



Universiteit
Leiden
The Netherlands

Right to Information: Towards an Effective Legal Position for Children Deprived of Liberty

Rap, S.E.; Liefwaard, T.

Citation

Rap, S. E., & Liefwaard, T. (2017). Right to Information: Towards an Effective Legal Position for Children Deprived of Liberty. *Today's Children Are Tomorrow's Parents*, 45-46, 49-61. Retrieved from <https://hdl.handle.net/1887/54715>

Version: Publisher's Version

License: [Leiden University Non-exclusive license](#)

Downloaded from: <https://hdl.handle.net/1887/54715>

Note: To cite this publication please use the final published version (if applicable).

RIGHT TO INFORMATION: TOWARDS AN EFFECTIVE LEGAL POSITION FOR CHILDREN DEPRIVED OF LIBERTY

Stephanie Rap and Ton Liefwaard



Stephanie Rap, Dr.

Assistant professor at the Department of Child Law, Leiden Law School



Ton Liefwaard, Prof. Dr.

*Holder of the UNICEF Chair in Children's Rights at Leiden Law School
Programme director of the LL.M. programme Advanced Studies in International Children's Rights*

Abstract

Children who are deprived of their liberty find themselves in a particular vulnerable position. Rights violations in detention take place on a large scale, regardless the reason for detaining the child. Article 37 of the UN Convention on the Rights of the Child is the core human rights provision for children deprived of their liberty. It recognizes the impact of deprivation of liberty on children's lives, as well as the need for a child specific approach. This article provides a framework in which the effective legal position for children deprived of their liberty is conceptualised. Next to rights aiming at the protection of children and providing basic services, an effective legal position of children requires procedural rights, including the right to information, which is the specific focus of this article. Procedural rights form an essential part of the legal position of children deprived of liberty and can also be regarded as a prerequisite for the effective protection of their rights. In this article, it is concluded that too little is known about the right to information – in theory and practice – in the specific context of deprivation of liberty. What has become clear is that providing information to children without them understanding it, is meaningless. Therefore, children should be educated about their rights and the effective enforcement of these rights.

Keywords: Right to information, deprivation of liberty, children's rights, UN Convention on the Rights of the Child, effective legal position.

1. Introduction

Children who are deprived of their liberty find themselves in a particular vulnerable position. Rights violations in detention take place on a large scale, regardless the reason for detaining the child (UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 5 March 2015, A/HRC/28/68). Deprivation of liberty of children takes place on various legal grounds and in different systems including, among others, the juvenile justice system, the child protection system, the (mental) health care system and the migration system.

Article 37 of the UN Convention on the Rights of the Child (CRC) is the core human rights provision for children deprived of their liberty. It recognizes the impact of deprivation of liberty on children's lives, as well as the need for a child specific approach while children are detained (Liefwaard, 2008). As a starting point deprivation of liberty of children must be used only as a measure of last resort and for the shortest appropriate period of time (art. 37 (b) CRC) and children have the right to challenge the legality of the deprivation of liberty before a court or other competent, independent and impartial authority (art. 37 (d) CRC). In addition, article 37 (c) CRC provides that children deprived of their liberty are entitled to be treated with humanity and respect for their inherent dignity, and in a manner that takes into account their needs as a child. For the protection of children deprived of their liberty, it is vital that they can effectively enjoy their rights under the CRC, which ultimately revolves around their legal position as children deprived of their fundamental right to liberty of the person (see, among others, art. 9 of the International Covenant on Civil and Political Rights).

This paper provides a framework in which the effective legal position for minors deprived of their liberty is conceptualised. Next to rights

aiming at the protection of children and providing basic services, as set forth in article 37 CRC and related international standards, an effective legal position for children requires procedural rights, including the right to information. The framework presented in this paper goes beyond article 37 CRC and includes other relevant international and regional human rights treaties, standards and jurisprudence. It will be argued that procedural rights aiming at safeguarding fair treatment, including the right to be heard, the right to an effective remedy and the right to information form an essential part of the legal position and serves as a prerequisite for the effective protection of the rights of children deprived of their liberty. This article focuses on the right to information. In addition, the article will provide examples of the conceptualisation of the right to information for children deprived of their liberty in practice through legislation and specific policies.

2. Legal position of children deprived of liberty under international law

Deprivation of liberty can be defined as 'any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority'.¹ As a consequence, deprivation of liberty can include many different forms of placement, including arrest, detention or imprisonment in context of criminal justice, placement in child protection or welfare institutions or other facilities meant to provide for alternative care, placement in psychiatric institutions, wards or hospitals, immigration detention and forms of administrative or military detention. In addition, this broad definition of deprivation of liberty encompasses both institutions that can be considered as closed (i.e. targeted at preventing children from escaping) and institutions that

¹ Rule 11 (b) UN Rules for the Protection of Juveniles Deprived of their Liberty (JDLs). Similar definitions can be found in article 4 (2) of the Optional Protocol to the Convention against Torture (OPCAT) and rule 21.5 European Rules for juvenile offenders subject to sanctions or measures. This definition to a large extent covers 'detention' under article 5 European Convention on Human Rights (ECHR) as developed under the case law of the European Court of Human Rights (ECtHR); see e.g. Trechsel (2005, p. 412ff).

