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TRIVIALISING JUVENILES' RIGHTS?

A Critical Comparative Perspective on the Rights of Juveniles during Police Proceedings in the Framework of the Dutch and Austrian Justice System

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Abstract

The area of juvenile justice systems focusing on children in conflict with the law amounts to the branch of children's rights where the largest number of legislation has been issued. Even though several States appear to question their own attitudes towards trends in juvenile delinquency, this field of juvenile justice often accounts for violations of children's rights at the hands of States themselves, such as during the phase of arrest. Clearly, a highly sensitive area, including responses that are frequently not be categorised as juvenile-friendly and further do not necessarily favour individual development of persons underage, the vulnerability of minor suspects refers to all stages of procedures. However, it appears to be greatest at the phase of police proceedings. This has also been confirmed by State reports of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment (CPT).

The present study deals with the specific topic of minors and their rights in light of international human rights law when confronted with the law enforcement body in practice. Two countries have been selected to examine and critically compare juvenile justice systems on the national level: Austria and the Netherlands. Taking into consideration the CPT reports to these countries, this thesis subsequently addresses the question of specific procedural rights and conditions of minors during the phases before detention. And moreover, until when is special protection guaranteed in the countries under examination and why are there differences among Austria and the Netherlands concerning the age limits? Overall, the question of relevance and impact of previous CPT reports on national practices arises and, similarly, which broader implications can be withdrawn from the kind of points of interests repeatedly selected and mentioned by the CPT. This research is dedicated to a comparative research, ensuring an insight into the differences and similarities of the two juvenile justice systems and identifying best practices and developments. Ultimately, broader conclusions can be drawn with regards to the nature of the force of international instruments and institutions, if a national government decide to overlook or ignore their actions and guidelines.

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List of Abbreviations

CoE	Council of Europe
CPT	European Committee for the Prevention of Torture and Inhuman and Degrading Treatment
CRC	United Nations Convention on the Rights of the Child
CRC Committee	United Nations Committee on the Rights of the Child
DCI	Defence for Children International
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
UN	United Nations
UNGA	United Nations General Assembly
UNCAT	United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment
UNGA	United Nations General Assembly

1 Introduction

> "In all decisions taken within the context of the administration of juvenile justice, the best interests of the child should be a primary consideration. Children differ from adults in their physical and psychological development, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law. These and other differences are the reasons for a separate juvenile justice system and require a different treatment for children" (CRC Committee, 2007, para. 10).

Less than 100 years ago *youth* has not yet been considered a distinct phase, but rather the image of an abrupt transition from childhood to adulthood has dominated. Only in the course of 20th century, the period of youth has crystallised and been recognised as a separate stage of life. Throughout this time, one finds its place in society via trial and error. As the mirror of the future, juveniles received high societal attention. These developments entailed, on the one hand, a control and skeptical monitoring of the capability of the youth to be socially acceptable and, on the other hand, research exploring the new and prospective picture of youth (Sting, 2011). Formative factors and role of 'educators' include family, most notably parents, but beyond that other institutions and actors shape emotional, character, social and practical competences of young adults. It is crucial to consider juveniles as a separate social group and bearers of rights to find adequate forms of balancing needs for self-determination, autonomy and participation of children as key elements of their personal evolvement, while simultaneously acknowledging particular vulnerabilities of young adults involved in the same development process (Sax, 2012).

Far from having reached a consensus on the exact extent, priorities or even particular components of juvenile's rights is not yet available: Working in the context of minors and their rights is a morally highly sensitive area, combining both extreme and at times contradicting normative and ideological stances. Therefore, dealing with this issue gives rise to challenges for all actors included, such as activists, policy and law makers as well as researchers (Reynolds, Nieuwenhuys & Hanson, 2006).

The United Nations Convention on the Rights of the Child (CRC), the most prominent international treaty with regards to children's rights, has gone further than merely protecting particular groups of children. In Article 1 of the CRC a child is defined as, "every human being below the age of eighteen years unless under the law applicable to the child, majority is

attained earlier" (UNGA, 1989).[1] It is there for all children, extracting them from penal law. Penal law always encompasses problems by way of a binary reading: authors against victims. Whatever the situation minors face might be, the CRC appeals States to view them first and foremost as minors. Some juveniles turn to acts that offend the law and a State has to pay due attention to juveniles entering the criminal justice system. The vulnerability of underage suspects refers to all stages of procedures. However, it appears to be greatest at the phase of police proceedings. This early stage of the penal chain mostly constitutes a juvenile suspect's first contact with law enforcement authorities. Clearly, minors shall already during this phase be provided with an adequate level of protection (Panzavolta, de Vocht, Van Oosterhout and Vanderhallen, 2015). To say the least, much irreversible damage can be done to someone in the first hours of police custody.

Against this background and during times when the notion of child-friendly justice is gaining increasing attention from policy-makers, children's rights advocates, practitioners and academics alike, this thesis set out to research the area of children in conflict with the law more closely. The second human rights treaty, after 1950's European Convention on Human Rights (ECHR), new member states entering the Council of Europe (CoE) in the nineties had to ratify constitutes the European Convention for the Prevention of Torture (ECPT), which came into force in 1989. On its basis, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) was founded as the anti-torture committee of the CoE. Throughout the last decade, however, the CoE's role and relevance has repeatedly been questioned, if not even categorised as obsolete (Benoît-Rohmer, 2017). It thus seems interesting to look into the CPT's role and impact on its ‚ember States over the years, synthesised with regards to the vulnerable group of juveniles. To take a concrete point of interest, this research took on to scrutinise CPT reports with regards to the topic of juveniles. This thesis discusses rights of children an international body, the CPT, insists upon. Two countries, both among the cohort of early ratifying states of the ECPT, have been selected to examine and critically compare juvenile justice systems on the national level: Austria and the Netherlands. One could hypothetically assume that states indicate their support by signing and ratifying an international legal tool. However and strikingly, some states chose to ratify without necessarily committing to a full-fledged implementation on the

[1] Within the scope of this thesis, the terms 'youth', 'children', 'young persons', 'minors', 'adolescents' or 'juveniles' are used interchangeably.

national level. One can observe that some states' apparent enthusiasm to adhere to international safeguards and recommendations is not necessarily backed up with action. Domestic practices and traditions prevail.

Article 40(1) of the CRC unequivocally enshrines the right to dignity as a principle, thereby reminding States that in any young suspect, there is first and foremost a human being, a juvenile (UNGA, 1989). "Despite progress in the realization of children's rights, as set out in the [CRC], too many commitments remain unfulfilled. This is particularly true for children deprived of liberty, who often remain invisible and forgotten" (UN Press Release, 2016). Due to the problematic nature of the coherent functioning of domestic legal systems, there was a call for a UN global study on children deprived of their liberty. At the end of 2016, the appointment of Manfred Nowak as an independent expert to lead this study attributes remarkable topicality and urgency to the need for this study and consequently more thorough research in this area. Children in contact with the law often remain an invisible and forgotten group in society in spite of increasing evidence of being victims of human rights violations. The personal cost to these children is immeasurable in terms of the destructive impact on their development, and on their ability to lead healthy and constructive lives in their societies. Closely linked to this difficulty is the issue of juvenile justice. Worthy to mention in analogy in this context is Winter's, the Chair of the UN Committee on the Rights of the Child (CRC Committee), recent, general note ahead of a key meeting of the EU and its Member States in February 2018, "We also encourage the EU and its Member States to provide safe spaces for the views of children to be brought into decision-making processes in this area. The current reform discussions are a test for the EU and its Member States to show that they are serious about both protection and child participation" (OHCHR, 2018).

This research set out to systematically analyse the CPT reports to both countries with regards to the specific topic of youth. Based on this assessment, a pattern of recurrent recommendations crystallised. Amongst other developments in the reports, it was kept in mind that the level of the police appears to be the one often overseen in juvenile justice procedures; a stage of particular sensitivity and touching the largest amount of minors in conflict with the law. Strikingly various issues have been repeated by the CPT concerning juveniles and the level of law enforcement authorities. In turn, the research problem at stake concerns the interplay between formal rights and practice on the domestic level. This level of a justice system touches much more people than the following stages of the penal chain and includes accused juveniles. The level of the police and the subjects of minors make it less evident to discuss the implementation of human right standards, since – at this stage –rights

are not applied by professionals specifically trained in law and to persons, namely minors, who are naturally less aware of the justice systems in place. Taking into consideration the CPT reports, this thesis subsequently addresses the question of specific procedural rights and conditions of minors during the phases before detention. And moreover, until when is special protection guaranteed in the countries under examination and why are there differences among Austria and the Netherlands concerning the age limits? Overall, the question of relevance and impact of previous CPT reports on national practices arises and, similarly, which broader implications can be withdrawn from the kind of points of interests repeatedly selected and mentioned by the CPT. This research is dedicated to a comparative research, ensuring an insight into the differences and similarities of the two juvenile justice systems and identifying best practices and developments. Ultimately, broader conclusions can be drawn with regards to the nature of the force of international instruments and institutions, if a national government decide to overlook or ignore their actions and guidelines.

The thesis is structured as follows: In the next section, the design of this research is developed. This seems particularly relevant, since several methods are combined and the reader should have sufficient information on the following parts. In the following chapter, an overview on the theoretical considerations of procedural fairness is presented. Thereafter, the most relevant international safeguards relevant to this research are elaborated on. This serves as a basis for the subsequent chapters of this research, carrying out its analysis by critically comparing the Dutch and the Austrian juvenile justice systems at the stage of police proceedings. Ultimately, the outcomes of this research are discussed in a broader context, including avenues for future research. The thesis concludes, then, by also pointing to the limitations encountered.

2 Design of the Research

Having introduced this thesis, this chapter delivers the design of this research. In this section the most important steps taken gradually within the set-up of the study are motivated.

