THE RIGHT OF MINORS AND THEIR PARENTS
TO RECEIVE JUVENILE CARE IN THE NETHERLANDS

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Introduction

At the end of September 2004 the Netherlands was shocked by the death of the three-year old toddler called Savanna who had been so seriously mistreated by her mother that it led to her death. The child’s body was discovered by chance during a police check when it was found in the boot of a car owned by the mother’s boyfriend. During the investigation which followed, it became apparent that several social workers had become involved with this family within the framework of voluntary and judicial juvenile care as well as juvenile mental health care. However, they worked at such cross-purposes that no adequate steps were finally taken to remove Savanna from her threatening situation.

The Savanna case has not only given rise to great upheaval within the Dutch population in general, but also more specifically among a variety of social workers. The Minister of Justice and the State Secretary for Health, Welfare and Sport, as well as the Mayor of the town where the child lived, have requested the Juvenile Care Inspectorate to instigate an investigation into the quality of the process for providing welfare services to Savanna.

The findings of the Juvenile Care Inspectorate are disconcerting\(^1\). The most important conclusions from the Inspectorate’s investigation are the following:
- there is no systematic control and testing within the primary process of implementing the family supervision order imposed by the juvenile court judge;
- by transferring from one welfare service agency to another there was no systematic and purposeful approach in this case;
- social workers were not asked to contribute extra expertise and not sufficient weight was attached to the expertise of others who were also involved in the process of providing welfare services;
- functional and result-oriented planning was not sufficiently utilized;
- the Juvenile Care Department inadequately directed the social workers involved;
- the information obtained from the family supervisor was not professionally weighed and internally tested. In supervising Savanna’s safety she continually allowed herself to be influenced from the mother’s perspective. In this respect she did not allow herself to keep a sufficient distance so that no connection was made between a number of signals. There was no internal control;
- the Juvenile Care Department did not work imitably and transparently;
- the loss of information in the (welfare service) chain stood in the way of a careful and responsible assessment of the situation. Signalling patterns were not recognised and this had large-scale consequences in assessing Savanna’s safety;
- the Child Care and Protection Board did not carry out its legal task to test family supervision orders which had not been extended as well as care orders which had

\(^{1}\) An Investigation Into the Quality of the Process of Providing Welfare Services to S. Juvenile Care Inspectorate: Utrecht, March 2005.
come to an end, whereby external control concerning the safety of the child was lacking.

From the conclusions it is conspicuous that the Juvenile Care Department is lacking in (a system of) timely internal control and steering and that the primary process is not well organised. In this respect minors who should be protected by the juvenile protection services are being exposed to unacceptable risks. That is of course completely unacceptable when we consider that the juvenile court judge can only impose a judicial welfare order when a minor is seriously threatened as regards his moral or psychological interests or his health and there are no (or no longer) any alternative solutions available. Family supervision orders therefore always concern serious, extremely complicated and mostly also multi-problem situations. It is not possible for parents and other persons involved in the client system themselves to remove the child from the threatening situation: there is a question of powerlessness, incapacity or even unwillingness.

The Juvenile Care Inspectorate will provide a number of recommendations based on its investigation. These mainly concern the organisation of child protection, the testing of individual cases against clear criteria and the safety of the child. In all the actions undertaken by the social workers, the interests of the child should occupy centre stage. This recommendation is closely linked to Article 3(1) of the Convention on the Rights of the Child whereby the regulation has been laid down that the interests of the child should be the first consideration.

The administrative law regulations in the field of juvenile law were laid down in the Youth Services Act in 2004. The objective of this Act was to create a coherent entity so that the minor client and his parents could rely on an optimal provision of assistance. The Savanna case nevertheless demonstrates that things can seriously go wrong and this case is unfortunately not the only one. For that matter, the legislator has for a long time been preparing to replace the Youth Services Act with the Juvenile Care Act. It has been increasingly obvious that the Youth Services Act has not delivered what was anticipated. No coherent entity has emerged and there has been just as little success in achieving cooperative connections and the necessary juvenile assistance advice teams. This hinders an adequate match from being made between supply and demand.