(semi-)open, but where children are ordered to stay also if they do not want to.

As mentioned in the introduction, each child deprived of his² liberty is entitled to be treated with humanity and respect for his inherent dignity, and in a manner that takes into account his needs as a child (art. 37 (c) CRC). This means that if a child is deprived of his liberty he remains entitled to all rights under international human rights law, including the CRC. This places states and, *de facto*, institutions under the obligation to provide for basic rights, rights that offer special protection and rights that enable children to reintegrate into society (Liefwaard, 2008, p. 595ff). *Basic rights* include rights related to living conditions in institutions (see art. 27 CRC), health care (art. 24 CRC, education (art. 28 & 29 CRC), recreation, play and cultural activities (art. 31 CRC) and freedom of religion, thought and conscience (art. 14 CRC). The right to maintain contact with family can also be regarded as a basic right (art. 37 (c) CRC; see also art. 9 (3) CRC). *Special protection rights* revolve around the protection of children against violence (art. 19 CRC) and forms of ill-treatment or -punishment (art. 37 (a) CRC), which relates to adequate protection against unlawful or arbitrary treatment or punishment, including the use of force and disciplinary measures, and to effective remedies, including the right to file a complaint and to have access to independent supervisory bodies, and the right to legal and other appropriate assistance (art. 37 (d) CRC). The right to be separated from adults (art. 37 (c) CRC) should also be seen in light of the need to protect children who are deprived of their liberty. In addition, special protection rights are connected to the more fundamental right to be treated fairly and in child-friendly manner, which enshrines the right to be heard and to effective participation in decision-making affecting him. The right to information should also be understood in this context. If a child is unaware of his rights, the risk to becoming subjected to unlawful or arbitrary treatment increases. In addition, there is no point in having rights if you

are not or only partly aware of that (for more on the significance of adequate information see further below).

Some rights are particularly important for the child's *reintegration* into society. These include the right to education and to maintain contact with family, but also the right to be adequately protected against violence is relevant for the child's reintegration. Moreover, international legal standards call upon states to tailor the reintegration to the interests and needs of each individual child, which calls for adequate selection and placement procedures and periodic review (art. 25 CRC; see also rule 27 JDLs), an individual plan recognizing the needs of the child, including the need for (medical) treatment (art. and after care (see e.g. the UN Guidelines on alternative care, chapter *E Support for aftercare*).

The rights of the child deprived of liberty are not absolute. However, international human rights law implies that the limitation of the enjoyment of right can only take place (i.e. can only be justified) in case such a limitation is strictly required and proportionate in light of the objectives of the placement of the child, and only while taking into account the best interests of the child (art. 3 (1) CRC) and the views of the child (art. 12 CRC). Effective remedies should be available to enable the child to challenge (alleged) unlawful or arbitrary treatment. Altogether, states are under the obligation to safeguard a legal status, which acknowledges:

- 1) that the child deprived of his liberty remains entitled to all rights under international human rights law, including the CRC;
- 2) that the enjoyment of rights can only be limited if strictly required by the objectives of the child's condition and only while respecting the general principles of the CRC, in particular the best interests of the child (art. 3 (1) CRC) and the child's rights to be heard (art. 12 CRC);
- 3) and that the child has the right to an effective remedy against unlawful or arbitrary treatment (Liefwaard, 2017).

The child's legal status must be translated

² For the purpose of uniformity it is chosen to refer to persons with 'he' or 'him', while meaning 'she' or 'her' as well.

into concrete terms³ and can benefit from further elaboration into (statutory) domestic legislation (CRC Committee, 2007, para. 88). This has a number of advantages including that it hardens the legal value of many international and regional standards that are part of soft legal instruments and as such not legally binding, it can contribute to their acceptance at the domestic and local level – i.e. it brings the standards closer – and it enables states to target the specific rules to the specific context in which the deprivation of liberty takes place.

3. Legal basis of the right to information

The right to information can be regarded as one of the most fundamental elements of the legal status of the child in deprivation of liberty. In general terms, the right to information is laid down in article 17 of the CRC. The right to information has close ties to the right to be heard (art. 12 CRC). The UN Committee on the Rights of the Child (2009) has stated that the right to be heard implies that the child should be informed about ‘the matters, options and possible decisions to be taken and their consequences’ (General Comment No. 12, para. 25). The right to receive adequate information is seen as a precondition for the child to be able to give his informed views and make clarified decisions (General Comment No. 12, para. 25; 80). The UN Committee states that ‘children should be provided with full, accessible, diversity-sensitive and age-appropriate information about their right to express their views freely’ (para. 134 (a)). This information should be given to children in a way that takes into account their age and capacities and concerning their rights, national legislation, regulations and policies, local services and appeals and complaints procedures (para. 82). Recently, the UN Committee (2016) has acknowledged that digital media play an increasingly important role regarding children’s right to information. Therefore, states should make sure that children have

equal access to digital forms of information and training should be provided to children to enhance their digital information and media literacy skills (General Comment No. 20, para. 47).