As shown in the chapter hereinafter, most scholarly literature focuses on the broad academic debate on children's rights and procedural justice. The literature is, however, missing joint analyses of debates in form of in-depth case studies exploring first the national practices of States towards juveniles at the stage of police and unravelling, in a broader context, the implications of non-concerted, differing approaches to the issue of juvenile delinquency. For this reason, it is relevant to study and understand domestic approaches to draw up comprehensive juvenile justice systems and make substantial progress in this realm. With its sole focus on two European countries, this thesis contributes to the bridging of that gap. By analysing the national domain in the context of juveniles and their rights when facing the police, it adds both the literature existent and to the long on-going struggle about implementing juvenile-friendly procedures on national levels. For this purpose, the analysis of this thesis is based on both general theorising on procedural fairness and children's rights studies, as elaborated on more extensively in the subsequent chapter.

From the purpose statement it becomes clear that the research focuses on juveniles' rights over the period of several years, involving the comparison of cases of the Netherlands and Austria. Within this design, the research involves the particular issue of juveniles when confronted by the police. However, what does not become clear from the purpose statement is how the analysis is structured.

The study employs a qualitative strategy. The researcher has selected a particular set of countries to qualitatively study in depth the issue of minors and their rights in front of the police. This work is set up as a cross-national study, aiming to explore the multifaceted topic and framework of juvenile justice systems on the national level of Austria and the Netherlands, focussing on the stage of police proceedings. Thus, this thesis sets out to critically compare two systems and strategies regarding children who have entered the criminal justice system.

The focus is on the time period from 1990 to 2016; *id est* the respective years of CPT's first and last periodic visit to the countries at hand. This particular set of countries is sampled out to qualitatively study in depth the juvenile justice system with regards to the phases before detention. The materials are systematically and correspondingly analysed within the units preliminarily defined by the CPT reports. Within the remits of the

development of this framework, particular attention was paid to the remarks with regards to improvement and recommendations as opposed to the systems and practices mentioned already in place. The methodological importance of chapter 4.1 stems from the fact that the following chapters – as the analytical focus of this study – are based on the findings inductively presented in the preceding chapters, making use of a positivistic approach. By employing a deductive approach in the parts thereafter the issues preliminarily identified are problematised. In last section before the conclusion, i. e. Chapter 4.7, a more normative approach is applied.

In this study it is chosen to observe the juvenile justice practice in two European countries. The countries are selected on the basis of purposive sampling, as opposed to aiming at reaching a statistically representative set of samples (Boeije, 2010). The aim was to select common juvenile justice systems in Europe, representing the continental, civil law tradition. However, the selection of countries also depended on practical issues, such as the language skills of the researcher. In general, the Netherlands amount to the human rights-friendly countries, comparable to Scandinavia, the US and the UK; overall a more liberal, Western tradition of human rights. In contrast, Austria amounts to another, more Eastern tradition of human rights. Both the Netherlands and Austria rather embrace a *welfare* model of juvenile justice, with slight shifts towards *(modified-)justice* perceivable (Winterdyk, 2002, pp. XII-XIII). The latter state used to be categorised as an exemplary country with regards to juvenile justice. The CPT determined by drawing of lots the countries to be visited, Austria being among the first ones. With its specialised Juvenile Court, their position appeared to be avant-garde.

In this research design, two cases are chosen that can be referred to as similar, as opposed to least similar case studies. That is to say that both countries selected are very similar in most areas. The Netherlands and Austria indeed amount to the cohort of early ratifying countries of the ECPT.[2] However, certain characteristics indeed differ among the states. This design allows both focusing on the similarities as well as contrasting the specific, few differences clearly. The disadvantages of a comparative design include comparability, the causal complexity involved and the low external validity, namely a lack of applicability of the

[2] *See* https://www.coe.int/en/web/conventions/search-on-states/-/conventions/treaty/126/signatures?p_auth=9JG4GQWX: Austria and the Netherlands both signed the ECPT in 1987 and it entered into force in 1989 in both states.

data and concepts from Austria and the Netherlands to the globe. Regarding the causal complexity, one needs to take into account that there might be other explanations. Clearly, this analysis is non-exhaustive in its explanations. "Comparative information, after all, provides a practical window of opportunity to gain new insights and adopt, adapt, and develop new responses (Winterdyk, 2002, p. XVIII)".

Three formal legal frameworks are applied to this thesis: the international standards on children's rights at the police level and their application, the Dutch legal framework of children's rights when faced with the police and Austrian one, respectively. The CPT, in this regards, serves as an organ that check the domestic application and practices. By means of an inductive approach to research, this thesis set out by collecting data relevant to the topic and once a considerable, comparable amount of material had been collected, patterns identified, the framework this thesis is embedded in and that might serve as an explanation for certain puzzles was developed. After systematically reading and analysing the reports of the CPT to both Austria and the Netherlands, two subjects appeared to be recurrent and particularly striking with regards to juveniles, namely detention and its conditions, on one hand, and police, on the other.[3] Whereas the former is covered quite thoroughly by literature, the latter is less discussed, leading to less clear and refined picture. There is more scope for clarification. The first connection a juvenile suspect encounters with the criminal justice system is mostly the police. The police take part early on in the penal chain. The specifics at this stage are not that obvious and less documented than later parts of the process.

This topic serves as material for a promising comparison between the two countries. It is the entry into the criminal system that is of focus here. Clearly, very early in the process, there are many particularities that can go wrong and are irreversible. The framework utilised in this thesis is withdrawn from CPT country reports. After an initial phase of scrutinising, three major points crystallised due to their repetition in occurrence and are promising in terms of comparison. The first element regards the information on rights given to juveniles and the comprehension thereof. The second one concerns the assistance provided. The third subject relates to the material conditions of detention during arrest. In order to proceed from these topics identified, it is crucial to examine those in form of a cross-country, legal and empirical comparison. The countries' practices have been considered and, provided possible, compared with its counterpart. Clearly, direct comparison of specific issues is not possible due to the

[3] For the complete table withdrawn and compelled on the basis of the CPT reports, *see* Annex.

country-specific features of the system in place in the respective state. The importance of comparative research in the context of juvenile justice has been emphasised by Winterdyk (2002). According to this scholarly research, this method is insofar interesting as by comparing procedural similarities and differences between the countries under research and their juvenile justice regimes, readers might draw broader conclusions, further enabling them to understand both the strengths and shortcomings of each system and potential responses to juvenile delinquency in general (Winterdyk, 2002). From a human rights perspective, methods that can examine the result of the dynamics between international and national norms with a view to if and to what extent they promote or prevent the realisation of human rights standards are needed. This research task necessitates a vertical comparative approach addressing both similarities and differences between existing human rights, national law and the living local law. To evaluate how different groups and vulnerable individuals within them, including certain age groups, are able to claim international, national and local norms towards their own ends, a horizontal comparison is required (Hellum, 2017, p. 437). On a more general note, the analysis of two countries renowned for human rights being mostly respected by the government might give wider indications as to the feasibility of the adherence to international human rights treaties in states that are to be found in the spectrum of human rights abusing governments.

Sources were collected searching for key words in online databases and results were deemed relevant when they supported elements of the analytical framework chosen or contributed to a better understanding of the country cases' background. International human rights treaties and national law served as primary data. Moreover, academic journal articles, national reports of human rights bodies covering the issue of juvenile justice and thematising the issue at stake, serve as secondary data. Since various data is outdated, especially concerning academic literature, the picture was completed by own research. For this purpose, interviews were conducted. Together with previous scholarly research, international reports and the expert interviews a comprehensive and triangulated network of resources underlies this research. The author's proficiency in German and understanding of the Dutch language additionally simplified the research process with regards to gathering and analysing the relevant data. Six in-depth, semi-structured interviews were conducted with relevant experts from both countries.[4] The interview candidates were chosen via a purposive sampling

[4] Transcripts provided upon request.

strategy. The selection of this specific set of people stems from their broad expertise in this field, representing not only the scholarly side of the juvenile justice systems, but also having insights into the work of the police, the judiciary, the international perspectives and, ultimately, the juveniles themselves. The interviews were conducted via Skype and in person, recorded and transcribed in hindsight. All the interviewees had been sent a topic guide, based on previous research, of approximately eight questions, which overall led to the interviews lasting approximately an hour. The questions were structured around the issues identified beforehand in the CPT reports, also referring to particular developments in the juvenile justice system and national perceptions of international, independent monitoring bodies related to children's rights. The avoidance of interviews with professionals working within the executive, legislative and judicative branch of the countries is motivated due to the potential biased, bound by instructions and mostly politicised nature of these positions and thus their expertise. In the preliminary stages of this thesis, thorough research was conducted, leading to this particular set of people. Starting with contacting the juvenile justice expert at Defence for Children International – The Netherlands and ECPAT (End Child Prostitution, Child Pornography & Trafficking of Children for Sexual Purposes), *Maartje Berger*, ECPAT Austria was contacted thereafter as well. However, they referred to the Austrian Boltzmann Institute for Human Rights, mentioning that this is their partner with regards to the questions presented, emphasising that the human rights institute's researcher most valuable in this regard is the children's rights researcher *Helmut Sax.* Ultimately, he provided his expertise in form of an interview. For more insights into the Dutch practices, a psychologist teaching on topics related to juvenile justice at the Dutch police academy (*Politieacademie*), *Karina Dekens,* was interviewed. She recommended, additionally, contacting a researcher of Child Law at Leiden University, *Yannick van den Brink.* This last interview complemented the profound understanding of the issue at stake in the context of the Netherlands. Ultimately, as the last president of Austria's dissolved Juvenile Court, *Udo Jesionek* was willing to provide his expertise in form of an interview. Throughout the process of finding a counterpart for someone working at the Dutch police academy, *Karoline Kaltenbacher*, a social worker specialised on training Austrian police officers on juvenile-sensitive approaches and practices, proved to be the fitting interview partner. Expert interviews are particularly useful as to set early findings from other sources in perspective and shed light on hidden elements that are not that clear from the analysis of other sources (Tansey, 2007).

In order to complete a profound, theoretical analysis issues of procedural justice were analysed. It enables the research to build a more thorough examination of the case of why

looking in this specific place of rights of youngsters when in contact with the police is essential, from a whole different point of view than formal rights and human rights. Though this thesis is not directly focussed on practices and perceptions, these angles of procedures complete the picture of a juvenile justice system.