The penetrating question, however, is whether the enactment of a new Act is sufficient to prevent dramas such as the one sketched above. It is not without reason that the Minister of Justice wrote in a letter to the Chairman of the Second Chamber of the States General that the solution does not ultimately lie in the making of regulations, “but with the parties who make it their professional responsibility to speak to each other”. This actually means that no matter how well the legislator will draft the legislation, the impact of such an Act will stand or fall depending on how it is dealt with in daily practice. Investing in professionals, in consultation between colleagues who are not in immediate contact with each other, in supervision and in

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2 Other recent examples concern the Roermond case where a father set fire to his house, thereby killing some of his children, and the case of the girl from Nulde who was also killed by her mother and her boyfriend.

3 Presentation letter accompanying the report on the Savanna case by the Juvenile Care Inspectorate, The Hague, 10 March 2005, no. 5340759/05/DJJ.
practical guidance is of the utmost importance. In this respect the interest of the child can be better served than by the quality of specific Acts.

The legal system in the Netherlands

In contrast to the Anglo-American system of the common law which, together with Acts of Parliament, form statutory law, the Netherlands has a system of written law laid down in Codes. In the main the law consists of codifications. For a good understanding of the Dutch situation with regard to minors one should realise that, in the Netherlands, there is no such thing as an independent general “juvenile law”, a law in which all the pertinent rights and obligations, in short all the regulations with regard to minor children and juveniles and their family, are included. On the contrary, for around one hundred years juvenile legislation has been globally spread out in three legal areas: juvenile civil law, juvenile criminal law and administrative juvenile law. Juvenile civil law also forms part of material and formal civil law, juvenile criminal law is also an integral part of criminal law and, since 1 January 2005, administrative juvenile law has been laid down in the Juvenile Care Act. Nevertheless, there is certainly a connection between the various areas of the law and namely in the field of implementation we can see bodies which are concerned with all three disciplines, for example the juvenile court, the Child Care and Protection Board and the Juvenile Care Department. The lack of a general juvenile law Act does mean that many actors in the field of juvenile law are only concerned with a part of this body of law and, because of this, they demonstrate serious shortcomings in looking after the interests of their young clients and their client system. I am increasingly confronted with this lack of knowledge in my legal activities and in the courses which I provide for judges, public prosecutors and lawyers.

The Juvenile Care Act and the Convention on the Rights of the Child (CRC)

The Juvenile Care Act entered into force on 1 January 2005. This Act regulates a right to, access to and the funding of juvenile care. The intention of the Act is to establish a coherent juvenile care system which is linked to the needs of children and their parents, adoptive parents or foster parents and which can offer a solution to the existing problems in juvenile care. A framework must be created so as to be able to realise this provision of coherent juvenile care whereby (the needs of) the juvenile client and his family occupy centre stage. In contrast to the Youth Services Act, the Juvenile Care Act emphatically concentrates on the rights of the child. Strengthening the position of the (juvenile) client and the realisation of such a provision of coherent juvenile care whereby the needs of the child occupy centre stage are very much in conformity with Art. 3 Convention on the

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4 In the past attempts have been made in this respect; see, for example, M. Rood-de Boer, Ouders en kinderen. Aspecten van het familierecht. Becht, Amsterdam 1962.
5 The Dutch Children’s Acts were established in 1901 and they entered into force on 1 December 1905: Act of 6 February 1901 to amend and supplement the provisions in the Civil Code concerning paternal authority and guardianship and the articles relating thereto, as well as the regulation connected thereto in the Code of Civil Procedure (juvenile civil law), Stb. 1901, 62; Act on Juvenile Criminal Law, Stb. 1901, 63; Child Protection Act, Stb. 2001, 64.
Rights of the Child, which determines that, in the first place, the interests of the child should also be paramount as far as the legislator is concerned. On the basis of Art. 5 CRC the Dutch state must respect the rights of the parents as long as this does not pose a threat to the minor in question. This is regulated in the Civil Code and the Juvenile Care Act also considers the legal position of the parents. The regulation in Art. 12 CRC that minors must be heard as regards all aspects which affect them has been implemented in the provision which states that the welfare service plan can only be determined after the client has been consulted. Moreover, in the case of voluntary assistance the client’s approval is necessary. In this respect a distinction is made between children under the age of 12 and children aged 12 and older. For every minor the Juvenile Care Department or the care provider is obliged to compile a welfare service plan.