International and regional standards elaborate on the right to information specifically in the context of juvenile justice. With regard to juvenile justice proceedings children should, first of all, be informed promptly and directly about the charges against him, in a language he understands (art. 40 (2)(b) CRC; UN Committee on the Rights of the Child, 2010, General Comment No. 10, para. 47). Preferably, this information should be provided orally to the child (para. 48) and to his parents in such a way that they understand the charge and the possible consequences (Guidelines on child-friendly justice, 2010, IV, A, para. 1 (5)).

In the European context two EU regulations apply specifically to the right to information in juvenile justice proceedings. First, in the Directive on the Right to Information in Criminal Proceedings (EU Directive 2012/13), which applies to adults as well as children, the right to information is laid down. In article 3 it is stated that suspected persons should be provided with information concerning specific procedural rights, such as the right of access to a lawyer, the right to be informed of the accusation, the right to interpretation and translation and the right to remain silent (art. 3 (1)). In particular, the information should be provided in ‘simple and accessible language’ appropriate to the needs of vulnerable persons, such as children (art. 3 (2)). Second, in the recent Directive on procedural safeguards for children suspected or accused in criminal proceedings the right to information specifically for children in conflict with the law is assured (Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings, 2016). This means that, next to information about the general applicable procedural rights, specific rights should be addressed when a child

³ See further the JDLs and similar regional standards, such as the European rules for juvenile offenders subject to sanctions or measures (2008), the Guidelines on child-friendly justice (2010) and the recently updated CPT standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (2015). See also the case law of the European Court of Human Rights under article 2 and 3 ECHR (FRA, 2015).

is accused or suspected of an offence. These rights are inter alia to have a parent or guardian informed and to be accompanied by a holder of parental responsibility during the proceedings, the right to privacy, the right to individual assessment and medical examination and assistance, and the right to limitation of deprivation of liberty, the use of alternative measures, including the right to periodic review of detention (art. 4).

Specifically concerning children deprived of liberty, the Havana Rules (United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990) provide minimum standards for the protection of children deprived of their liberty in any form (rule 3). Two sets of principles as set out in the Havana Rules are related to the right to information for children who are deprived of their liberty. First, it is stated that children on admission should be 'given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand' (rule 24). Moreover, information should be provided about where children can lodge complaints and where they can seek legal assistance. In case the child is illiterate or cannot understand the information in written form, another form of conveying the information should be sought (rule 24). Efforts must be made to enable children to understand their rights and obligations during deprivation of liberty. This implies that information should be provided about the 'house rules' of the institution, the care provided, the disciplinary procedures and other methods of seeking information (rule 25). The second set of principles relates to making complaints while deprived of liberty. In rule 25 it is also stated that juveniles have the right to make complaints and that they should be assisted in understanding this right. In rules 75-78 the right to lodge a complaint is further elaborated upon. For example, children should be able to make requests or complaints to the director of the facility (rule 75) and to a higher authority (rule 76), an independent office or ombudsman should be established to investigate complaints (rule 77) and children have the right to request as-

sistance in order to file a complaint (rule 78). To conclude, the Guidelines on child-friendly justice are worth mentioning in this regard. The Guidelines, adopted by the Council of Europe in 2010, 'articulate in a holistic manner the key elements of the justice system from a children's rights perspective' (Liefwaard & Kilkelly, n.d., p. 1). Although being legally non-binding principles, they give practical guidelines on how to protect children's rights in the justice system (Liefwaard & Kilkelly, n.d.). With regard to the right to information the Guidelines provide that 'children should be provided with all necessary information on how to effectively use the right to be heard' (First Part, ch. IV, at para. 48). Moreover, several matters are listed of which children should be informed when involved with the justice system, such as concerning the duration of proceedings, access to appeals and complaints mechanisms, the role the child plays in the procedures, the time and place of court proceedings and the outcomes of proceedings (First Part, ch. IV, at para. 1.1). It is also stated that 'child-friendly materials containing relevant legal information should be made available and widely distributed, and special information services for children such as specialised websites and helplines [should be, *sec*] established' (First Part, ch. IV, at para. 1.4). However, it can be noted that no specific provisions are formulated regarding the right to information for children deprived of their liberty. The guidelines formulated in the first paragraph should therefore be seen as also applying to this specific group of children, albeit this not being explicitly mentioned. In the same line of thought the UN High Commissioner for Human Rights states explicitly in the 2013 report on access to justice for children that children should be empowered with child-sensitive information and that child-sensitive procedures form a prerequisite for effective access to justice for children, such as access to complaints mechanisms while deprived of liberty (UN High Commissioner, 2013, paras. 18ff and 21ff.). The 'CPT-standards' developed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

