



Radboud University



Universiteit  
Leiden  
The Netherlands



Maastricht University

## REPORT FROM THE WEBINAR

CHILDREN & YOUNG ADULTS  
IN CONTACT WITH THE LAW  
- systemic vulnerabilities  
and institutional responses

16 APRIL 2021  
DR. ANNA PIVATY  
DR. STEPHANIE RAP  
EVA SCHMIDT, LL.M.

Draw up!  
Live cartooning by Danibal



**Organisers:** [Dr. Stephanie Rap](#) (Leiden University)  
[Dr. Anna Pivaty](#) (Radboud University/Maastricht University)  
[Eva Schmidt](#), LL.M. (Leiden University)  
with support from [Peggy ter Vrugt](#), L.L.M (Maastricht University/Radboud University)

**Financial sponsors:** [The Netherlands Network for Human Rights Research](#)

## INTRODUCTION

Children and young adults are by definition considered to be vulnerable participants in legal procedures. Traditionally their vulnerability was explained by reference to individual factors, such as age and maturity. However, the recent view on the concept of vulnerability is that it is also co-created by the legal system itself. In [childhood studies](#), three dimensions of child vulnerability were distinguished: an individual dimension based on psychological development; a structural dimension based on access to economic resources; and a systemic dimension based on risks embedded in the societal systems with which children interact.

The webinar held in April 2021 explored the systemic dimension of vulnerability with respect to children and young adults. The notion of systemic failures can potentially lead to greater vulnerability of children and young adults in different legal proceedings. The legal system might fail to sufficiently accommodate diversity or create barriers to the effective participation of children and young adults. Therefore, the webinar sought to come to an enhanced understanding of the concept of ‘vulnerability’ of children and young adults in contact with the law. An international group of researchers shed light on systemic vulnerabilities and institutional responses, with a particular focus on under-explored factors leading to vulnerability.

## KEYNOTE ADDRESS

[Ann Skelton](#) (University of Pretoria, Leiden University and member of the UN Committee on the Rights of the Child) gave the keynote speech, ‘Upper age limits and beyond’, focusing on the child justice system. She first addressed the importance of the upper age limit of the

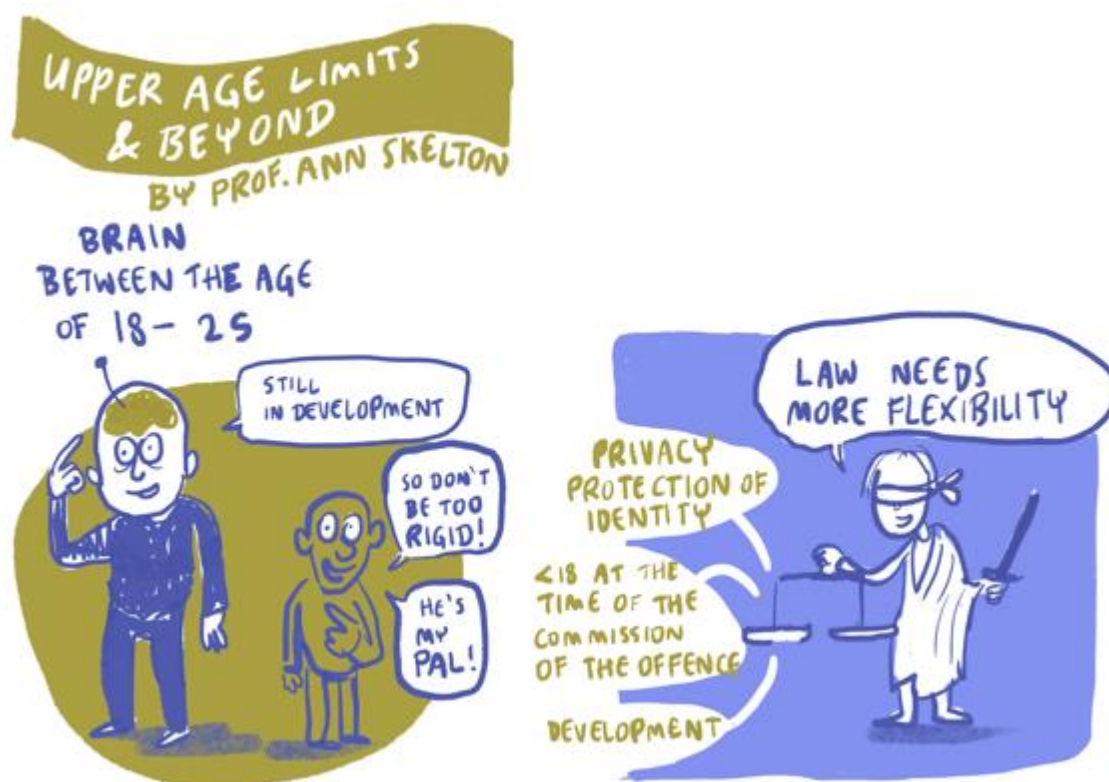
application of the UN Convention on the Rights of the Child, which is set at the age of 18 years at the time of the commission of the offence.