In Art. 18 CRC it is determined that parents have the right to receive support in the upbringing of their children. A right to juvenile care is formulated in the Juvenile Care Act. This is a right which does not only pertain to parents, but also to children and juveniles. The right to juvenile care also includes the right to receive support during the children’s upbringing. Furthermore, the Act takes Art. CRC into consideration. This Article states that care orders relating to minors must be regularly re-evaluated. In juvenile protection law this is guaranteed by the fact that the juvenile court’s authority to impose a care order is coupled with a set period of time during which such an order remains effective; in voluntary juvenile care this is subject to a decision by the Juvenile Care Department which provides an indication as to the length of such a term.

The right to juvenile care

In the Netherlands, therefore, a right to juvenile care exists, that is to say juvenile care can be claimed. This is important in order to guarantee the right of children and juveniles to a healthy and balanced development. However, the concept of juvenile care is nevertheless somewhat less unequivocal than it should be. It encompasses the following three components. Juvenile care is the care to which one is entitled within the framework of the Juvenile Care Act. This means that the Act provides regulations on access to, the financing of, the supply of as well as the supervision of such care. Here we can think in concrete terms of, for example, emergency shelter, observation, (semi-)residential treatment and therapeutic family treatment. Secondly, juvenile care includes care within the framework of juvenile mental health care, care for mentally handicapped children and the treatment of children and juveniles in custodial juvenile institutions. It here concerns, among others, psychiatrically disturbed minors and minors with serious behaviour disorders. This component also gives rise to a right to juvenile care and the regulations of the Youth Services Act are also applicable here, but this right, as far as financing is concerned, is based on the Exceptional Medical Expenses Act and on the Youth Custodial Institutions Act. Thirdly, there is juvenile care for which there is no entitlement within the framework of the Juvenile Care Act. This concerns, for example, general social work concerning juveniles, social work within schools and the counselling services within the schools. These provisions should be attuned to the activities of the Juvenile Care Departments and the care providers whereby care is available based on the Youth Services Act. The financing

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7 See note 6, p. 10.
thereof takes place on the basis of the Social Welfare Act 1994 or the Public Health (Preventive Measures) Act. This is the first time in Dutch legal history that this right has been formulated for minors. Alongside traditional human rights, such as the freedom of religion, the freedom of expression and the freedom of association, there exist social human rights such as the right to work, to social security, to health care, and to a suitable education. The right to juvenile care fits best within these social human rights. It is striking, however, that this ‘social human right’ has not been included in the Dutch Constitution, but rather in an Act of Parliament. Nevertheless, the right to juvenile care is not unlimited. Just as in the case of, for example, the right to health care (Art. 22 Constitution), the right to juvenile care finds its limits in the budgetary possibilities of the Dutch state. The concept of juvenile care is defined in the Act as support for and assistance to children and juveniles, their parents, adoptive parents or foster parents in upbringing or similar threatening problems. Juvenile care does not provide an answer to simple questions relating to upbringing, such as how much food or sleep is necessary for a child. It rather concerns situations where parents are not in a situation to independently resolve the problems of a child for whom they are responsible. It is interesting that Dutch children and juveniles now have a legal right to juvenile care for the first time in history. This also applies to most juvenile aliens in the Netherlands. The right to juvenile care concerns a broad range of assistance possibilities. This applies, on the one hand, to simple, available care and, on the other, to the far-reaching authority of the juvenile court to place a minor in a closed judicial institution for juveniles. The child must receive what he needs and not that which he does not need. The proposal must be completely attuned to the child’s needs and must be independent of the organizational setting within which this has to take place. This means that the Dutch system concerns supply-related assistance as an answer to demand-related assistance. This is a very risky enterprise because institutions providing welfare services with their behavioural experts and other members of staff can only offer what they have to hand and not that which they do not have in-house. It is a well-known fact that it can take years before new forms of assistance are developed and, of course, it also takes time to adequately train professionals in these new forms of assistance. Time can only tell what will become of newly requested assistance, but a certain degree of scepticism is certainly not out of place.