Overall, the thesis employs an objective, yet critical approach towards the topic and lays down an illustrative and analytical overview over the issue at stake. Having elaborated on the research design this thesis is embedded in, theories focussing on procedural rights, thus, appear to be particularly useful for the analytical set-up of this thesis. These theoretical considerations, as elaborated in the next chapter, facilitate the delineation of multiple factors that complete Austria's and the Netherlands' current juvenile justice systems and enable drawing broader conclusions, based on the findings.

3 Theoretical Considerations on Procedural Justice in the Context of Juveniles

The aim of this chapter is to provide an overview and elaboration on the concept of procedural justice. Taking the theorising and empirical research, mainly conducted by Tyler, general requirements of a fair trial in the context of juveniles are derived.

The participation of juvenile defendants can be seen as a process, taking place in a specific context. To be exact, it concerns an interaction between the juvenile suspects, their assistants or representatives and the relevant national authorities; a process eventuating – in the optimal scenario – in an individually taken decision. On the one hand, the participation of juvenile defendants can be seen as serving the purpose of upholding rights and legal responsibilities, namely the juvenile's right to be heard and to a 'fair' trial, as elaborated on below. On the other hand, it is a means of empowering young people – in line with the CRC – entering the criminal proceedings. Procedural justice and perceived fairness, thus, are key notions in this regard.

Procedural justice concerns the just treatment of people by the authorities, achievable through both the commonness within the given procedures as well as the treatment of the individual taking part of the procedures (Murphy & Tyler, 2008). Key to this concept is the *perception* of the individual regarding the fairness of the entire proceedings. The fact that people are displaying greater levels of compliance and cooperation towards authorities when they feel treated in a 'respectable' manner is found in various scholarly works. These findings suggest that judicial scenarios, as discussed in this paper bring cases of extrema with them by nature of the issue. Based on that, the individual's perception of fairness of the procedure affect the willingness to cooperate and comply with the conclusions reached by the authorities within the procedure at hand. Moreover, the general attitudes and an overall evaluation of authoritative bodies will be rather positive if individuals deem their processes to be just and correct. Indeed, previous scholarly works point out that the opinion making period lasts from the very first meeting with any member of the authority until the final verdict. Therefore, the underlying and crucial part of the procedural justice concept lies in a sustainable treatment prior to the outcome, as well as the outcome itself (Murphy & Tyler, 2008).

Tyler (2003; 2006) outlined a number of elements of a procedure which are perceived as fair by individuals, namely that the decision-making process is neutral, law-based, non-biased and consistent, that the individual's dignity and rights are recognised and upheld and that the individual is granted opportunities to partake in the process by displaying their perspective and being heard about possible resolutions. Furthermore, the perception of the

authorities' compassion and care also plays a determining role in the individual's perception of procedural justice.

As is the case with all scientific theorems, a certain level of heterogeneity among juveniles is required to draw these conclusions. Generally, there are two distinct ways to define procedural justice. Procedural justice inevitably suggests that the conclusion of the procedure is just. Individuals highly cherish the fairness of the procedure itself, as it severely impacts the decision which is ultimately made by the authorities. Undoubtedly, an unbiased and neutral atmosphere adds a significant amount of value to any procedure. Defining and upholding the same set of rules for any given situation enhances the neutrality of decision-making, but this neutrality, or at least perception of it, can be achieved by displaying openness and willingness to give explanations along the whole procedure. In this way, the authorities can convey their neutrality and the individual is able to build up trust as he or she will not be left with unanswered questions. This problem might seem to be trivial but is a core instrument in order to establish an interpersonal relationship.

Similarly, several researchers focus on the interpersonal aspect of procedures in order to explain procedural justice. If an individual is worried about the received treatment in the course of the decision-making process, the integrity and fairness of the procedure is impacted by the interpersonal interaction taking place within the procedure. Tyler (2003) calls this the quality of interpersonal treatment, whose aspects include honesty, fairness, neutrality, non-bias, respect and politeness. Interpersonal treatment is most easily improved by granting individuals opportunities to tell their side of the story and provide their opinions, even if their opinion is irrelevant to the final outcome of the procedure.

In international human rights law, the term procedural justice is also linked to the term of a fair trial. Numerous human rights provisions stress the importance of a fair trial and several safeguards for minors are in place in order for this to be achieved and respected (UNGA, 1989, Art. 40). Thus, these provisions and safeguards also play a role in the promotion of procedural justice. The ECtHR has complemented in its case law that the comprehension of the proceedings is an indispensible component of a fair trial for minors (ECtHR, 2004). As portrayed, understanding the process overall reinforces the ability to perceive the proceedings as fair.

A major argument that results from research findings is that cooperation and compliance of people is being influenced by procedural justice, leading to the perception of a more legitimate and reasonable justice system. Thus, people are more inclined to accept and follow the verdict, if they have been treated in a fair and respectful manner (Murphy & Tyler,

2008). As mentioned above, positive as well as negative extrema might appear. If, by way of example, but nonetheless similarly applicable to all the procedures in analogy, a judge acts in a way that people perceive to be fair, the probability that people defer to the decision increases, which in turn, increases the effect of the decision in question on the person's behavior (Tyler, 2003). Thus far, the illustrated outcomes of research regarding procedural justice focus mainly on adults.

According to Fagan and Tyler (2005) legal socialisation is an important part of adolescent development and that this progress is shaped by interactions and experiences with the justice system. Nevertheless, they note that little if any knowledge is available about children's perceptions and evaluations of the fairness of the law (Fagan & Tyler, 2005). Therefore, Fagan and Tyler (2005) have reiterated earlier studies concerning procedural justice with a sample of children aged 10 to 16. In this respect, they summarise that juveniles' perceptions – comparable to the views of adults – about the legitimacy of authority are influenced by procedural fairness conclusions stemming from both own and others' encounters with the police. Similar results among adjudicated adolescents aged 14 to 18 can be found in Piquero's, Fagan's, Mulvey's, Steinberg's and Odgers' (2005) study: The more young people experience and perceive law-enforcement procedures as just and fair, the more likely they are to view the justice system and reasonable and legit. Piquero et al. (2005) concluded that social and situational interaction with law-enforcement impacts the overall views and perceptions of individuals about the legal system.

However, Tyler (2003) acknowledges that there is not "a single procedure that is universally regarded as fair" (p. 301). People's perceptions regarding fair treatment of procedures differ across different types of procedures and different types of problems that have to be solved.

Literature specifically insisting on the importance of adhering to procedural rights and procedures during the early, first stage of criminal proceedings at the level of police, does exist. However, most of it focuses on suspects in general. In this context, Lévy (1985) studied the way the police produce their reports throughout their investigations, by way of comparing questions of suspects, witnesses and victims alike with the officially transcribed documents meant to account for these communications. It becomes clear that between producing objective accounts of what happened and the actual practice, there is a wide gap. The scholar describes the ways in which police construct written evidence in order to eliminate doubt and further strengthen their case. This research has identified processes of selection and modification during the transcription from spoken words to text with a particular focus on

police interrogations. Reasons for these selection and modification processes are to be found in the requirements imposed on evidence throughout criminal prosecution. In turn, these demands influence the objectives of presentation of authors of such protocols. Lévy showed that the production and staging of credibility and incredibility amount to these very aims. According to this, the way of taking minutes differentiates depending on the purpose of orchestrating either credibility or incredibility. Consequently, the questioning is influenced by a twofold aim: both the maximisation of extracting information and the foresight of establishing permanent information, providing the further proceedings therewith. Via this research, it became apparent that a certain tendency, namely the way how statements are protocolled the viewpoints of prosecution are strengthened and the stances of the defendant weakened, is noticeable (Lévy, 1985). On the contrary, it is shown, that credibility may be conveyed via passages of monologues, since the statement can be presented as a – by the authorities conducting the interrogation – uninfluenced account.

Authors like Haas, Van Craen, Skogan and Fleitas (2015) have also pointed out the benefits of internal procedural justice with beneficiaries surpassing the police organization itself but also including the public. Namely, it is argued that police personnel and officers tend to obey their superiors and respect their decisions if they are treated fairly and if they perceive the superiors' instructions to be well intended, transparent and just. Similarly, it is asserted how police supervisors and higher-ranking officers can advance their officers' affirmation of the hierarchy in the organization by taking time to discuss and explain changes and provide opportunity for feedback (Gau and Gaines, 2012). Finally, Haas et al. portray a wide-range of varying cases in which model proves to produce similar results but contributes to the debate greatly by linking officer endorsement of regulations on the use of force with procedural justice, in the case of Buenos Aires, Argentina. The findings of this research are once again echoing previous works on the matter, as Haas et al find that the procedural justice approach can substantially advance officer compliance and respect for the rules in place.

More recently and in a similar vein, Van Craen and Skogan (2016) argue that internal procedural justice is directly linked to external procedural justice as well as indirectly, via trust in citizens. Moreover, by asserting that internal procedural justice is central for trust between police officers and their superiors and building upon previous scholarly work, Van Craen and Skogan (2016) claim that "officers' perceptions of internal procedural justice not only influence their trust in superiors but also in citizens" (p.8). Finally, the research conducted points to a strong link between internal and external procedural justice as the top-

down approach within a police organization can be transferred to citizens dealing with police officers, if they echo their superiors' positive or negative behaviours.

In the legal sphere, it is asserted that the presumption of children's incompetence has to clear the way for a presumption of their competence, shifting the burden of proof from children and their representatives to the authorities acknowledging the competence of minors (Rodham, 1973). Rodham's (1973) study allows for a view on the rights of minors that makes space to encompass the complex debate on rights of juveniles. This scholar differentiates two broad assumptions of the image of minors. First, the broadening of adult rights to minors is recognised. Second, the quest for enshrining the acknowledgement of the particular needs and situations of children in law is perceivable. Although at times adults' rights can one-to-one apply to children, under other conditions these rights have to be translated into the peculiarities of minors. In light of Rodham's conceptualisation, rights of children imply a dual face of both equal and special rights. In this regard, children's rights validate this group as part of society like adults and eliminate discrimination stemming from their age. Moreover, they confirm a combination of minor's evolving capabilities paired with their particular violability, taking into consideration complementing, specific rights for minors.