(CPT)⁴, contain more specific guidelines with regard to information provision to children deprived of their liberty. When children are taken in police custody they should immediately be given an information sheet explaining their rights and safeguards. This sheet should be ‘child-friendly, written in simple and clear language and available in a variety of languages. Special care should be taken to ensure that juveniles fully understand the information’ (para. 98). Moreover, when are placed in an institution they should inter alia be provided with a copy of the rules governing the institution, a written description of their rights and obligations and information on how to lodge a complaint. When the child is not able to understand the information in written form it should be made sure that his full comprehension is reached by using another form of communication (para. 130).

In conclusion, the right to information has been explicitly recognized under international human rights law. The implications of this right as well as the obligations that can be derived from it differ depending on the context the child is in. However, it is clear that children deprived of their liberty have a right to information and that, as part of this right, information is presented to them in a child-friendly manner. Therefore, states should develop specific legislation to target the right to information to the different contexts in which children deprived of their liberty find themselves. These specific regulations should include the kind of information that has to be provided to the child. In addition, it should provide when the designated authority ought to provide the information and rules regarding additional safeguards, including the right to legal and other appropriate assistance (art. 37 (d) CRC).

4. Why is receiving adequate information of importance?

Deprivation of liberty can cause children much stress and feelings of anxiety, especial-

ly in the earliest stages of the placement in an institution or detention facility (Van Keirsbilck, 2016; Van der Laan & Eichelsheim, 2013; Neubacher et al., 2011; Van der Laan et al., 2008). Poor adaptation to imprisonment can cause risky situations involving self-harm, (attempted) suicide and aggressive behaviour, negatively affecting the person himself, other inmates and the staff (Van der Laan & Eichelsheim, 2013). Moreover, children deprived of their liberty generally have particular problems with, among others, accessing information, receiving legal and other appropriate assistance, including assistance by family members (UN Violence Study, 2006; see also Liefwaard, Reef & Hazelzet, 2014).

To reduce these feelings of stress and anxiety receiving adequate and child-friendly information, which takes into account the age and maturity of the child, is of importance (Liefwaard, 2017). Here a link can be drawn with fair treatment of children by authorities. From a procedural justice perspective, it can be argued that the extent to which people perceive procedures and treatment as fair influences the acceptance of the decisions made by authorities and results in a more positive evaluation of the decision maker (Tyler, 2003). This also applies in prison situations, where rule compliance is higher when the legitimacy and authority of the staff is accepted (Van der Laan & Eichelsheim, 2013). Research conducted in Germany concerning violence in detention shows that the level of aggression and feelings of loss of autonomy can be effectively reduced when juveniles experience that they are treated fairly (Neubacher, 2014). According to Tyler (2003; 2006), elements of a fair treatment constitute a respectful treatment, the opportunity to participate in the situation by explaining one’s perspective and understanding the argumentation behind a certain decision. Research shows that experiencing unfair treatment in a detention setting relates to feelings of stress, anxiety and fear. At the contrary fair treatment by staff contributes to diminished feelings of fear and

⁴ The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) is the non-judicial monitoring body under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Council of Europe; *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, 26 November 1987, ETS 126.

perceiving the environment as safer (Van der Laan & Eichelsheim, 2013).

Being able to understand the decisions taken by judicial authorities or the staff of an institution requires the provision of age specific information to children. Liefwaard, Reef and Hazelzet (2014, p. 23) argue that fair treatment should be supported by 'clear and child-friendly procedures and policies, monitoring bodies and complaint mechanisms'. Moreover, fair and child-friendly treatment of children deprived of liberty can serve as a prominent tool in the prevention of violence in institutions (Liefwaard, Reef & Hazelzet, 2014). However, child-friendly treatment and distribution of information should have regard for the age and level of maturity of children deprived of liberty.

Numerous studies have been conducted regarding the understanding of children of legal proceedings (Driver & Brank, 2009; Weijers & Grisso, 2009; Grisso, 2000; Cooper, 1997). From these studies, it can roughly be concluded that adolescents between the ages of 14 and 16 have the capacity to understand court procedures (Grisso, 2000; Scott & Steinberg, 2008). Moreover, several aspects of adolescent development influence their level of understanding. Adolescents' behaviour is influenced by factors such as susceptibility to peer pressure (Steinberg & Scott, 2003; Scott & Steinberg, 2008; Gardner & Steinberg, 2005; Steinberg, 2011), the different assessment of risks compared to adults (Greene, Krcmar, Walters, Rubin & Hale, 2000; Schmidt, Repucci & Woolard, 2003; Steinberg & Cauffman, 1996), the lesser capacity to see the long-term effects of behaviour (Cauffman & Steinberg, 2000; Scott & Steinberg, 2008) and less life experience (Steinberg & Scott, 2003). This implies that the reasoning skills and maturity of judgment of adolescents are not fully matured (Scott & Steinberg, 2008; Steinberg & Schwartz, 2000). This could hamper the full understanding of rules and proceedings that apply to them. Buss (2017) notices that studies on children's understanding of their rights, focuses heavily on their ability to understand the words included in these rights, instead of focussing on the true appreciation and the consequences of cer-