Skelton expressed her concern that some states seek to lower the age of criminal responsibility or make exceptions where certain children are treated as adult offenders.



Therefore, an important part of the Committee's monitoring tasks is to urge states to raise the upper age limit and allow for no exceptions. In General Comment No. 24, the Committee opened the door to extend some of the principles of the Convention to young adults in, as Skelton referred to it, cases of 'bad timing': children who turn 18 whilst being in the system. This approach is in line with the developmental and neuroscience evidence that shows that brain development continues into the early twenties. In this context, Skelton argued that child justice systems should extend their protection to also include these young adults. Skelton concluded by saying that child justice laws need more flexibility and that states should not treat the upper age limit too rigidly. Inflexible age limits can cause systemic responses to be overly harsh and thus some contours of these artificially created age limits should be softened.



It was also noted during the ensuing discussion that in most legal systems, developmental and neuroscience findings are used (if at all) at the sanctioning stage, but not at the earlier stages of the legal process.



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

The first panel, moderated by Stephanie Rap, addressed the under-explored and 'emerging' factors leading to vulnerabilities of children and young adults in criminal justice systems. [Anna Pivaty](#) considered the out-of-court disposals in the Netherlands and the position of child suspects and focused upon the potential obstacles towards meaningful involvement of children in the decision-making procedures.

Anna observed that although internationally and nationally out-of-court disposals are viewed as a preferred option of dealing with children in conflict with the law, the Dutch system of out-of-court disposals as applied to children contains several weaknesses, which may place children coming in contact with it at increased risk.



[Ingun Fornes](#) (University of Bergen) discussed the dualistic approach in the Norwegian justice system, that could lead to a situation where offenders over the age of 15 can face restrictive measures, including custody, from the child welfare system as well as penalties in the criminal justice system. She questioned whether this situation results in a breach of the right not to be tried or punished twice for the same offence.

## CHALLENGING THE PROTECTION AGAINST DOUBLE JEOPARDY BY DR. INGUN FORNES



[Christina Peristeridou](#) (Maastricht University) and Dorris de Vocht (Maastricht University) addressed the potential impacts - both negative and positive - of remote justice to the procedural rights and effective participation of child suspects. They noted that children might feel safer and less intimidated when appearing on screen. On the other hand, appearing on video might alter how children are perceived (e.g. making them appear older), but also how the trial is perceived by children.



CHILDREN IN CONFLICT WITH  
CRIMINAL LAW & REMOTE JUSTICE  
BY DR. CHRISTINA PERISTERIDOU &  
DR. DORRIS DE VOCHT



[Eva Schmidt](#) (Leiden University) discussed the position of young adults in the Dutch criminal justice system, who can be sentenced either under the youth or the adult system. An important finding from Eva's interview-based research is that decisions on whether or not to apply youth sanctions to young adults are determined not only by substantive grounds, but also by decisions taken earlier in the proceedings, such as whether young adults were placed in a youth or adult remand detention facility.