Kilkelly (2010) further suggests that juveniles involved in the justice system frequently perceive the criminal proceedings as unfair, since they sense that they are not listened to and treated disrespectfully. This absence of respect results in juveniles lacking trustfulness towards authorities. Albeit the conditions and setting for the realisation of a fair trial matters both for juveniles and adults, the former face situations where they feel disempowered to actively partake in the proceedings more often. Overall, minors have little if any empirical knowledge on the functioning of communication with authorities.

Although various scholarly researches do agree on the importance of the concept of children's rights, a generally valid agreement on its exact meaning and components seems to be lacking (Hanson, 2012). Already some decades ago, but nonetheless still almost equally relevant nowadays, Rodham (1973) has summarised the dilemma accordingly, "The phrase "children's rights" is a slogan in search of a definition" (p. 487).

In general, the aforementioned requirements of both, a fair trial and procedural justice are important and applicable for everyone who comes in touch with the justice system. So, the question can be posed if and to what extent these requirements must be adapted and potentially complemented to respond to the needs of juvenile defendants. Having highlighted the importance of procedural fairness in light of the study on children's rights in general – as identified by previous scholarly literature – to locate the theoretical foundations of this

research, this thesis now turns to the elaboration of procedural rights and paradigms in an international and national context, with a specific focus on the level of police proceedings.

4 Analysis

This part of the thesis concerns the analytical nucleus of this research to respond to the research problem. To this end, the analysis is structured into five parts.

First, the CoE reports with regards to the most recurrent subjects are presented, serving as a foundational structure for the part discussed thereafter. Second, a short overview of various sources from the UN, CoE and EU, including their relevant provisions with view to the subjects identified in the chapter before, is presented. Third, the domestic system and practices with a focus on the previously identified issues are scrutinised. This part of the analysis is carried out by examining domestic law in light of the relevant, applicable international standards, informed by interviews conducted on the national level and various other relevant documents as well as specific scholarly opinions. Fourth, the issue of age limits is contextualised and problematised, focussing on the legal framework of Austria and the Netherlands in this regards. Ultimately, issues and problematic patterns between the lines, on a more general note are identified, highlighting within a national context both the best practices and shortcomings with regards to the specific phase of early juvenile justice.

4.1 The CPT Reports

The stepping stone of this research is the careful examination of the CPT reports to Austria and the Netherlands. This section presents an analysis of country reports and identifies the major deficiencies identified by the CPT in the countries under research, along with the CPT's principal, to the issue of persons underage related recommendations.

The CPT, established in 1989 under the ECPT, has its seat in Strasbourg, France. Its mandate, composition and way of operating are based on the ECPT, drafted within the organisational framework of the CoE. Thus, like the ECtHR, the CPT form part of the CoE. Likewise, any new member State to the CoE has to ratify the ECPT and the ECHT. The rationale behind the establishment of the CPT was to establish an instrument, additionally to the judicial body of the ECtHR, which by way of regular member States visits and on-site monitoring acts against torture and ill-treatment of persons deprived of their liberty, mainly by means of prevention. Overall, the CPT is not set up as an investigative body, but one that offers a non-judicial, preventive mechanism in order to protect persons deprived of their liberty from various forms of ill-treatment, thereby complementing judicial mandate of the ECtHR (Kozma, 2012, p. 149).

As enshrined in Article 1 of the ECPT, the CPT shall by means of visits, scrutinise the treatment of persons deprived of their liberty with a view to strengthening the protection from torture and other forms of inhuman or degrading treatment or punishment. For the purpose of fulfilling its preventive function by means of conducting visits to various places of detention within the territory of the 47 member states. More precisely, the CPT considers the legal framework around the deprivation of liberty in the respective countries and the facts found during the State visits based on interviews with detainees and the visiting delegations' impressions of conditions. In hindsight they issue structural, institutional and legal recommendations with the overall objective to prevent prospective ill-treatment. As laid down in its mandate in Article 7(1) of the ECPT, it conducts both periodic and ad hoc visits. The former happen approximately every four years to every member State and are the focus of this research.

As regards the composition of the CPT, in line with Article 4(1) of the ECPT, is shall consist of as many members as there are State parties, currently 47. In practice, "however, due to a number of reasons not all seats are constantly filled" (Kozma, 2012 p. 145). Albeit the members are elected in respect to their countries, they shall serve in an individual capacity, not representing their home countries. They are excluded from visits to their States. Moreover, the experts should be independent, impartial and refrain from facing any conflicts of interests when working in the framework of the CPT. Members are selected on a the basis of various conditions, such as "high moral character, competence in the field of human rights, or professional experience in the areas covered by the ECPT" (p. 148). Its composition of members from a variety of backgrounds – ranging from lawyers, judges and university professors of law to specialists in prison and police issues, such as forensic doctors, sociologists or political scientists – amounts to one of its unique assets, since this multi-disciplinary approach enables it to view torture and ill-treatment from various angles and to develop all-encompassing recommendations regarding the prevention of this degrading treatment. Noteworthy with regards to the remits of this thesis is that the CPT indeed understands its mandate in a broader sense than merely focusing on allegations of forms of torture. In accordance with its preventive role, it incorporates the surrounding conditions of detention holistically and consequently has formulated a thorough catalogue of guidelines, here to mention police detention and deprivation of liberty of specific groups, such as juveniles. Thus far, the CPT has offered a significant contribution to knowledge about the extent to which children's rights are protected, particularly when minors are deprived of their liberty, and further how these standards might be enhanced (Kozma, 2012).

The CPT's mandate allows it to visits places of detention in the Member States of the CoE to evaluate how persons deprived of their liberty are treated view a to preventing ill-treatment, including police stations, prisons, juvenile detention centres, immigration detention centres and psychiatric hospitals or social care homes.

The CPT reports of its visit are published at the latter's discretion and they provide an important source of information about the reality of detention in Council of Europe member states. First, States are notified that the CPT intends to carry out a visit and thereafter, the CPT delegation can visit any place where persons are deprived their liberty. This may happen at any time and without further notifications (Kilkelly, 2012). The CPT's recommendations serve as a means of guidance for member States regarding how to guarantee that minors are deprived of their liberty by adherence to the protection of their rights.

The duration of visits varies from a few days to two weeks, depending on the type of visit. They are part of the foreseen periodic cycle, meaning approximately one per four years, or unannounced and *ad hoc* (Kozma, 2012, p. 146). A review of the CPT visit reports was undertaken and this established that the all CPT visits, apart from the second periodic visit to Austria in 1994, examined juvenile detention issues particularly (CPT, 1994). To this date, six visits have been carried out to both countries compared. Only periodic visits have been conducted Austria, whereas to the Netherlands there were also visits conducted in the Dutch Caribbean. Within the remits of this research, however, merely the visits of European portion, thus excluding the overseas territories, of the Netherlands are taken into consideration.

Broadly, these issues can be summarised among the categories of rights during criminal procedures, special protections and laws of juveniles and detention as well as its conditions, including youth and education, the physical and mental health of minors, underage migrants, and isolation of juveniles (CoE, n.d. *b*).[5] From this cohort of broader topics, the stage of police proceedings protrudes. The CPT critically reiterates in numerous recommendations to both countries worrying practices with regards to the proceedings undertaken by the law enforcement body when dealing with minors. Its concluding remarks affirm the special vulnerability of children held by the police and highlight various procedural safeguards that protect minors against the risk of ill-treatment.

[5] For a complete overview of all the CPT reports and minor-related issues, see *Annex*.

More precisely, the CPT has repeatedly noted with concern that children are sometimes detained in police stations for periods of excessive length. It has raised this issue in Austria and the Netherlands numerous times (CPT, 2010, para. 28; CPT, 2008, para. 9).

The Committee also expressed concern in Austria about the practice of allowing young people to be questioned or to sign statements in the absence of a parent or appropriate adult (CPT, 2010, paras. 28-29).

In both countries studied, the CPT has expressed its concerns regarding the inadequate regime observed in police facilities and the extent to which it has been adjusted for minors. Serving as a framework for the subsequent sections of this thesis, the recommendations are broadly summaised among the following categories of *delivery of information on procedures and rights*, *assistance by a lawyer and adult-trusted person* and *conditions upon arrestation*. Particular examples from numerous CPT reports highlight these repeated calls and criticisms, here to mention exemplarily, the urge to create "a specific version of the information sheet, setting out the particular position of detained juveniles and young adults, be developed and given to all such persons, . . . without delay upon arrival at a police establishment" (CPT, 2005, para. 25; CPT, 2010, para. 53; CPT, 2015, para. 64), "juveniles were not always provided with a lawyer and a trusted adult prior to questioning" (CPT, 2005, para. 58; CPT, 2010, para. 32; CPT, 2017, para. 46), "to take steps without delay to ensure that detained juveniles are not subjected to police questioning without the benefit of a trusted person and/or a lawyer being present", "ensure that juveniles are not detained in police cells for prolonged periods and are transferred to appropriate juvenile detention facilities expeditiously" (CPT, 2008, para. 35, CPT, 2017, para. 64), "the law still provides for the possibility of holding a [minor] on remand in a police cell for up to ten days" (CPT, 2017, para. 52), "authorities are invited to consider setting up separate juvenile police departments" (CPT, 2004, para. 38), detention facilities at police stations consisting of "confined and windowless cubicles" (CPT, 2012, para. 35), "juveniles . . . had been subjected to physical ill-treatment and/or verbal abuse during police questioning" and "police officers allegedly also threatened to inflict pain on juveniles ("we will torture you") if they did not confess to a particular criminal offence" (CPT, 2010, para. 67).

Not mentioned within their first periodic reports, the CPT increasingly drew attention to the stage of police proceedings the more visits they undertook to the countries under research. Having identified these patterns, the thesis highlights the most important international standards in this context in the following part.