tain decisions. Therefore, language should not only be made more child-friendly, efforts should be made to make the child understand what he is consenting for or deciding about (Buss, 2017). Even though the studies referred to concern (formal) court proceedings, it is likely that the findings are relevant for rules and procedures in institutions.

Regarding children's appreciation of rules and proceedings it is important that they receive adequate support and information. The staff of an institution plays an important part in providing information regarding the daily activities and house rules of the institution. Van der Laan and Eichelsheim (2013) found that fair treatment by the staff contributed to less dangerous situations and a diminished risk of aggressive incidents. However, with regard to legal information lawyers can play an important role in informing and explaining children their rights and legal procedures (Buss, 2000).

5. Implementation in practice of the right to information

In nearly every member state of the European Union children involved in civil and administrative proceedings have the statutory right to receive information about their rights. In some countries, children also have the right to receive this information at their first contact with the judicial system or other competent authorities (i.e. police, immigration, social, educational or healthcare services). Some countries have developed certain child-sensitive measures, such as the requirement that information about rights and procedures should be provided in a child-friendly manner and that court decisions should be communicated in a manner adapted to the child's understanding (Kennan & Kilkelly, 2015). With regard to juvenile justice procedures, child suspects generally have the statutory right to receive information about their rights and the procedures, provided upon their first contact with the authorities (usually the police). However, in the majority of European member states no legislative obligation exists to provide this information in a child-friendly manner (Kennan & Kilkelly, 2015), let alone

that such obligations exist with regard to children deprived of their liberty. Knowledge and research about informing children deprived of liberty about their rights and the procedures is very limited. Therefore, in the following part, two specific countries will be looked at: Belgium and the Netherlands, focussing specifically on police custody in the context of juvenile justice and institutional placement as part of a civil youth care measure (i.e. a form of alternative care) or in a juvenile detention facility. Belgium serves as an example of having a national regulation, which is rather concrete and child-specific. The Netherlands form an interesting example to learn about how specific regulations designed for children placed in a youth custodial institution work in practice. This paragraph will be concluded with a brief overview of recent research outcomes concerning children's experiences regarding the provision of information while deprived of liberty.

Two examples: Belgium and the Netherlands

In Belgium, when children involved in offending are taken in custody police officers should inform the child in a language that he understands about his rights and the reasons for placement in custody; the maximum duration of the custody; the procedures that need to be followed as a result of the custody; and the possibility for the police to resort to coercive measures. Police officers must confirm that this information has been provided, by submitting it into a register of detainees. This means that individual police officers can be held accountable when not providing this information to the child suspect (Kennan & Kilkelly, 2015).

Rules concerning the legal position of minors subjected to youth care are laid down in a separate law applicable in the Flemish community (Decree concerning the legal position of the minor in youth care, 2006).⁵ In Belgium (Flanders), the youth court judge can order educational measures, which also include placement in a (closed) institution (Chris-

tiaens et al., 2010). When children receive a youth care measure they have the right to receive clear and adequate information they understand about youth care and if applicable the rules that apply in the institution (art. 11). They also have the right to communication in a language that they understand and that is adapted to their age and maturity (art. 12). Upon admission in an institution, every child should receive a booklet including all the rules governing the institution. Institutions in Belgium have developed a child-friendly version of the house rules. The booklet is written in understandable language and explanations are provided of terminology. Moreover, it is stated that children can turn to staff members with further questions (Kinderrechtencommissariaat, 2010). Recently, the external monitoring of youth care services as well as the external handling of complaints was given a legal basis.⁶ Herewith a firmer basis is laid down for the complaints procedure in institutions, ensuring compatibility with international standards concerning the legal position of children deprived of liberty (see Kinderrechtencommissariaat, 2014). Moreover, explicit references are made in the law to the duty to inform children on their right to lodge complaints, which aims to safeguard the right to information (art. 11 (1) Decree concerning the legal position of the minor in youth care). In the Netherlands, children who are held in custody by the police are provided with information through a brochure, titled '*You are suspected of a criminal offence*' (version March 2016), developed by the Information Department of the Ministry of Security and Justice. The brochure contains information about the rights of children who are interrogated by the police, especially the right to legal representation. It is digitally available in twenty languages and can be printed at every police station. It is, however, questionable whether the three-page, small font brochure is easy to read and understand, especially for younger adolescents and in the stressful circumstances they find themselves in. On a po-

⁵ Decreet van 7 mei 2004 betreffende de Rechtspositie van de Minderjarige in de Integrale Jeugdhulp (DRP), in force as of 1 juli 2006.

