

Justitiële verkenningen

jrg. 28, nr. 9, december 2002

Child protection

Summaries

Child protection: how to go on?

P.H.M. Deijkers

In this article the author summarizes the current discussion in the Netherlands on the desirability of extending the present system of child protection measures with a minor preventive measure. This minor measure could, apart from measures like placing under supervision and deprivation of parental rights, be imposed by the judge. The author observes that nowadays the capacities of parents to raise their children in a proper way are under a lot of strain. It is a task of the government to support parents in raising their children, if necessary. If this assistance is not provided in the first place, how can more drastic intrusive measures taken by the government be legitimate? The new law on Youth Care has to tackle the problem that a lot family support comes too late nowadays. The new law provides for an easily accessible offer of support in upbringing. The author also stresses the importance of a good judicial motivation in case of the imposition of child protection measures. This motivation is important because there is more at stake than just the legal security of parents and their children. Clarity on why a child protection measure is being imposed and on its purpose, can also contribute to the effectivity of the measure.

'Strictness can be love as well'; more than a century of child protection

B. Kruithof

Based on secondary sources, a short history of the Dutch legal system regarding child protection is sketched, from the nineteenth century until the present day. In this system, fear of state intervention as far as education is concerned based on principal - usually religious - grounds, is intricately interwoven with a growing tendency to lean heavily on professionals and on governmental interventions on the other hand. The Law on children's misbehaviour was enacted in 1905 and is still, albeit adapted in some ways, in force. In 1920, specialised judges were installed to deal with dangerous children, as well as with children at risk. Even more important was the possibility to supervise the upbringing of children by guardians, appointed by these magistrates in juvenile court ('ondertoezichtstelling', ots). Although popular as a measure - nowadays used for approximately twenty thousand children per year - results are hard to gauge, and the use of this measure depends as often as not on the general climate with regard to punishment. E.g. in the seventies, when authority was under fire, an all time low in the imposition of this measure can be seen, while in the nineties calls were heard for more discipline, especially with regard to youngsters.

Child protection as feature of child care

J.C.J. Boutellier

The central statement of the article is that child care should be more oriented on prevention of the need for child protection. In the Netherlands the Minister of Justice is responsible for child protection; the Minister of Welfare for childcare. The author states that these two perspectives work competitive. He discusses three oppositions between the welfare and the justice perspective: demand versus problem based intervention; child versus society protection; voluntariness versus compliance. In practice these oppositions are an obstacle for close cooperation and an effective system of child care. The author believes that this obstacle can be overcome if (prevention of) child protection interventions becomes a major goal of the childcare system.

Effective revision of youthcare

T. van Yperen

The system of youthcare in the Netherlands is subject of a major revision. This article discusses the meaning of this revision for the development of the child protection services and the prevention of youth delinquency. The author states that, on the one hand, the revision of the system does not guarantee adequate quality of the contents of the prevention and care. On the other hand, the question is whether new measures of child protection are defensible if the existing system of prevention and youth care itself is still not brought to order. The author notes that new measures of child protection should not be a filling of an inadequate organisation and use of the system.

What works in child custody?

J. Hermans

Legally imposed help, in the form of a family supervision order, places a heavy responsibility on the child custodian to offer effective family support. Seven principles of affective family support are described: the use of evidence based and standardized methods; a balance between severity of the problem and investment of personal and financial resources; applying demand-oriented help-giving practices; the use of empowerment and strength based interventions; multisystemic strategies; goal directedness; activation of formal and informal social networks. Applying these principles to child custody services leads to a redesign of the organization and content of this work. It is shown that, keeping the supervisor status of the custodian intact and without exuberant financial claims, effective and brief child custody is attainable. The recently formulated need for new forms of imposed help is consequently unnecessary.

Youthcare in the light of international legal norms

S. Meuwese

The new legislation on child care in the Netherlands gives the right to child care to minors or their parents. In its explanation paper to the draft-law, the government states that this right to child care is in accordance with the UN-Convention of the Rights of the Child (CRC), but a specific article on the right to child care is not part of the CRC. This is a topic for discussion. The right to child care can be constructed using more and other articles than the government has mentioned. The reason the government denies the basis for a right of child care in the CRC lies in the fact that the government wants to limit this right for certain categories of minors, especially asylum seeking minors and children without a permit to stay in the Netherlands. This is not only a violation of the CRC, but also of the The Hague convention on child protection (1961). The European Court of Human Rights has contributed to standards for child care in two judgements (both of 10 May 2001) in cases against the United Kingdom. In one case, the child care agencies acted inefficiently and too late, in the other case the intervention was based on carelessly gathered information. The Court sets with these both judgements the limits within which the child care agencies have to operate. In July 2002 six children died in the city of Roermond when the family house was set on fire by the father; the father, the mother and one child survived this drama. The family was already known to child care agencies. A report of the Inspection of Child Care and Child Protection describes how a variety of child care agencies had gotten involved with this family. The question is to what extent the child care sector is based on real professionalism. Judging from the legal side, there are only very general and vague standards in the existing and future Dutch legislation. This is very questionable in the light of article 3 CRC: the state party has the obligation to ensure that the child protection services shall conform with the standards in the number and suitability of their staff. The Dutch legislation on child care is not meeting the relevant international standards.

Youth protection as legal protection<

B. van Roermund

Youth protection by law in the Netherlands is under considerable pressure, generated by family disintegration, political indifference, and institutional reorganisation. In spite of this pressure, principled reflection is needed in order to make the right practical choices. In contrast to other views, this article argues that specifically *legal* intervention in youth protection calls for a limited number of regimes, applied by official markings and clear argumentation, rather than a diffuse spectre of intertwinements with social welfare. It does so on the basis of three theses: legal protection is inherently ambiguous, it can only work if it also maintains the system, sometimes at the cost of the child's interests; children's rights are trumps on parental rights, whatever the latter may be; if parents prove unable to educate

their children, legal officials should not try and educate the parents but rescue the children by mobilising alternative educators. The author adds two practical policy proposals in embryonal form: enhancing the stakes of governmental family allowance and integrating legal youth protection organisation into schools.

A fresh look on child protection; on implicit presuppositions

A. van Dantzig

The author names and discusses the implicit presuppositions that underlie the debate on the reform of the system of child protection measures. The parents' need for help in raising their children is still seen as a proof of their incapacity, while it is common knowledge that raising children is not always an easy thing to do. The author also questions the emphasis that is put on the protection of privacy of parents and their children. In his view the relations between families and the community has gone crooked. Nowadays parents are much more on their own when it comes to raising their children, whereas decades ago problems in raising children were discussed within the community, church or family. The author himself is involved in a pilot project in Amsterdam that aims at informing parents with children on the possibilities of getting advise and support in bringing up their children. The people that took this initiative see it as their goal to make it as normal for parents to ask for support in raising their children as it is for them to go see a docter or childrens health centre.