4.2 International Framework in Light of Juvenile Justice during the Stage of Police Proceedings

Before critically comparing domestic systems of juveniles, it is crucial to elaborate on the present state of international standards with regards to the topics identified in the CPT reports and selected for further research. On the international level, various provisions include safeguards for juveniles during criminal proceedings.

The CRC was adopted in 1989, constituting the key international treaty in the area of children's rights. Minors are the only group of human rights holders whose rights have received near universal recognition; with all member states of the United Nations (UN) being state parties to the CRC, except the United States (United Nations Treaty Collection, 2018). Yet, merely laying down state obligations and child rights is not sufficient to further advance and to properly safeguard the status of such a vulnerable group in need of specific protection. Although the CRC currently represents the peak of the development of children's rights, namely "a substantial cross-cultural consensus on the human rights of the children", it is argued that it still entails "many reservations, a weak implementation system, and the lack of the right of individual petition" (Freeman, 2011, pp. 151-152). Thus, a vast discrepancy between principles and practice continues to exist (Sax, 2012, p. 422). To remedy this problem, international and national safeguards and guidelines can assist in bridging the existent gap between international standards and domestic application (Sax, 2012, p. 423). Due to this uniquely high number of ratifications, one might assert, "that there is no greater legitimacy in arguing with internationally agreed human rights standards than in the field of children's rights" (Sax, 2012, p. 422). Overall, the CRC follows a holistic approach towards children's rights (Sloth-Nielsen, 1995, p. 401). Research emphasises that all the rights enshrined in the CRC are to be interpreted as interdependent and interrelated (Hammarberg, 2001, p. 354). This means that every right adopted in the CRC must be acknowledged when dealing with children in specific situations, such as when the child is suspected of having committed an offense.

The CRC Committee has been established to monitor the implementation of the CRC. It compromises of 18 elected members drawn from the states parties that act independently of their country and reviews the mandatory State reports State parties submit in a cycle of five years. The CRC Committee published general comments, serving as guidelines for the states regarding the application of the provisions of the CRC. The General Comments 10, 12 and 14 of the CRC Committee, correspondingly on "Children's Rights in Juvenile Justice", "The

right of the child to be heard" and "The right of the child to have his or her best interests taken as a primary consideration", amount to relevant UN sources alike (CRC Committee, 2007, 2009, 2013). More specifically, General Comment 10 includes guidance on the implementation of Articles 37, on deprivation of liberty, and 40 of the CRC, on the administration of juvenile justice. General Comment 12 incorporates guidelines on how to implement Article 12 of the CRC in the context of various legal procedures, including juvenile justice proceedings.

To complete the UN framework, applicable provisions of the United Nations Convention Against Torture (UNCAT) are to be taken into consideration (UNGA, 1984). Similarly, the non-binding principles of the "Beijing Rules" on the administration of juvenile justice, the "Riyadh Guidelines" for the prevention of juvenile delinquency and the "Havana Rules" on the protection of juveniles deprived of their liberty address several safeguards for juveniles as well (UNGA, 1985; UNGA, 1990; UNGA, 1990). Although these instruments are not legally binding, they serve as an indication and guidance to member states on how they should further develop their national policies.

Even though the ECHR does not include any juvenile-specific provisions, the European Court of Human Rights (ECtHR) – throughout its jurisprudence – indeed interprets the ECHR in light of issues relating to juveniles entering the justice system, such as in the exemplary cases of *Blokhin*, *A.B. and Others v. France, D. L. v. Bulgaria*, *Gülcü v. Turkey*, *Adamkieuwicz v. Poland*, *Dushka v. Ukraine* and *Nart v.Turkey*.

Noteworthy in this regards is the significance of the reference to the rights of minors to participate in decisions made affecting them, as enshrined in Article 12 of the CRC. More importantly, however, it reflects the significant weight of jurisprudence developed by the ECtHR in this area notably in the twin cases of *T and V vs. the United Kingdom*, the so-called James Bulger-case, and later confirmed in the case of *S.C. v. United Kingdom* (ECtHR, 1999a; ECtHR 1999b; ECtHR, 2004). In the two judgments of 1999, the ECtHR came to the principal conclusion that: "it was essential that the child's age, level of maturity and intellectual and emotional capacities be taken into account in the procedures followed" (paras. 82 and 84). It considered further that conditions of criminal proceedings, such as court rooms fit for adults within criminal proceedings, might be seriously intimidate persons underage. Ultimately, "having regard to the applicant's age, the application of the full rigours of an adult . . . deprived him of the opportunity to participate effectively in the determination of the criminal charges" (paras. 82 and 84). These references marked the first steps taken towards

an increased awareness of the need for a justice system adapted to children within the jurisprudence of the ECtHR.

The 2002 CPT Standards set out provisions in its paragraphs 20 to 41 especially applicable to children deprived of their liberty (CoE, 2002). The European Rules for juvenile offenders subject to sanctions or measures were adopted by the Committee of Ministers in 2008 (CoE, 2008). The specific setting of detention does not matter, since these non-binding rules apply to all juveniles deprived of their liberty, regulating the particular conditions applicable in those circumstances. Clearly, the most extensive set of standards on child-friendly justice are contained in 2010's Guidelines of the Committee of Ministers of the CoE on child-friendly justice (CoE, 2018).

To completely comprehend the international standards, particular attention has to be drawn to its central principles, serving as factors of elaboration and clarification. Various key principles determined by international legal documents find applicability in the scope of this thesis. In its General Comment 5 on implementation, the CRC Committee determined four provisions of the CRC as "General Principles", setting them as overall standards concerning the interpretation of children's rights standards: the right to life, the principle of non-discrimination, the principle of the best interests of the child and the right to participation (CRC Committee, 2003).

Article 6(2) of the CRC adds the obligation of States to "ensure to the maximum extent possible the survival and development of the child" (UNGA, 1989, p. 3) to the general human right to life, as incorporated in other human rights treaties, such as in Article 2 of the ECHR. This human right matters for juvenile justice insofar as delinquency and its implications negatively impact the development of the suspect (CRC Committee, 2007, para. 11).

The principle of non-discrimination as enshrined in Article 2 of the CRC comes due to fore during criminal matters as well, since it must be ensured that all children in conflict with the law have to be treated equally. The first paragraph lays down for States to "respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind", specifying in the second one that consequently they have to "take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members". In this regard, the General Comment 10 further clarifies that these provisions especially refer to "de facto discrimination and disparities", which might stem from inconsistent policy-making and concerns particularly

vulnerable children, such as recidivists, those living on the streets or those belonging to minorities (CRC Committee, 2007, para. 6).

The principle of the best interest of the child as a primary consideration when dealing with children, may it concern "public or private social welfare institutions, courts of law, administrative authorities or legislative bodies" is enshrined in Article 3(1) of the CRC. The Committee highlights in its General Comment 10 that regarding criminal proceedings this principle is adhered to when States aim at dealing with children within a separate, specialised juvenile justice system. Thereby, repression and retribution can be replaced by a focus on rehabilitation and restorative forms of justice (CRC Committee, 2007, para. 10).

The concept of participation in juvenile justice procedures emerged for the first time in the 1985 Beijing Rules. Its Rule 14.2 provides that juvenile justice proceedings should take place in "an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely". The right to participate in juvenile justice proceedings as laid down in rule 14.2 can be seen as having served as an example for Article 12 of the CRC, enshrining the children's right to be heard in criminal proceedings. This right unmistakably constitutes another crucial element of juvenile-friendly justice systems. It shall be upheld to throughout the entire process. In this respect, the CRC stipulates that the right to be heard encompasses "the right to express those views freely in all matters affecting the child, the views . . . being given due weight in accordance with the age and maturity of the child" and grants the child "the opportunity to be heard in any judicial proceedings affecting the child" (UNGA, 1989, p. 4). This right is instrumental to the application of the best interest of the child principle of Article 3, since the best interests cannot be assessed if the views of the child are not listened to (Krappmann, 2010). When hearing the views of the child, relevant authorities have to decide on how much weight to attach to them and incorporating the maturity and age of the child during this decision-making process. Concerning this matter particularly, Article 12 is linked to Article 5 of the CRC, specifying the "evolving capacities" of the minors to make use of their rights. Furthermore, the right to be heard is to be read in accordance with the broader principle of participation. Although no particular mention is made of the latter within the CRC, in General Comment 12 it clarifies its scope of "information-sharing and dialogue between children and adults based on mutual respect, and in which children can learn how their views . . . shape the outcome of such processes" (CRC Committee, 2009, para. 3).

More general principles of law and human rights also apply to juvenile suspects, here to mention legality and proportionality. For juveniles, the principles of *nullum crimen sine*

lege and *nulla poena sine lege* are just as valid as they are for adults and are a cornerstone of a democracy's criminal law system (CoE, 1950, p. 10). Legality – as enshrined international law – unmistakably also applies to juveniles, as specified in Article 40(2)(a) of the CRC: "No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed". The CoE Guidelines specify in this regards that elements of due process, including legality, proportionality, the presumption of innocence, the right to a fair trial, the right to legal advice, the right to access to courts and the right to appeal, have to apply to minors as well. None of these principles and rights shall be restricted or even denied under the guise of action in the child's best interests. Moreover, these guidelines should apply to *all* procedures, encompassing administrative and non-judicial proceedings alike (CoE, 2010, E.2). The Beijing Rules with regards to this principle emphasise within the aims of juvenile justice that such any juvenile justice system has to focus on "the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence" (UNGA, 1985, Rule 5.1). The individualized, case-by-case approach taking into consideration the particular circumstances of the suspect has to be given due weight.

Based on this international framework including its fundamental principles and the subjects identified within the CPT reports in the preceding part, several guarantees relevant for the stage of police proceedings can be deduced varying in its contents. Albeit most of these international human rights norms should theoretically be in place for all persons entering the criminal law systems, there are additional particularities connected to the vulnerable group of minors (CRC Committee, 2007, para. 40). The thesis now turns to a thorough elaboration and critical comparison on the national level hereof.