YOUNG ADULTS UNDER THE  
DUTCH ACT ON ADOLESCENT  
CRIMINAL LAW  
BY EVA SCHMIDT





YOUNG ADULTS UNDER THE  
DUTCH ACT ON ADOLESCENT  
CRIMINAL LAW  
BY EVA SCHMIDT



[Lore Mergaerts](#) (KU Leuven) showed in her presentation that instead of merely focusing on individual characteristics, an interactive and dynamic approach should be adopted in identifying a suspect's vulnerability in pre-trial investigations. She also called for a departure from a categorical approach to defining who is vulnerable or not in the criminal justice system. Instead, she argued that we should focus on the functional capabilities of the person at the given moment, as well as the context-related aspects such as the complexity of the specific legal proceedings.

CONCEPTUALIZING VULNERABILITY  
IN THE CONTEXT OF POLICE  
INVESTIGATIONS  
BY LORE MERGAERTS



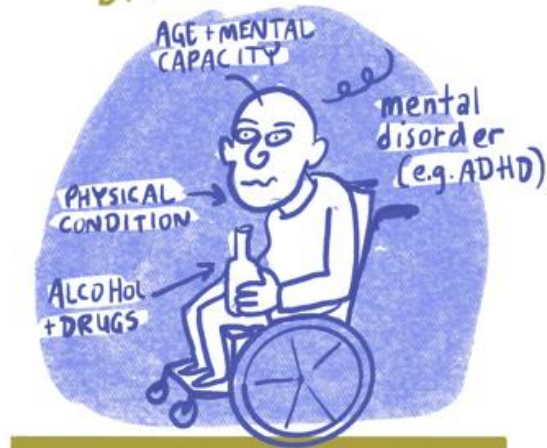
REMEMBER:  
MINORS ARE ALWAYS  
VULNERABLE



- FANTASY PRONE
- FALSE CONFESSIONS
- SENSITIVE TO SHORT-TERM REWARDS



CONCEPTUALIZING VULNERABILITY  
IN THE CONTEXT OF POLICE  
INVESTIGATIONS  
BY LORE MERGAERTS



WHAT IS VULNERABILITY?

REMEMBER:  
MINORS ARE ALWAYS  
VULNERABLE



- FANTASY PRONE
- FALSE CONFESSIONS
- SENSITIVE TO SHORT-TERM REWARDS

The discussant of the first panel, Professor [Stefaan Pleysier](#) (KU Leuven), provided a short reflection on panel 1 and addressed the need to continue working towards improvement of youth justice systems.

SHORT REFLECTION ON  
PANEL 1  
BY PROF. STEFAAN PLEYSIER

youth  
justice  
system

STEP ONE

INVEST IN  
UNDERSTANDING  
AND A CLEAN  
& CLEAR SYSTEM

STEP TWO  
AND BEYOND



Stefaan summed up his remarks with the following reflection:

*‘Having a youth justice system is a first step towards ensuring that children and young adults in conflict with the law are treated appropriately, but it is insufficient. Research presented today and my own research shows that even within those youth justice systems not all procedures are child-friendly. Youth justice systems are more complex than adult systems. They often pursue a variety of objectives, which are unclear even for academics let alone children in contact with these systems. Paradoxically, this can lead to less protection for children than adults in conflict with the law.’*

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

The second panel, moderated by Anna Pivaty, analysed vulnerabilities of children based on a different ethnic, religious or cultural origin and the corresponding responses from legal institutions.

[Stephanie Rap](#) (Leiden University) highlighted the views of professionals and refugee and migrant children in the Netherlands on the right to effective participation in asylum proceedings and how these views can be taken into account when conceptualising the right to participation for refugee and migrant children. She observed that in reality asylum interviews of children aim at gathering facts and evidence necessary to determine whether or not to grant asylum, and not at enabling children to have their voice heard, as is required by the CRC and other international instruments. She attributed this mismatch to the political nature of asylum decisions and high complexity of asylum systems.