A juvenile client’s request for assistance will be determined by a Juvenile Care Department’s decision indicating that assistance is necessary. Included in this decision is the form of assistance to be assigned and to which he has a right. This decision indicating that assistance is necessary is also the basis for the welfare service plan. The right to juvenile care must be implemented in good time by the province in which the minor resides and by the three largest Dutch cities, namely Amsterdam, The Hague and Rotterdam. This means that the province in question must provide for all kinds of juvenile care that are necessary. For that matter, the care to be provided for mentally handicapped minors must also be brought within the ambit of the Juvenile Care Act. However, the legislator has omitted to inform and to advise this field and the bodies connected thereto so that the implementation of this part has been postponed.

The Juvenile Care Department and the Decision Indicating Juvenile Care

Who determines whether there is a need for juvenile care as far as a minor is concerned? To be eligible for juvenile care the Juvenile Care Department must
provide an indication to this effect. In the Netherlands the implementation of juvenile welfare services lies in the hands of institutions in the private sector. This also applies to assistance which occurs as a result of a child protection order having been imposed by the juvenile court judge whereby parental authority may have been limited or parents may even have been deprived thereof. In the past there were a few hundred institutions which were responsible for voluntary and judicial juvenile welfare services. However, in the Juvenile Care Act (JCA) the legislator has determined that from now on there will only be one Juvenile Care Department in every juvenile welfare service region, that is to say one Department in each of the 12 provinces plus the three largest cities. A Juvenile Care Department will be maintained by a foundation which, under Dutch law, is a legal person (Art. 4 JCA). The foundation will be funded by the provinces and the largest cities. The most important task of a Juvenile Care Department is to investigate whether a (young) client is in need of care in relation to problems relating to his upbringing or development, or psychiatric problems. Part of this investigation involves looking into whether the parents are hindering their child’s unthreatened upbringing. This investigation can be at the request of the client or otherwise. The investigation will lead to the required indication. The point of departure is that the assistance should beneficial to the unthreatened upbringing of the child and is connected to his needs. This assistance must not therefore be more intrusive than is necessary, it must be available as close as possible to the child’s home and it must last for as short a period as possible (Art. 5(4) JCA). In the Netherlands this policy is called the as-as-as policy: as light as possible, as close by as possible and as short as possible.

In the decision which provides an indication that assistance is necessary, the Juvenile Care Department will describe the (threatened) problems as well as their degree of seriousness and the possible causes thereof (Art. 6 JCA). It will also describe the necessary care in this respect and the intended objective thereof. Also the length of time during which this care will continue to apply will be placed in this indication. Finally, in this decision the Juvenile Care Department will indicate who is best equipped to provide this care.

Taking the above-mentioned Savanna case into account, it is not unimportant to mention that the Juvenile Care Department must also indicate in this decision whether it is necessary to coordinate the care and, if so, who can best be charged with this coordination (Art. 6(2) JCA). See on this matter my comments concerning the “family coach” on the final page of this contribution.

The Juvenile Care Department and the Juvenile Court

The implementation of the Juvenile Care Act also has consequences for the traditional role of the juvenile court, especially within the framework of family supervision orders. From now on the juvenile court judge will be able to allow only the Juvenile Care Department to implement a family supervision order. In this respect the juvenile court has lost its possibility to choose. Until the implementation of the new Act it was not only possible to assign the family supervision order to regionally operating institutions, but also to nationally operating institutions. If, in practice, problems occurred between a (family) guardianship institution and a client, the juvenile court judge could, at the request of the client, appoint a different institution. If this now occurs the juvenile court judge can, at most, appoint a Juvenile Care Department in another region. This also seems to be an impoverishment in the legal position of the client, because he is now also deprived of a choice. In principle, he is tied to the
Juvenile Care Department in his region. However, the juvenile court judge does not have to have such a decision by the Juvenile Care Department indicating that care is necessary if he has to decide on an application for a family supervision order which has been lodged with the juvenile court.