4.3 Particular Safeguards for Juveniles during Procedures of the Police

4.3.1 Adequate Information?

International children's rights law and standards concerning juvenile justice stipulate that juvenile defendants should be heard in decisions that are taken concerning them and that they should be able to understand the juvenile justice process in which they are involved.

As enshrined in Article 40 (2)(b)(ii) of the CRC, every minor "alleged as or accused of having infringed the penal law has" the right "[t]o be informed promptly and directly of the

charges" either directly or via the parents or legal guardian. Similarly, the Beijing Rules lay down – among other basic procedural safeguards – the right of the juvenile to be notified of the charges (UNGA, 1985, Rule 7.1). General Comment 12 adds to the information on charges that the minor has to further be informed about the "juvenile justice process and possible measures". (CRC Committee, 2009, para. 60) In this context, prompt and direct refers to as soon as possible, namely when procedural steps are taken or when the competent authorities refrain from a judicial settlement (CRC Committee, 2009, para. 47).

In this connection, the CoE Guidelines on Child-friendly justice broaden scope of the right to information further and specify that "from their first involvement with the justice system or other competent authorities (such as the police, immigration, educational, social or health care services) and throughout that process, children and their parents should be promptly and adequately informed of", inter alia. Whenever a child is apprehended by the police, the child should be informed in a manner and in language that is appropriate to his or her age and level of understanding of the reason for which he or she has been taken into custody (CoE, 2010, IV. A.1. paras. 1 and 28).

A fair trial component constitutes – inter alia – the guarantee that the minor suspect can participate "effectively" in the trial. For the minor to be capable of effective participation, it needs to first understand the charges and its potential consequences, in order to then correctly and adequately carry out the following steps, such as instructing its legal representative or decide accurately on evidence (CRC Committee, 2007, para. 46). Not only is the minor entitled to be informed as soon as possible, but the CRC further reifies that the information needs to be conveyed in language understandable for the juvenile. Merely providing the suspect with official documents does not necessarily suffice. An additional oral explanation might often be needed (CRC Committee, 2007, para. 48). Thus, it is of utmost importance that the juvenile fully *comprehends* the proceedings he or she is involved in.

Ultimately, the competent authorities bear the responsibility of assurance that the juvenile comprehends the case and the "delivery of child-friendly information" constitutes therefore an essential element of the process (CRC Committee, 2007, para. 48; CRC Committee, 2009, para. 34). Therefore, both the access of information in a foreign language, but further the adaptation of legal jargon into a language and format that the suspect comprehends have to be guaranteed (CRC Committee, 2007, para. 47). In case the juvenile does not understand the working language, the assistance of an interpreter should be free of charge (UNGA, 1989, Art. 40 (2)(vi)).

In this regards, as part of the ECtHR case *S.C. v. UK*, the Court clarified that the juvenile defendant needs to understand the charges and the possible consequences and outcomes of the trial in order to be able to effectively participate in his trial (ECtHR, 2004, para. 29). Nonetheless, Article 6 ECHR is not be interpreted in light of the juvenile defendant understanding very legal detail during criminal proceedings (para. 29). Thus, the legal presentation has to serve the purpose of guiding and instructing the juvenile throughout the process. What has to be highlighted further is that information has to be communicated to the minor directly. That is why its delivery to either parents or legal guardians does not substitute the communication to the juvenile (para. 48).

The CPT noted that specific information sheets in simple language had been elaborated by the child and youth advocates in various federal provinces (*Länder*) for juveniles detained by the police. These information sheets, which are also available on the Internet, may well serve as a model of "good practice" for the Austrian police service.

Children who are suspects or accused persons in criminal proceedings are not always able to understand the content of questioning to which they are subject. In order to ensure sufficient protection of such children, questioning by police or by other law enforcement authorities should therefore be audio-visually recorded. Article 9 of the Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings introduces safeguards in relation to police questioning. In particular, it provides for the use of audio and video-recording of all questioning of children carried out before the indictment. Currently, only the Netherlands, but not Austria, has legally binding standards to systematically audio or video record police interviews (Amnesty International & Save the Children, 2014, p.10).

The interviews conducted with experts from both countries showed that in general a widespread problem is that juveniles often do not comprehend all the information they are given by the police due to language deficiencies. *Karina Dekens* highlighted that throughout the course of working together with other people doing international research, they came to the conclusion that 60% of juveniles entering the criminal justice system tend to have language problems, ranging from mild to severe. These conditions impact strongly the comprehension of information they are receiving, but also their general position in the system and consequently it also affects their capability of telling their story, which also involves using language correctly. Another critical aspect mentioned is the legal terminology used throughout the whole proceedings. In this regard, it needs to emphasised that the speed of language, apart from the difficulty of the words, is quite high and the time span of

interrogations often relatively short. This contradicts the needs of a juvenile due to his or her slower information processing.

What can be concluded from the interviews are certain elements that have to be paid due attention to when training police officers. It is of utmost importance to instruct them on how to react to juvenile. The juvenile-sensitive approach does not only concern language, *id est* what to say, how to use simplified words as opposed to legal jargon and to assure that the juvenile understands the on-going and potential future proceedings, but moreover the attitude of the authorities towards the youngster. Similarly, knowledge on the particular functioning of the brain development of youngsters and on how long it can take until they have reached an adult level should be vital components of teaching the police.

Furthermore, throughout the training awareness about various behaviours of juveniles, in the sense that this behaviour can be ego-centric, careless or reluctant, needs to be raised. At this stage, it is crucial to take into consideration that any kind of behaviour is not directly linked to what it looks like. Normally, the young suspects face a lot of fear and uncertainties due to not knowing what the system is about, what your rights are and, in general, how to behave. However, *Karina Dekens* stressed that it is known from research that if police officers during an interrogation face reluctant behaviour, they tend to interpret it to the effect that they consider the suspect guilty. Subsequently, interrogation techniques are hardened, thereby increasing the risk to come to false or coerced statements.

What became apparent in the interviews is that during interrogation as well as later on in the process one can speak of a double vulnerability: This can be concluded from the fact that it that youngsters have a lower level of intelligence and due to their young age. Minors are frequently overrated and not paid due attention to in the justice system. This, in turn, leads to a high risk of false confessions or incrimination.

As for interviewing young suspect neither in the Netherlands nor in Austria a specific booklet on interrogating young suspects is used nationwide. However, the Dutch Police Academy has published a handbook on interviewing methods and a part of it also focuses on minors. This is considered as material of best practice in the Netherlands. There is also an upcoming book about interviewing vulnerable people and one article deals with minors. However, via the interviews it was not possible to observe a clear picture regarding the common use and consultation of the aforementioned handbook. In this context, the CPT mentioned on a positive note that specific information sheets in simple language had been elaborated by the child and youth advocates in various federal provinces (*Länder*) for

juveniles detained by the police. It further recommends these information sheets to be applied as a model of "good practice" by the Austrian police service (CPT, 2010, para. 29).

Both *Karina Dekens* and *Karoline Kaltenbacher* noted that most police officers are indeed aware of the fact that youngsters amount to a special group. When it comes to minor suspects, however, they are often treated like any other suspect and authorities omit a justice-friendly approach, treating them like adults. According to the interviewees, both in Austria and the Netherlands, the general practice of not involving specifically trained interviewers to interview juveniles is identifiable. In the past there were indeed specially trained police officers to interview young suspect in the latter country. The system has changed in the meantime and now this is a general crime. Thus, every police officer can and may interview juvenile suspects. Only if they are suspects in a big crime, for instance there is a sentence of 12 years or more, a sexual crime or somebody died, then a specifically trained interviewer can come, although this is clearly not an obligation. This just happens when someone involved in the investigative team says this might be useful. To conclude, this is not a right, it is simply that there are specially trained people and they can be called to interview such a suspect. The only rule for youngsters involved in big crimes in the Netherlands is that their interview should be taped, audio-visually taped, but there is no regulation that a specially trained interviewer has to come. On a more general note, various factors contradict juvenile-friendly processes in both countries, here to mention the need for the procedure to be as speedy as possible. So, time but further also resources restraints obscure the effective functioning of procedures adapted to youngsters.

Moreover, interviewees from both countries have observed that numerous police officers are moralistic and authoritarian at the stage of interrogation, which is undoubtedly not suitable for this part of the process. Additionally, showing verbally or non-verbally that they do not believe the youngsters hinders them to tell their stories.

The law enforcement body as a special occupational group shows its own individualised form of communication as opposed to the language used by juveniles. For police officers, their jargon amounts to the normality of their day-to-day work and only by increasing awareness to juvenile-sensitive communication, they might adjust their approach to the specific situation of talking to young suspects. To succeed in putting this sensitivity in practice, a strong focus on these issues needs to happen early on in the training of future police officers. Experience of the interviewees shows that the behaviour of police authorities towards minors greatly depends on the personality of the officer responsible. It appears to be quite a difficult task to teach different, in this case more juvenile-sensitive approaches to

someone having practiced for years in a different way. Similarly, a lot of them are not convinced to adapt their behaviour to juveniles or do not completely understand the urgency of this conduct. Therefore, the success of conveying an age-sensitised form of communication is linked to individual police officers and their willingness to cooperate towards such an approach. As mentioned by the interview partners, in Austria, there is a lack of support from the side of police schools conceivable. If the future or active police officer is not interested in acquiring skills needed for an adequate treatment of juveniles and shows personal initiative, there is little encouragement by teachers and such forms of teaching are often dismissed as unnecessary or even ridiculed.

As discussed, in order to effectively ensure that information is provided in comprehensive way to juveniles, both countries still need to fulfil their obligation to have specifically trained police officers capable of guaranteeing that the minors ultimately understand the proceedings they are involved in.

4.3.2 Free, Legal and Other Appropriate Support?

The CPT has made it clear that the vulnerability of juveniles requires stronger standards to protect their rights. For example, although adults can waive the right to a lawyer, the CPT has noted that juveniles have the right not to make or sign a statement without the presence of a lawyer. This relates to the notion that juveniles require additional support during police questioning with the implication that juveniles may be more susceptible to pressure while in police custody.