# EFFECTIVE PARTICIPATION OF REFUGEE & MIGRANT CHILDREN

BY DR. STEPHANIE RAP



DISPLACEMENT OF THE CHILD'S RIGHT TO BE HEARD

# EFFECTIVE PARTICIPATION OF REFUGEE & MIGRANT CHILDREN

BY DR. STEPHANIE RAP





[Iris Sportel](#) (Radboud University) presented the preliminary findings of her research into how Dutch courts take families' ethnic, cultural or religious backgrounds into account when making decisions in respect of children in criminal, migration and family protection proceedings. She noted that across various areas of law, Dutch judges and other professionals did not explicitly address the issues of culture or ethnicity, even though they were aware of possible cultural value conflicts which could negatively impact the procedural position of the child. She ascribed this finding to the tendency of avoiding references to race or ethnicity in the Dutch society.





[Nina van Capelleveen](#) (Leiden University) discussed the various interventions that are used to tackle radicalisation of children, and how these interventions can be employed while balancing fundamental rights, child protection and public safety. The preliminary finding of her interview-based research is that often the choice of interventions does not seem to be based on applying the corresponding legal framework governing the use of the different possible measures from various areas of law. Rather, the decision is taken pragmatically based on which organisation is considered most suited to ‘reach’ the child in question.



[Yannick van den Brink](#) (Leiden University) addressed the fundamental principle of equality in the youth court and the meaning, perceptions and implications of the principle of equality in youth justice. Based on the outcomes of an interdisciplinary literature review and an extensive qualitative study of English youth courts, he presented a theoretical model, which can be used to measure equality in the particular context of youth courts.

EQUALITY IN THE  
YOUTH COURT.  
BY DR. YANNICK VAN DEN BRINK



EQUALITY IN THE  
YOUTH COURT.  
BY DR. YANNICK VAN DEN BRINK



After these presentations, [Caroline Lanskey](#) (University of Cambridge) provided a short reflection on the second panel. She addressed, among other points, the importance of achieving equality and justice in practice, or as [Amartya Sen](#) has put it: the difference between the ‘niti’ and ‘nyaya’ of justice. Researchers should be mindful of the differences between the values that criminal justice systems and institutions espouse to achieve in theory, and those that they are actually guided by in practice. She also pointed at potential ‘blind spots’ of human rights frameworks when dealing with child vulnerabilities. One example is the assumption that participation of children in legal procedures is always desirable. Another challenge is that legal systems lack the means to deal with potential conflicts of values which may affect the child’s position, such as cultural values or the values of ‘good parenting’.

Caroline observed that:

*‘In addition to the structural vulnerabilities related to the child’s minority status in society, the papers presented in this panel engage with additional situational vulnerabilities related to children’s ethnic or cultural background and their precarious citizenship status, as well as other related vulnerabilities such as the use of language. The recognition of these differences illuminates the increased vulnerability of children at the face of the legal system not only because of the inherent power differences between children and adults, but also because of the risk of misunderstanding or misconceptions around cultural issues, or even reluctance to recognise these issues.’*



### PANEL 3: PITCHING NEW RESEARCH IDEAS

The final panel, moderated by Eva Schmidt, provided the opportunity for (prospective) PhD candidates and post-doc researchers to pitch their research ideas on topics related to the webinar.

**Eva Huls** (Defence for Children) discussed her PhD-project on sentencing young offenders for serious offences. She studies to what extent the Dutch youth justice system and practice when sentencing these young offenders is in accordance with international and European children's and human rights standards.

