work, he serves as a deputy judge in the Youth Chamber of the District Court of The Hague.

Discussant

Dr. Caroline Lanskey is a Lecturer in Criminology and Criminal Justice at the University of Cambridge Institute of Criminology. After an earlier career in teaching and educational research she joined the Institute in 2006. Her youth justice research draws on her cross-disciplinary experience of education and criminology and addresses themes of education, citizenship,

family, and voice. Previous projects include a study of young people's experiences of custody; research on the education pathways of young people in the youth justice system, a historical review of safeguarding children in the secure estate and analyses of the experiences of prisoners' children as part of the Families and Imprisonment Research (FAIR) Study. Caroline is currently co-leading a study of youth justice and rurality and an evaluation of an accommodation project for young people leaving care.

PANEL 3 – PITCHING NEW RESEARCH IDEAS

Invited PhD candidates and post-doc researchers will pitch their research ideas on related topics.

Chair

Prof. Masja van Meeteren is associate professor of Criminology at Leiden University and full professor of Criminology at Radboud University. Her research interests lie at the intersection of migration, crime and criminalization. She conducts research into human trafficking, irregular ('illegal') migration, the intended and unintended consequences of migration policy, informal work and fake constructions on the labour market. In 2015, Masja was awarded a VENI-grant by the Netherlands Organisation for Scientific Research (NWO) for her research *The New face of human trafficking: understanding different types of labour exploitation*.