⁶ Decreet van 12 juli 2013 betreffende de integrale jeugdhulp, article 78 (2).

sitive note, a recent study reveals that lawyers, prosecutors and judges, who come into contact with juvenile suspects, indicate that they ask whether the child received information on the proceedings and whether he has additional questions (Barendsen & Vegter, 2016). The setting, though, needs to be of a non-hostile and preferably less informal nature, in order for children to feel comfortable enough to ask the professional questions and further clarifications (Rap, 2013).

Specific legislative obligations with regard to the right to information of children deprived of their liberty in youth custodial institutions (i.e. institutions meant to house children in the context of juvenile justice) exist as well in the Netherlands. Each child admitted to a juvenile detention facility must receive information on his rights and duties, in writing and in a language he understands; he must receive this information upon admission. In particular, this information must inform the child about the right to complaint and appeal and to make requests (art. 60 Dutch Youth Custodial Institutions Act).⁷ The Youth Custodial Institutions Act does not prescribe the way in which information should be provided. However, written information should always be available in the form of brochures or leaflets.⁸ In addition, the Act provides that children must receive information in writing when certain specific decisions are made (e.g. in case of disciplinary procedures); this information must include the right to lodge a complaint regarding the decision made (art. 62). Research by Bruning, Liefwaard and Volf (2005) shows that children indicate that they can go to staff members when they have additional questions about their rights. However, it is argued that staff members or mentors may not be the right persons to inform children about their rights, because they are not legally educated and they do not hold a neutral position. Moreover, staff may not point children at their rights, because they perceive rights as potential risk or they do not value the significance of rights for children (Brun-

ing, Liefwaard & Volf, 2004). It is recommendable to give independent legal advisors (e.g. legal aid clinics) access to the institution, to provide children with information and advice (Bruning, Liefwaard & Volf, 2005).

Views and experiences of young people

As stated before, being deprived of liberty and especially arriving for the first time in an institution is a stressful event for children. Although the legal position of children deprived of liberty is carefully laid down in laws or regulations in some countries, in practice children may not receive the appropriate information or they might not be in the position to understand the provided information. In general, children involved in the justice system (i.e. education, public or private family law or juvenile justice, but who are not necessarily deprived of their liberty) indicate that they want to receive more information about their rights (Kilkelly, 2010). In recent years, studies were conducted about the experiences of young people specifically with regard to admission procedures in institutions and the provision of information.

First, several studies indicate that when information is provided upon admission it is experienced by children as too much information at once and difficult to understand, because it is not written in a way that they can understand it (The Howard League for Penal Reform, 2011; The Ombudsman for Sweden, 2013; Barendsen & Vegter, 2016). Young people rely heavily on the information they receive from peers, instead of the information that is provided by the authorities (Ombudsman for Children and Young people Ireland, 2011; Kinderrechtencommissariaat, 2010; Bruning, Liefwaard & Volf, 2005). Informal communications with peers and observations guide them in understanding the rules that apply in the institution (Ombudsman for Children and Young people Ireland, 2011). Moreover, children have limited knowledge concerning their legal rights and potential legal remedies. Research in the Netherlands

⁷ Beginselenwet Justitiële Jeugdinrichtingen, in force as of 2 November 2000.

⁸ *Kamerstukken II* 1997/98, 26016, nr. 3 (MvT), p. 63.

shows for example that children were not adequately informed about their right to complaint; children indicated that they primarily received information about this from other children (Bruning, Liefwaard & Volf, 2005; see also the Ombudsman for Sweden, 2013). Children in custody often view the law as something that is there to punish them. They are often particularly reluctant to pursue their rights due to the threat of restraint that is routinely used to make them do what they are told (The Howard League for Penal Reform, 2011). This underscores the importance of the provision of child-friendly information on the existence of remedies and compliant mechanisms. These procedures should be speedy, confidential and safe. This means, among other things, that children should be protected against retaliation, when they lodge a complaint (Liefwaard, 2017).

6. Concluding observations

Children deprived of liberty, regardless of the context in which their deprivation of liberty takes place, are entitled to continue to enjoy their fundamental rights and freedoms. This aims to safeguard essential basic services, to protect children against violence, forms of ill-treatment and unfair treatment and to promote their reintegration. Procedural rights, in particular the right to information, form an essential part of the legal position of children deprived of liberty and can also be regarded as a prerequisite for the effective protection of their rights. This article provided insight in the significance of adequate information and presented some information on legislation and practice in (certain) EU countries in this regard. Actually, too little is known about the right to information – in theory and practice – in the specific context of deprivation of liberty, let alone that we sufficiently understand what kind of information is provided to children and how that relates to their needs while being deprived of their liberty, also given the specific context in which the deprivation of liberty takes place. The UN Global Study on Deprivation of Liberty, which is currently conducted, should therefore specifically focus on the rights and actual means children

have – in theory and practice – to acquire relevant information in order to fully benefit from the rights protection they are entitled to under international children's rights. What we do know is that providing information to children without them understanding it, is meaningless. Empowerment of children deprived of liberty therefore requires to educate children about their rights and the effective enforcement of these rights.

