

# Introduction

In the Netherlands, we are familiar with the term ‘juvenile law’ (*jeugdrecht*). This term covers issues relating to aspects of family law such as parenthood, minority and parental authority as well as child protection and juvenile justice. But those who want to gain clear insight into Dutch law with respect to children also have to take into consideration a range of fields, such as education, medical treatment, youth care and migration. However, there is no all-encompassing legal code in the Netherlands in which everything related to children and the law has been brought together, and the various relevant regulations are not at all arranged in a way that gives a clear overview. For example, some rules that are important to children are set down as rights and obligations of parents. Issues crucial to juvenile law such as parenthood, minority, adoption and custody form part of the Netherlands Civil Code. This also contains the regulations concerning child protection, though they are spread over several articles. The regulations on education and medical treatment are provided for in separate and various laws and to see the rights of children of migrants, one must consult migration law as part of special administrative law. And the regulations concerning Dutch juvenile justice are not found in a separate legal code, for example, but only in the much more widely-encompassing codes of criminal law and criminal procedure.

This book aims to give a very brief introduction to this extensive field of Dutch juvenile law. It offers a concise account of some of the most relevant and most typical points in these various legal fields. This latter aspect – ‘typically Dutch’ – is accentuated by taking the various Dutch laws and regulations that are relevant to children and comparing them to corresponding laws and regulations in other countries.

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To gain a clear understanding of Dutch juvenile law, it is first of all necessary to gain an idea of the bigger picture of how it has evolved over time. Two broad-based international developments are crucial here. The first concerns the simultaneous creation of a system of child protection and

a separate juvenile justice system around 1900, against the background of the ‘social question’. In the context of the rapid industrialisation and urbanisation of the Western world, there was an increased awareness of impoverishment among families in the fast-expanding cities. In response, there were calls at national and international level for states to take action to protect children. It should be noted that this took place in the context of the ‘night-watchman state’ – that is, where the predominant idea was that the state should remain in the background in matters societal.

In the Netherlands, the striking call for active government intervention ‘in the best interests of the child’ resulted first of all in the introduction compulsory education (*Leerplicht*) 1900 and one year later in the adoption of the Children’s Laws (*Kinderwetten*) in 1901. The Children’s Laws brought about far-reaching changes in two areas – child protection and juvenile justice. It meant an end to the inviolable rights of the father, while the state gained the right to intervene if there was a threat to the health or development of the child. Separate penalties and procedures were introduced for children who broke the law. These new measures aimed at protecting children and applying appropriate punishment were in keeping with the international trend. Compare the introduction of the Juvenile Court Act in Illinois in 1899, the introduction of the Juvenile Delinquents Act in Canada in 1908, the Law on Child Protection in Belgium in 1912 and the introduction of the *Jugendgerichtsgesetz* in Germany in 1923. Compulsory education was introduced in England in 1880, in France in 1882 and in Belgium in 1914.

### *1989 Convention on the Rights of the Child*

The second crucial development came about more than fifty years later. This development was not so much about *child protection* as *children’s rights*. This trend began with the adoption of the European Convention on Human Rights in 1950, but it really only gained significance several decades later when the European Court of Human Rights started to become influential through its rulings. European citizens who have exhausted all legal avenues in their own country can take their cases to this Court, as a last resort. The verdicts of the European Court play a major part in the development of human rights and children’s rights in Europe, and in setting them down in more concrete terms. Verdicts by the European Court of Human Rights relate to every subject covered by this book – family law, youth support services, child protection, juvenile justice, and migration law. The book makes multiple references to relevant rulings by this Court.

In turn, this trend towards a greater focus on children's rights was greatly bolstered by the adoption of the Convention on the Rights of the Child (CRC) by the United Nations in 1989. This is undoubtedly the most comprehensive human rights instrument in existence, which has moreover been ratified by 193 states. (The USA and Somalia are the only countries yet to ratify the Convention.) This book also makes repeated reference to articles from this document.

For interpreting and assessing the significance of the Convention, it is usual to distinguish the four general principles: that all children should enjoy equal enjoyment of their rights (Art. 2); that the best interests of the child be a primary consideration in all matters concerning the child (Art. 3); that all children have a right to life, survival and development (Art. 6); and that all children have a right to express their views and to participate in decisions that affect them in accordance with their age and capabilities (Art. 12).