But he does have to have such a decision when an application has been made within the framework of the family supervision order to have the minor taken into care (Art. 1:261(2) Civil Code). It is even the case that the decision indicating that care is necessary must be produced at the same time as the application for a care order. It is only in emergency situations that the juvenile court judge can allow such an authorization without the Juvenile Care Department’s decision indicating that care is necessary (Art. 1:261(3) Civil Code). In such a case this decision will have to be subsequently made. An emergency authorization can last for three months at most. If it appears that after the assistance has been given a temporary decision must be taken indicating that care is necessary, an application to this end will be made to the juvenile court.

In the reverse situation, if the Juvenile Care Department, within the framework of the family supervision order, has already made a decision indicating that care is necessary and this decision points to the necessity of placing the minor in a residential establishment, this cannot be done without the authority of a juvenile court judge. At least, not against the wishes of the parents who have parental authority over the child in question. It is however possible for the parents themselves to have their child placed in care, but for this to be done permission from the Juvenile Care Department is necessary. This possibility rarely arises, but in 50% of all cases where minors are placed under the supervision of the Juvenile Care Department, these minors are in fact taken into care. This therefore occurs almost always with the authority of a juvenile court judge. The Juvenile Care Department’s decision indicating that care is necessary and which determines the necessity of a care order will only become effective if the juvenile court judge has authorized this. The period during which the decision indicating care will remain in effect will be the same as the juvenile court judge’s authorization for the minor to be taken into care. This period of time may, however, be shorter than the period indicated in the Juvenile Care Department’s decision indicating that care is necessary (Art. 3(2) JCA). The maximum term is one year, but there is a possibility of continuous extensions of a maximum of one year up until the minor reaches the age of majority. The authorization to take a minor into care can also be used to place a minor in a (closed) judicial juvenile institution. In this case the authorization must explicitly lay this down and this can only be done when there is a question of serious behavioural problems as far as the minor in question is concerned and the juvenile court judge will, in his specific capacity, ensure that the minor will have access to a lawyer. In the case of an ordinary authorization the minor will not be offered the services of a lawyer.

If it is necessary to extend the care order, the decision indicating that care is necessary, as well as the judicial authorization thereof, will have to be made anew.

Interested parties, in practice almost always the parents, can object against the Juvenile Care Department’s decision indicating that care is necessary. If the Juvenile Care Department considers their objection to be unfounded, they can appeal to the juvenile court. In the Dutch legal system the Juvenile Care Department is an administrative body in the sense of Art. 1(1) of the General Administrative Law Act. Under this Act such decisions indicating that care is necessary are decisions in the sense of Art. 1(3) and are therefore subject to an appeal to the courts. Normally, this
would be the administrative court, but in these particular cases the juvenile court has exclusive authority. It is the juvenile court judge who will check whether the general principles of sound administration have been adhered to and, in this respect, he can only confirm or annul a decision indicating that care is necessary. Checking the substantive content of such a decision is not part of his tasks, although the juvenile court judges have stated that in these types of cases their testing will be comprehensive. We now have to await a decision from the Supreme Court in order to discover whether their stance can be maintained.

**Final Remarks**

At the end of my contribution I wish to delve somewhat deeper into the question of whether the Juvenile Care Act can bring about what is expected. Will, in practice, the right to juvenile care provide an adequate answer to children and juveniles concerning the often serious situation in which they find themselves? Can the Savanna case be avoided both now and in the future? It is obvious that the Juvenile Care Act is of crucial importance for the organisation and the quality of Dutch juvenile care. The most important hallmarks of the Act are the following:

- The demand for juvenile care is determinative instead of the supply by the care providers;
- The child has a right (claim) to care when the Juvenile Care Department has so indicated;
- In every province and in the three largest cities there is one central access point to all juvenile care provisions mentioned in this Act;
- Guardianship, family supervision, the juvenile probation and after-care service and the Child Abuse Counseling and Reporting Centre are also part of the Juvenile Care Department;
- A “family coach” has been introduced.