7. References

- Barendsen, A.E., & Vegter, M.A. (2016). *Procedural rights of juveniles suspected or accused in the European Union. National research report the Netherlands*. Leiden: Defence for Children International The Netherlands.
- Bruning, M., Liefwaard, T., & Volf, M. (2005). Jongeren in justitiële jeugdinrichtingen: wat vinden zij van hun rechten? *Proces*, 3, 114-121.
- Bruning, M., Liefwaard, T., & Volf, M. (2004). *Rechten in justitiële jeugdinrichtingen. Evaluatie Beginselenwet justitiële jeugdinrichtingen*. Amsterdam: ACK.
- Buss, E. (2017). What stands in the way of children's exercise of their criminal procedural rights in the United States? Our evolving and incomplete interdisciplinary understanding. In M.D. Ruck, M. Peterson-Badali & M. Freeman (Eds.), *Handbook of children's rights. Global and multidisciplinary perspectives* (pp. 278-295). New York/London: Routledge.
- Buss, E. (2000). The role of lawyers in promoting juveniles' competence as defendants. In T. Grisso & R.G. Schwartz (Eds.), *Youth on trial. Developmental perspectives on juvenile justice* (pp. 243-265). Chicago: University of Chicago Press.
- Caffman, E., & Steinberg, L. (2000). (Im)maturity of judgment in adolescence: Why adolescents may be less culpable than adults. *Behavioral Sciences and the Law*, 18 (1),

- Christiaens, J., Dumortier, E., & Nuytiens, A. (2010). Belgium. In F. Dünkel, J. Grzywa, P. Horsfield & I. Pruin (Eds.), *Juvenile justice systems in Europe* (pp. 99-130). Mönchengladbach: Forum Verlag Godesberg.
- Cooper, D.K. (1997). Juveniles' understanding of trial-related information: Are they competent defendants? *Behavioral Sciences and the Law*, 15 (2), 167-180.
- Council of Europe (2010). *Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice* (adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies). Strasbourg: Council of Europe.
- Driver, C., & Brank, E.M. (2009). Juveniles' knowledge of the court process: results from instruction from an electronic source. *Behavioral Sciences and the Law*, 27 (4), 627-642.
- FRA - European Union Agency for Fundamental Rights (FRA) (2016). *Handbook on European law relating to the rights of the child*. Luxembourg: Publications Office of the European Union.
- Gardner, M., & Steinberg, L. (2005). Peer influence on risk taking, risk preference, and risky decision making in adolescence and adulthood: An experimental study. *Developmental Psychology*, 41 (4), 625-635.
- Greene, K., Krcmar, M., Walters, L.H., Rubin, D.L., & Hale, J.L. (2000). Targeting adolescent risk-taking behaviors: the contribution of egocentrism and sensation-seeking. *Journal of Adolescence*, 23 (4), 439-461.
- Grisso, T., & Schwartz, R.G. (2000). Adolescents' capacities as trial defendants. In T. Grisso & R.G. Schwartz (Eds.), *Youth on trial. Developmental perspectives on juvenile justice* (pp. 67-71). Chicago: University of Chicago Press.
- Keirsbilck, B. van, Grandfils, S., Rosset, P.Y., & Salcedo, A. (2016). *Practical guide. Monitoring places where children are deprived of liberty*, Brussels: Defence for Children International – Belgium.
- Kennan, N., & Kilkelly, U. (2015). *Children's involvement in criminal, civil and administrative judicial proceedings in the 28 Member States of the EU*. Luxembourg: Publications Office of the European Union.
- Kilkelly, U. (2010). *Listening to children about justice: Report of the Council of Europe consultation with children on child-friendly justice*. Strasbourg: Council of Europe.
- Kinderrechtencommissariaat (2014). *Kind(errechten)vriendelijke toezicht- en klachtenmechanismen. Advies 2013-2014/9*. Available at: <http://issuu.com/kinderrechten/docs/95c7e927-86ad-448f-86f0-1654b8255f9a/21?e=0>
- Kinderrechtencommissariaat (2010). *Binnen(st)en buiten. Rechtswaarborgen voor minderjarigen in detentie doorgeleucht*. Brussel: Drukkerij Artoos.
- Laan, A.M. van der, Vervoorn, L., Schans, C. A. van der, & Bogaerts, S. (2008). *Being inside. An explorative study into emotional reactions of juvenile offenders to custody*. The Hague: WODC/Ministry of Security and Justice.
- Laan, A. van der, & Eichelsheim, V. (2013). Juvenile adaptation to imprisonment: feelings of safety, autonomy and well-being, and behaviour in prison, *European Journal of Criminology*, 10 (4), 424-443.
- Liefwaard, T. (2017). Access to justice for children deprived of their liberty. In Center of Human Rights & Humanitarian Law of American University Washington College of Law (Ed.), *Protecting children against torture in detention: Global solutions for a global problem* (pp. 57-80). Washington, DC: American University, Washington School of Law.
- Liefwaard, T. (2008). *Deprivation of liberty*

of children in light of international human rights law and standards. Antwerpen/Oxford/Portland: Intersentia.