In recent years, this development has led to discussions in many areas in the Netherlands and elsewhere in Europe, and to far-reaching changes to legislation relating to the rights of children. One factor is that the Netherlands, like every other country that has signed the Convention, must write a report once every five years on every law and policy that has been developed in relation to children's rights. This report is discussed in an open sitting by an international body of independent experts – the Committee on the Rights of the Child (CRC) – which monitors the implementation of the Convention. In this sitting, it is customary to discuss a shadow report issued by non-governmental organisations such as Amnesty International and Defence for Children, who have joined forces to form the Children's Rights Collective (*Kinderrechtencollectief*). Based on all this information, the Committee makes recommendations for the member state.

One of the Committee's recommendations was that the Netherlands should appoint an Ombudsman for Children (*Kinderombudsman*). The Ombudsman for Children is intended as an independent institute that monitors whether the children's rights contained in the Convention on the Rights of the Child are adhered to. The Ombudsman for Children offers help to juveniles who believe their rights have been violated; provides advice, solicited and unsolicited, to the government, parliament, and other bodies in the development of policies relating to juveniles; and examines structural problems of children, such as poverty, and children who are forced to stay at home because no schools will accept them. The Netherlands has had an Ombudsman for Children since 2011.

Within the European Network there are currently 40 Ombudsmen for Children. From among their number, a task force for refugee chil-

dren was formed in 2015. The European Ombudsmen for Children are seriously concerned about the situation of thousands of children fleeing to Europe. They point out that these children experience traumatic experiences and may be victims of violence and trafficking. The Ombudsmen for Children believe that European governments must protect these children and provide them with access to health and education, without reservation.

### *Structure of this book*

Dutch juvenile law is anything but static. In the last few decades in particular, much has changed – there has been much discussion as new laws and rules relating to various areas have been introduced in quick succession, ranging from reviews of child protection measures to alterations to parenthood law, from reviews to custody rights to the introduction of a new ‘adolescent criminal law’ and the tightening of migration laws. These recent legal changes are largely related to a far-reaching transition from a welfare state to a ‘participation society’. Many of the rights to care and social security that were introduced after World War II have been dismantled against that background. Citizens are expected to first look for solutions within their own social network concerning such issues as care for the elderly, the needy, and children with problems, and to turn to the state only as a last resort.

In the chapters that follow, the most important current developments in the broad field of Dutch juvenile law are examined, always from the perspective of relevant international and European laws and regulations, and with brief comparisons with other countries. The first chapter of this book deals with some aspects of family law. This concerns parenthood, adoption, minority and parental authority. These are basic issues that are essential for a good understanding of the material in the subsequent chapters. For example, a proper understanding of minority and parental authority is needed in order to be able to understand what is at stake in the field of child protection, juvenile justice and migration law. Minority implies that the person is always under the care of a parent or guardian, and this fact has implications for the minor and parents alike in every area of the law. Far-reaching and recent changes to family law are examined in this context.

The second chapter deals with education law. Besides compulsory school attendance and the duty of care, this chapter also discusses the role of religion in education, issues relating to the privacy of the pupil and finally the right of complaint. The third chapter deals with health law. This chapter focuses on informed consent for children, parental con-

sent, professional secrecy and the reporting code for mental healthcare institutions and youth care professionals, and compulsory admission. The fourth chapter discusses the recently enacted Youth Act of 2015, and the background to this. The most important actors in the field of Dutch youth care are then introduced. This is followed by an examination of several critical issues – access to good-quality care, protection of privacy and the professional secrecy of the youth care professionals involved, and the right to appeal and complaint.

The fifth chapter introduces more new legislation, this time in the field of child protection. Fairly extensive coverage is given to the most important and most widely applied measure – the care and supervision order. This is followed by a discussion of the most radical measure – the termination of a parent's authority over his child. The chapter concludes with the legislation concerning child abduction. The sixth chapter discusses juvenile justice. It starts with a brief introduction to the special punishments and procedures used for minors, followed by a discussion of three structural aspects: age limits, the relationship between the juvenile justice system and child protection, and the inquisitorial tradition of criminal trials as opposed to the adversarial tradition. Finally, the main actors in juvenile justice are introduced – first the police and the Public Prosecution Service, then the defence and the judge, and finally the social services. The last chapter deals with the law relating to aliens or migrants. It examines in turn the possibilities for and limits to family reunification for children of foreigners, the legal position of asylum seekers and the 'children's amnesty', the legal position of unaccompanied minor aliens and the position of illegal children. The chapter concludes with a brief look at the risk of youth protection measures in some migrant families.