In light of international law, legal or other appropriate assistance has to be present throughout the entire course of the criminal proceedings. As specified in the Beijing Rules, "the right to counsel . . . shall be guaranteed at all stages of proceedings" (Beijing, Rule 7.1). They determine that the minor has "the right to be represented by a legal adviser or to apply for free legal aid" (Rule 15.1). The CRC particularises in its General Comment 10 that "[t]his presence should not be limited to the trial . . . but also applies to all other stages of the process, beginning with the interviewing (interrogation) of the child by the police" (CRC Committee, 2007, para. 52). After apprehension, juveniles have to both be able to access to a lawyer *and* contact their parent or another trusted person (CoE, 2010, IV.C. para. 28). Furthermore, children shall have access to free legal aid either, applying the same or less strict conditions as compared to adults, and this lawyer shall supply the minor "with all necessary information and explanations concerning the possible consequences of the child's views and/or opinions (D.2. paras. 38 and 41).

In this context, Article 37 (d) of the CRC lays down that every minor "deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance". Even though Article 40 of the CRC is similarly rather broad with regard to this State obligation of providing assistance, in General Comment 10 the CRC articulates that the assistance does not need to be legal, but has to be adequate and free of charge. Therefore, it is left to the discretion of the States, if a lawyer, paralegal professional or social worker, for instance, is provided. Clearly this person, has to be equipped with "sufficient knowledge and understanding of the various legal aspects of the process of juvenile justice and must be trained to work with children in conflict with the law" (CRC Committee, 2007, para. 49). The

ECtHR has also repeatedly ruled that police questioning of a child without the presence of a lawyer was a breach of Article 6 ECHR.[6]

The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile (UNGA, 1985, Rule 15.2). Parents or legal guardians should also be present at the proceedings because they can provide general psychological and emotional assistance to the juvenile, a function extending throughout the entire procedure (CRC Committee, 2007, para. 53). Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter (UNGA, 1985, Rule 10.1). However, these safeguards do not imply that either the parent or legal guardian can assume the part of defending the child nor that they take part in the decision-making process. Moreover, their presence might be reduced or even excluded under certain circumstances, here to mention most importantly motivations regarding the best interest of the child (CRC Committee, 2007, para. 53).

The CRC Committee recommends that States parties explicitly provide by law for the maximum possible involvement of parents or legal guardians in the proceedings against the child. This involvement shall in general contribute to an effective response to the child's infringement of the penal law. To promote parental involvement, parents must be notified of the apprehension of their child as soon as possible, as already emphasised in the Beijing Rules (CRC Committee, 2007, para. 54).

According to the CPT's report to Austria, "the point of special provisions for young persons is to protect this age group and to provide them with adult support so that they do not have to make decisions with important legal implications on their own" (CPT, 2005, para. 29). The interviewees noted in this regard, that this reiteration of the CPT up until its last visit in Austria in 2014, "it is not acceptable that many juveniles . . . are still subjected to police questioning and are requested to sign statements without the benefit of having either a lawyer or a trusted person present" (CPT, 2015, para. 35), is indeed justified. It still amounts to common practice that before an interrogation, most of the times, it is not clearly

[6] ECtHR. (2008). Panovits v. Cyprus (application no. 4268/04). Judgment. Strasbourg; ECtHR. (2010). Adamkiewicz v. Poland (application no. 54729/00). Judgment. Strasbourg.

communicated to the juvenile that he or she has the right to consult a lawyer or adult-trusted person. One of the explanations for not sufficiently informing minors with regards to their procedural rights at this stage might be that it would incorporate more "efforts" and might lead to postponing the questioning to a later date when a lawyer is available. Generally observable is the practice that police officers want to avoid these complications. To conclude, at the stage of police interrogations in Austria the police officers frequently and arbitrarily decide not to present the rights of juveniles to contact their parents or a legal assistant.

The interviewees stressed that in the Netherlands, on the other hand, the ECtHR case *Salduz v. Turkey* regarding the rights of a juvenile to legal assistance prior to interrogation did have a huge impact (ECtHR, 2008). It started with the Dutch Supreme Court rulings after the *Salduz*-case and then the prosecution officers came with more policy guidelines rather than laws but eventually it ended up being in formal legislation. Since 2017, Article 489 of the Dutch Code of Criminal Procedure enshrines a new law which lays down that minor cannot waive their right to counsel prior to interrogation. Thus, they have to consult a lawyer beforehand. During this consultation they can decide together with the lawyer whether the lawyer will also be present during the interrogation. So, this is basically the end of the development that started with the *Salduz*-case.

However, the practice of this law appears to be complicated, according to the interview partners in the Netherlands. There is a tension between, on the hand, the right to a fair trial and a lawyer prior to interrogation, but on the other hand the idea of deprivation of liberty being as short as possible. Thus, what happens, by way of example, if a juvenile is apprehended by the police due to a minor offense, such as shoplifting of a non-valuable item? Since the new law, they might have to wait for some hours at the police facilities until their lawyer arrives. In contrast, in the past they would have sent them home probably after half an hour. In this example it is for some hours, but sometimes this extends throughout an entire night because there is no lawyer available and then they have to wait for the morning, for example. Moreover, there were also some experiments with using *Skype* for the consultation, but various experts have raised concerns in this regard. It appears to be inappropriate to talk to children for legal consultation via video.

Thus, as shown, it is enshrined in Dutch law that an attorney has to be consulted. Yet, according to the Criminal Code, cases are divided into three categories in Dutch law: *A*, *B* and *C* offences. Crimes of category *A* are considered most serious and the youngster must have this obligatory consultation with a lawyer prior to the interrogation and the legal assistance has to be present during the interview. For *B* and *C* crimes, however, the law obliges the

consultation only before the questioning, but during the interrogation the juvenile the right to waive his or her rights on a solicitor. It is questionable whether this differentiation is favourable. Can every youngster comprehend and foresee whether this presence is necessary?

Comparably, after the last periodic visit to the Netherlands in 2016, the CPT noted, reiterating its 2011 visit report, that persons, including juveniles, suspected of *C* category offenses, namely the minor offenses, were still not entitled to *free* legal assistance (CPT, 2017). The CPT, thus, reiterates in its recommendation that the restriction on access to free legal aid for persons suspected of *C* category offences be removed. Moreover, as regards the specific situation of juveniles in police custody, the delegation could not obtain a clear picture of the current practice concerning their obligatory legal representation (CPT, 2017). However, the visit had been conducted before the new law, as described above, entered into force.

On a positive note, it should be added that, in the case of juveniles and young adults, the police are, as a rule, under a legal obligation to wait for the arrival of the *requested* lawyer or trusted person, and the presence of a lawyer cannot be denied (StPO, Section 164, para. 2; JGG, Sections 37, para. 1 and 46a, para.). In this regards, it must be highlighted that in order to effectively protect this particular age group, the onus should not be placed on the juvenile to request the presence of a trusted person or a lawyer, but rather that such a presence should be automatically and mandatorily provided.

Even though considerable developments have been achieved by the Netherlands in the area of the right to legal counsel of a juvenile on a legal level, it is still to be seen how practice lives up to these obligations. Austria, in this regards, might look at the Netherlands for a favourable vision and guidance with regards to protecting juveniles during police interrogations by means of legal assistance.

4.3.3 Conditions upon Arrest

The conditions upon arrest are insofar of significance as the atmosphere surrounding the entire criminal procedure has to be adjusted to the juvenile's capacities and allow the minor to express him or herself and to completely and effectively take part in the proceedings (CRC Committee, 2009, para. 60). This implies that the environment should not be hostile for the person underage.

Juvenile's ill-treatment in police custody appears to be a particular problem. For instance, when the CPT visited Austria, it reported that several allegations had been received from juveniles in respect of physical ill-treatment and/or verbal abuse experienced during police questioning (CPT, 2010, para. 12). In this regard, the CPT was concerned that staff dealing with juveniles receives insufficient specialised training to deal with juveniles (CPT, 2010, para. 73). In both countries a relatively high rate of staff turnover, paired with the difficulty in recruiting new, well-trained staff, obviously has an impact on the quality of specially trained police officers (CPT, 2008, para. 81). In this context, it can be summarised that police stations. In its visit to the Netherlands in 2011, the CPT found that juveniles were kept in windowless cubicles at the police facilities. It considered these conditions highly inadequate for minors (CPT, 2012).

From the interviews conducted with experts from both countries, it became apparent that the conditions upon arrest at police stations are clearly not adapted to minors and can be categorised as further, additionally to the already sensitive situation a juvenile finds him- or herself in when apprehended by the law enforcement authorities, intimidating. Moreover, in a report titled "A few nights in the police cell", specialising on juveniles in the Netherlands, these unfavourable circumstances have also been portrayed (Berger and van der Kroon, 2011). After its publication, albeit containing harsh critiques on the conditions in police cells, which are insensitive to the vulnerabilities of juveniles, nothing has changed in this regard. Both in Austria and the Netherlands, a lot of criticism has been voiced in the interviews with regards to the conditions for juveniles at police stations. In both countries they are held in separate cells from adults, but in the same building, which is not a place for persons underage. The cells are not tailored to the children's needs. Via the interviews, it showed that there is one police station in the Netherlands implements a pilot project in this regard. They have a child-friendly police cell with a television, but this does not amount to common practice.

Ultimately, in both countries the time of police custody – considering the fact that the cells there are not adapted to minors and their specific needs – can be rather long. Normally,

children can be held at police facilities for up to three days and 18 hours. However, this time period can be extended – both in the Netherlands and Austria – to six days and 18 hours. Thus, the police still have a lot of discretion in both States to decide on the length of police custody.

Taking into account the lengthy periods of police custody and inadequate conditions for minors there, both the Netherlands and Austria should question these circumstances and their efforts put into changing the current situation for juveniles during the time of police proceedings.

4.4 The Brisance around the Age of Criminal Responsibility

This chapter deals with the pivotal yet obscure question of when children become criminally culpable. Considering the debate on juvenile justice, it is important to note that the age applied to determine young offenders does vary among national law and even so within the supposedly close confines of the pan-European continent. In this regard the following peculiarities of the two domestic legal systems under study are worthy of observation.