Liefwaard, T., & Kilkelly, U. (n.d.). Child-friendly justice: past, present and future. In B. Goldson (Ed.), *Juvenile justice in Europe: Past, present and future*. New York/London: Routledge (forthcoming).

Liefwaard, T. Reef, J., & Hazelzet, M. (2014). *Report on violence in institutions for juvenile offenders* (prepared for the Council for Penological Co-operation (PC-CP). Leiden: Leiden University Law School.

Neubacher, F., Oelsner, J., Boxberg, V., & Schmidt, H. (2011). Gewalt und Suizid im Strafvollzug - Ein längsschnittliches DFG-Projekt im thüringischen und nordrhein-westfälischen Jugendstrafvollzug. *Bewährungshilfe – Soziales, Strafrecht, Kriminalpolitik*, 58 (2), 133–146.

Neubacher, F. (2014). Gewalt im Jugendstrafvollzug – Ein Überblick über Ergebnisse des Kölner Forschungsprojekts. *Forum Strafvollzug* 63 (5), 320-326.

Ombudsman for Children and Young people Ireland (2011). *Young people in St. Patrick's Institution*. Dublin: Ombudsman for Children's office.

Rap, S.E. (2013). *The participation of juvenile defendants in the youth court. A comparative study of juvenile justice procedures in Europe*. Amsterdam: Pallas Publications.

Schmidt, M.G., Reppucci, N.D., & Woolard, J.L. (2003). Effectiveness of participation as a defendant: the attorney-juvenile client relationship. *Behavioral Sciences and the Law*, 21 (2), 175-198.

Scott, E.S., & Steinberg, L. (2008). *Rethinking juvenile justice*. Boston: Harvard University Press.

Steinberg, L. (2011). *The science of adolescent risk-taking*. Washington: The National

Academies Press.

Steinberg, L., & Cauffman, E. (1996). Maturity of judgment in adolescence: Psychosocial factors in adolescent decision making. *Law and Human Behavior*, 20 (3), 249–272.

Steinberg, L., & Schwartz, R.G. (2000). Developmental psychology goes to court. In T. Grisso & R.G. Schwartz (Eds.), *Youth on trial. Developmental perspectives on juvenile justice* (pp. 9-31). Chicago: University of Chicago Press.

Steinberg, L., & Scott, E.S. (2003). Less guilty by reason of adolescence. *American Psychologist*, 58 (12), 1009-1018.

The Howard League for Penal Reform (2011). *Twisted: the use of force on children in custody*. London: The Howard League for Penal Reform.

The Ombudsman for Sweden (2013). *From the inside. Children and young people on life in police cells and remand prisons*. Stockholm: The Ombudsman for Children in Sweden.

Trechsel, S. (2005). *Human rights in criminal proceedings*. Oxford: Oxford University Press.

Tyler, T.R. (2006). *Why people obey the law*. Princeton/Oxford: Princeton University Press.

Tyler, T.R. (2003). Procedural justice, legitimacy, and the effective rule of law. In M.

Tonry (Ed.), *Crime and justice* (vol. 30, pp. 283-358). Chicago: University of Chicago Press.

UN Committee on the Rights of the Child (2016). *General comment No. 20 (2016) on the implementation of the rights of the child during adolescence*. CRC/C/GC/20.

UN Committee on the Rights of the Child (2009). *The right of the child to be heard*.

General Comment no. 12, CRC/C/GC/12.

UN Committee on the Rights of the Child (2007). *Children's rights in juvenile justice*. General Comment no. 10, CRC/C/GC/10.

UN Committee on the Rights of the Child (2003). *General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)*. General Comment no. 5, CRC/GC/2003/5.

UN High Commissioner (2013). *Access to justice for children. Report of the United Na-*

tions High Commissioner for Human Rights, UN Doc. A/HRC/25/35.

UN Violence Study (2006). *Report of the independent expert for the United Nations study on violence against children*, 29 August 2006, A/61/299.

Weijers, I., & Grisso, T. (2009). Criminal responsibility of adolescents: Youth as junior citizenship. In J. Junger-Tas & F. Dünkel (Eds.), *Reforming juvenile justice* (pp. 45-67). Dordrecht: Springer.