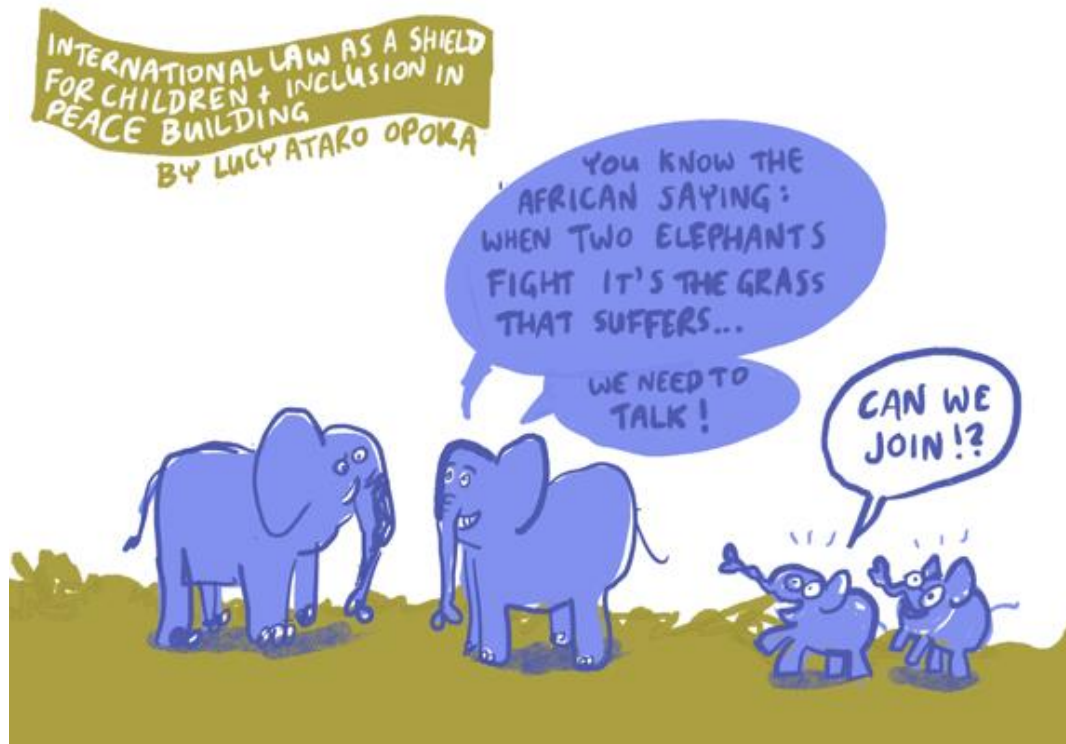


In his post-doc research project, **Ioannis Papadopoulos** (University of Portsmouth) aims to study the correct application of Article 12 CRC throughout the asylum procedure, thus ultimately allowing for the voice of migrant children to be heard throughout their asylum procedure.





**Lucy Ataro Opoka** (Leiden University) pitched her PhD-proposal for a legal and empirical study on the protection of children against violence, torture and exploitation during armed conflict in South Sudan and on the inclusion of children in the peacebuilding process.





**Peggy ter Vrugt** (Maastricht University) presented her PhD-proposal on the right to silence of child suspects and how this right is exercised and perceived throughout the Dutch criminal proceedings.



**Masja van Meeteren** (Leiden University and Radboud University) was the chair of this panel and provided the young researchers with constructive feedback and useful tips.

## THE MAIN TAKEAWAY...

This webinar highlighted the importance of paying attention not only to children's psycho-social development, but also to the network of their social relationships and interactions with the court and the justice system. As observed by Caroline Lanskey, given the traditionally individualised nature of rights, the child's relational self might be overlooked by child rights frameworks. It is high time to address the notion of child vulnerability in the legal system as a contextual, interactional and multi-dimensional concept.



## PROGRAMME

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

16 April 2020

- |             |   |
|-------------|---|
| 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 | <p><u>Panel 1: Institutional responses to ‘hidden’ and ‘emerging’ vulnerabilities in the criminal justice system</u></p> <p>Presenters:</p> <ul style="list-style-type: none"> <li>• Dr. Anna Pivaty, Radboud University, <i>Out-of-court disposals in the Netherlands and the position of child suspects</i></li> <li>• Dr. Ingun Fornes, University of Bergen, <i>The dualistic approach in the Norwegian youth justice system: Challenging the protection against double jeopardy?</i></li> <li>• Dr. Dorris de Vocht/Dr. Christina Peristeridou, Maastricht University, <i>Children in conflict with the criminal law and remote justice</i></li> <li>• Eva Schmidt, LLM, BSc, Leiden University, <i>Culpability in development: Young adults under the Dutch Act on Adolescent Criminal Law</i></li> <li>• Lore Mergaerts, LLM, MSc, Leuven University, <i>Conceptualising vulnerability in the context of police investigations in an interactional and dynamic way</i></li> </ul> <p>Discussant: Professor Stefaan Pleysier, Leuven University</p> |
| 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

## **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](http://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, LL.M** 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*.