The Juvenile Care Departments must therefore undertake a wide range of tasks. This concerns diagnosis, the already mentioned decision indicating that care is necessary, tackling child abuse as well as maintaining the children’s helpline. The Juvenile Care Departments are also charged with a number of judicial tasks, such as custody over minor children (guardianship), family supervision orders and the juvenile probation and after-care service, which can include the carrying out of a community service order. Also within the ambit of the Juvenile Care Departments is the provision of light peripatetic care. Further-reaching care activities are offered by so-called care providers. These are juvenile care institutions which can provide peripatetic, residential and foster care to children, juveniles and their parents.

The question remains whether the Juvenile Care Departments and the care providers can fulfil all the requirements. In has been stated above that a care provider has certain expertise at its disposal but that it cannot make use of other expertise within the foreseeable future because the Act now says that the client’s request is determinative. Of course the client’s request must be paramount, but it is unreal to suppose that every request can be fulfilled. We must continually strive towards improving and extending the provision of care, but sometimes we have to limit ourselves to the least unfavourable alternative. There is now a right to juvenile care, although this still has to be optimally realised. Diagnosis and determining care
indications require competent and experienced child psychiatrists, (clinical) psychologists, remedial educationalists and social workers. In the Netherlands a great deal of animosity exists between care providers who work with clients on a voluntary basis and care providers who work within the framework of a measure imposed by the juvenile court. Furthermore, in the juvenile mental health care sector many care providers feel that they are elevated far above other care providers. Child psychiatrists are unwilling to leave the health sector because they are afraid that they will lose their professional input and that is not completely understandable. The legislator nevertheless expects that these persons will also cooperate in a Juvenile Care Department. This can only lead to problems because legal pressure is not enough to compel people to be willing to stand together behind an integrated juvenile care system. This is indeed worrying because the Juvenile Care Act must nevertheless be implemented. Children and juveniles have a right to assistance and that is now explicitly laid down. These juveniles are the victims of the situation in which they are raised, irrespective of whether this can be attributed to the parents. It is not for nothing that the International Convention on the Rights of the Child has determined that the interests of the child are the first to be balanced. Children are vulnerable, they are dependent on adults and that which can go wrong during childhood will have lasting effects.

One central access point to juvenile care per juvenile care region. On the one hand, this sounds like a good thing, but, on the other, it means that the legal position of the client is limited. The client’s possibility to choose has been decimated in the event that he has problems concerning a particular Juvenile Care Department and there is hardly any alternative available. It remains incomprehensible that the legislator has dispensed with the nationally operating guardianship and family supervision institutions. They were always willing and able to find a place in their case-load for the most awkward of cases.

The introduction of the “family coach” has found its way into the opportune legislation as a result of a case with a tragic result where, just as in the Savanna case, care providers worked at cross-purposes and ultimately some children were burned to death. It has increasingly been the case in recent years that the Dutch legislator has been influenced by certain incidents and the following reaction thereto in society and in Parliament. Recently this has also been so concerning serious consequences which occurred in the case of a mentally disturbed man who had been released on licence. Such incidents then determine the route which the legislator should take, without the necessary time being taken to adequately reflect on the material in question. The Juvenile Care Act has indeed introduced the concept of the family coach from whom it can be expected that he/she will take over the coordination of various care providers, but the Act omits to state who can be a family coach and what the competences of this person will be. In the case law it has often been indicated that a family supervisor possesses more adequate means of providing or optimalising assistance that a family coach will have.

Legislation, it seems, comes with increasing speed while citizens and the implementing authorities can hardly keep pace with such developments. The legislator does not even always take seriously its most important advisory body, the Council of State, when the Council emerges with well-founded criticism concerning a draft legislative proposal. This also occurred in the case of the Juvenile Care Act.

8 The Roermond case, see note 2.
All in all, it is extremely uncertain whether the expectations surrounding the Juvenile Care Act will be fulfilled. Without more being done, a new Savanna case can certainly not be prevented and the question is whether this Act can even contribute to this prevention. It would seem to be better to invest in optimal cooperation between various care providers. As has been repeatedly said above: the solution ultimately lies not in the laying down of regulations, but with the parties who take it upon themselves to utilize their professional responsibilities and actually communicate with one another.

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