

Spending a ‘couple of nights’ in a police cell

SUMMARY

The UN Convention on the Rights
of the Child and custody in police cells

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The UN Convention on the Rights of the Child and custody in police cells

Over the past few years Defence for Children has received alarming signals on the high number of minors being held in custody in police cells in the Netherlands, and on the way these minors are treated during their custody. Upon the notice of these signals Defence for Children decided to research the legal status of minor suspects in police cells. For this purpose a legal framework has been set up, based on the relevant articles of the UN Convention on the Rights of the Child (UN CRC) and other UN-rules and regulations concerning juvenile justice. Subsequently, current laws, rules and regulations, policies and practices were judged against this legal framework. This report sets forth the findings of this research and includes recommendations in order to better the situation of minors being held in custody in police cells.

The aim of this research is to assure the correct implementation of the UN CRC in the Netherlands and to promote and contribute to a more conscious and child friendly policy for minors who come into contact with the police. Based on this report Defence for Children concludes that the Netherlands have failed to comply with the articles of the UN CRC concerning the custody of minor suspects in police cells:

The Netherlands have not implemented a child friendly policy for minors in police cells

According to the UN CRC minors have a special legal status, meaning that the Netherlands should, where necessary, alter laws, policies and practices to bring them into compliance with the UN CRC. However, minors being held in custody in police cells in the Netherlands are hardly treated any different from adults. Separate departments or child friendly cells are scarce and often minors are not properly informed on their rights, such as the possibility to make phone calls or to receive visits.

The detection of crime is of higher interest than the (best) interest of the child

The UN CRC states that the arrest, detention or imprisonment of a child shall be in accordance with the law and shall only be used as a measure of last resort and for the shortest appropriate period of time. Especially during the first three days of the pre-trial detention the best interest of the child is insufficiently considered. There are no specific criteria for determining whether the detention of a minor is necessary. Only when a minor is brought before the examining judge, which can take up to three days, the lawfulness of the detention is tested. The rule where detention is suspended unless there are grounds to keep the minor detained only applies from the moment a minor suspect is held in pre-trial detention called 'in bewaring'. At this point the examining judge is obligated to test whether there are sufficient grounds to let the minor go, occasionally under specific conditions. And only from the moment that this test is carried out the Netherlands are in compliance with the UN CRC.

Pre-trial detention has risen in the past couple of years

It is striking to see that the amount of minors that have been interrogated between 2008 and 2010 has decreased from 59.750 to 49.015, yet the amount of minors that have been detained for one or more nights in a police cell has increased over that same period. This number has increased from 8.261 in 2008 to 9.316 in 2010. This shows that the Netherlands have not implemented a child friendly policy which aims to decrease the amount of minors being detained in police cells.

The registration of data concerning minors being held in police cells is not in order

Statistics on the time that minors spend in police cells are not readily available. The same applies to statistics on the age of minors that are held in police cells. The statistics publicised by several organizations, such as the police, the prosecutor's office and the ministry for Safety and Justice do not sufficiently correspond with each other.

The maximum duration of stay of minors in police cells is too long

According to the UN CRC a child is to be detained for the shortest appropriate period of time. In the Netherlands minors are legally allowed to be detained in a police cell for a maximum of sixteen days and fifteen hours. In other countries, such as Belgium, Germany, Finland and England and Wales, this detention does not exceed 24 hours.

There are not enough alternatives for detention in police cells

During the time of the pre-trial detention spend in the police cell there are insufficient possibilities to settle the matter out of court, and there is no national coverage for diversion and alternatives for detention. There is no legal basis for restorative justice or mediation, and these methods are insufficiently used after the first contact(s) with the police. In countries such as Belgium, Germany and Finland restorative justice and mediation is applied more often.

The right to information and legal assistance should be improved

Minors have the right to be informed on their rights in a manner consistent with their age. In practice this is not always the case. Information is not always readily available, and when it is, it is not always presented in a way that the minor can understand it. Also, access to legal assistance should be improved. It should be readily available and free of cost, the latter not always being the case.

The knowledge of police and judicial authorities is insufficient

Minors are often confronted with professionals who are not specialized in working with children. No national protocol or instructions concerning minors exist for the youth police who work with children.

Coercion and violence are not prohibited by Dutch law

The use of violence or other humiliating forms of punishment are prohibited. Minors are most likely to become a victim of violence, humiliation or other forms of maltreatment. The use of coercion and violence is not prohibited by Dutch law, nor is there any guarantee that these methods of coercion cannot and will not be applied as punishment.

There is insufficient supervision of the circumstances in which minors in police cells find themselves

As mentioned before, specific criteria are lacking for determining whether the pre-trial detention of a minor is necessary. Moreover, there is insufficient knowledge on the complaints lodged by minors and/or their parents at the regional complaint committee of the police. The committee does not keep track separately of these complaints. Henceforth, an important instrument that could be used for picking up signals, analyzing and evaluating cases is left unused.

Recommendations

Momentarily the Dutch laws, rules, regulations, policies and practices are not in compliance with the UN CRC articles on (pre-trial)detention concerning minors. The Netherlands fail to guarantee a human and child friendly treatment of minors in police custody. The rights of children are insufficiently considered during the first stages of the criminal trial. Based on this research, Defence for Children has developed a couple of recommendations for the implementation of a child friendly policy for minors in police custody. Using these detailed recommendations, the government and other relevant organizations can improve the legal status of minors during the first stages of the criminal trial that is in line with their duties under the UN CRC.



The Netherlands

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