Nowadays, many countries have set an age under which children cannot be held criminally responsible. Above that age, they can be held liable. Setting a minimum age of criminal responsibility matters in so far as it, "recognises that a child has attained the emotional, mental and intellectual maturity to be held responsible for their actions" (Penal Reform International, 2013, p.1). The minimum age of criminal responsibility set by different countries ranges hugely from as low as six up to 18 years of age. In almost all countries, minors having reached the age of criminal responsibility can be arrested, detained and imprisoned. This implies that they can enter – often at an early age – the criminal justice system which might stigmatise them and damage their prospects and opportunities in their later life.

Both on the international as well as European level, various sources serve as recommendations. Considering Article 1 of the CRC, a child is every human being below the age of eighteen years (UNGA, 1989). Both the Austrian and the Dutch Civil Code are in accordance with this international legal definition: every person that is under the age of eighteen is considered a "minor". Beijing Rule 4 requires that the age limit to be set not too low, in reference to the minor's intellectual, emotional and mental maturity (UNGA, 1985). When turning to Article 40 of the CRC, states are required to set a minimum age for criminal responsibility. But the Convention itself does not set what that age should be. It reads that "states should establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law" (UNGA, 1989). Subsequently, the CRC Committee has interpreted this provision in its General Comment 10 and has particularised that – given the current knowledge – this minimum age should be at the *minimum* of 12 years (CRC Committee, 2007, para. 32). Countries are even encouraged to go beyond 12 and to set their minimum ages for criminal responsibility even at 14 or 16. If the young adult, at the time of the offence committed, is older than this minimum age set, but under 18, he or she can be held liable and thereby formally charged. All these proceedings have to be in accordance with the CRC (CRC Committee, 2007, paras. 31 and 33). Moreover, in case the authorities cannot

determine the age of the juvenile in question, he or she should have the right to the rule of the benefit of doubt, not facing criminal responsibility (CRC Committee, paras. 38 and 39).

Against these backgrounds, the question about the proper age to set arises: Is it 12, 14, 18 or even 21? To approach these questions, a first notion one has to understand is the notion of the 'penal majority' (Hanson, 2018). The CRC has set a minimum age for penal majority. It urges States convention urges states to set the age at 18, and to design a separate juvenile justice system for all persons below that age. This is clear in article 43 from the Convention on the Rights of the Child, which reads as follows: "States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law". Now, this means that every country should establish a separate system for dealing with juvenile defenders.

As visualised in the table below, according to national law, the age of criminal responsibility in the Netherlands is 12 (Code of Criminal Procedure (CCP), para. 486).
The law enforcement authorities are even allowed to arrest children under the age of 12 and question them at stations up to six hours. Due to the related measures to this the Netherlands has been categorised as applying an *effective* criminal responsibility as of the age of 10 (Detrick, Abel, Berger, Delon & Meek, 2008; Uit Beijerse & van Swaaningen, 2006). Under certain circumstances and if the court deems it appropriate, juvenile law might apply to adolescents until the age of 23. Dutch law also allows for 16 to 17 year olds to be subject to adult law. This referral is only lawful upon consultation with child protection services. Thus, to juveniles aged between 16 and 18, juvenile criminal law is applied in principle, but the juvenile court may apply adult criminal law where it finds grounds to do so by reasons of the gravity of the offence, the character of the offender, or the circumstances in which the offence was committed. The fact that according to Dutch law, 16- and 17-year-old minors can be sentenced as adults, but between the ages of 18 to 23 adolescents can still be tried as juveniles characterises the Dutch system as on with a so-called flexible upper age limit, as *Yannick van den Brink* defined it in his interview.

In comparison, according to Austrian juvenile law, minors can only be held criminally liable for offences committed from the age of 14 (*Jugendgerichtsgesetz* (JGG) (Youth Court Act), para. 4 (1)). Juveniles aged 14 to 16 committing so-called 'petty' offences, which include those subject to the threat of punishment of three years imprisonment or less, are generally not liable to punishment. Thus, persons aged 14 or 15 cannot be subject to criminal penalties where their conduct does not amount to serious guilt attributable to the offender and

neither general nor specific deterrence require any kind of punishment. This means that persons under the age of 16 are not punishable for petty offences where the application of juvenile justice is not needed to prevent minors from legal wrongdoing (JGG, paras. 1(1) and 4(2)(2)).[7] The majority of offences typical for juveniles, such as shop lifting or property damage, are thus not punishable for juveniles under 16. Thereby, Austria clearly maintains some welfare principles (Junger-Tas, 2006, p. 517).

Additionally, if juveniles are incapable of understanding their actions as an offence or are deemed unfit to act in line with such a comprehension, the offence is not punished. Under these circumstances, the procedures are suspended without any further consequences by the prosecutor (JGG, para. 4(2)(1)). These reasons are only presumed in case of a serious retardation of the personal development of the juvenile which is determined by Austria's High Court and includes – among others – psychological or physical diseases, massive neglect or serious social defects.

Table 1: Comparison of age limits

Country	Austria	The Netherlands
Age of criminal responsibility (juvenile criminal law)	14	12
Full criminal responsibility (adult criminal law can or must be applied/ juvenile law or sanctions of the juvenile law can be applied)	18/21	16/23
Age range for youth imprisonment or similar forms of deprivation of liberty	14-27	15-24

Source: Table withdrawn and adapted from Dünkel, Grzywa, Horsfield and Pruin, 2011, p. 19.

That young people aged 16 and 17 can be tried according to adult law in the Dutch criminal system, amounts to a violation of the CRC. *Maartje Berger* from Defence for Children International reiterated in her interview that they advocate that the Netherlands withdraw its reservation to Article 37 of the CRC. This reservation makes it possible to continue this

[7] *See* https://www.crin.org/en/home/ages/europe

practice. Concluding from the interviews conducted, the flexible upper age limits is considered among law-makers as a "compromise". The provisions of the possibility of referral to adult law already exists since the start of the juvenile justice system, dating back to the beginning of the 20th century. The background for this law was that the Dutch system leaned towards a welfare-oriented justice regime, for children in general, but the idea was that 16 and 17-year-olds that have committed very severe offenses should not be treated anymore as children but as adults. And this is a provision is still in force, even after the major revision of the juvenile criminal code in 2014. It became apparent via the interviews conducted, that the more right-winged parties, the "law-and-order parties", insisted on keeping this provision enshrined in law. In this area, highly politicised agenda with regards to responses to juvenile delinquency comes to the fore. In this respect, for States allowing adults law to be applied to some minors, the CRC Committee has recommended repeatedly that this should cease and calls for the implementation of juvenile justice fully and entirely and without discrimination.

To conclude, the Netherlands appear to be a non-exemplary country with regards to their age limits. Under the pretext of having implemented a compromise this State continues their practice of sentencing minors under adult law. This practice is to be considered as highly critical under international human rights law and it remains to be seen if changes will follow in the future.

4.5 The Key Findings seen through a Broader Lens

Migration, globalisation and post-modern times triggered the re-evaluation of international norms, in turn, leading to a 'crisis of juveniles'. These developments are realised when the legislator due to contemporary irreconcilable expectations in scientific research and politics hesitates with further reforms of the juvenile justice system. The resulting lack of pointers for aspiring models is noticeable both in the Netherlands and Austria (Sagel-Grande, 1996; Jesionek, 2003). It remains questionable whether the two countries work towards a justice system *for* or rather *with* juveniles. Undoubtedly, juvenile justice systems can be improved by including the perspective, peculiarities and perception of juvenile suspects. Likewise, this may impact the extent of willingness to which young people corporate with the system, such as adhering to the procedures and consequently avoid re-offending. In general, the public perception of key actors – in this context most prominent the law enforcement body – plays a pivotal role as to whether they encounter citizens as equals or are rather perceived as their 'enemies'.

To remedy the problem of discrepancy between international principles and standards and domestic application and practices, the Third OP to the CRC has been adopted by the United Nations General Assembly (United Nations, 2011). This legal instrument entered into force in April 2014. It entitles the Committee to new procedural competences, allowing for this human rights treaty body to receive individual complaints about alleged violations of the Convention and to initiate a special inquiry procedure. By its proponents, the adoption of the Third OP has been acknowledged as the greatest legal achievement for children since the adoption of the Convention (Gerber, 2012). Austria has not moved from signature to its ratification yet and the Netherlands has not even signed this protocol.[8] Overall, the instrument provides children with an effective remedy in combating the violation of their rights on an international level and therefore is has to considered highly problematic that neither of the two countries have moved to its ratification.

One cannot change culture, mentality or a general atmosphere over night and neither of them are easy to measure. Overall, there is a trend observable that once people get into conflict with the law, they might be tendency to automatically strip them of their fundamental

[8] *See* https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&lang=en

human rights. The reasons for wrongdoings are multifold and only via a case-by-case, multi-professional approach can they be eluded. Austria and the Netherlands, in some areas of juvenile justice amount to pioneers paired with a clear need to catch up and re-evaluate certain practices. Overall, neither the Netherlands nor Austria amount to the global cohort of human rights abusing governments. Nonetheless, when grouping rights of juveniles along the so-called "three Ps" categorization of protection, provision and participations rights, it becomes apparent that this realisation in a comprehensive domestic juvenile justice system seems to encounter a long way to go.

Over the last two decades, empirical studies on subjects of juvenile justice have clarified that in order to understand their realities, minors cannot be reduced to passive citizens. If one attempts at comprehending and engaging with their lived realities and rights, the complex situations they face and the agency they exercise need to be taken into account (Hanson and Nieuwenhuys, 2013).

As shown in the parts discussed above and in the light of international human rights law, there are various strengths in both domestic systems identifiable. However, in order to fully guarantee juvenile-friendly police proceedings, there is still considerable progress to be achieved with regards to providing adequate information to minors and legal assistance. Moreover, improvements of the conditions at police stations are yet to be aspired. In the Netherlands, raising the minimum age of criminal responsibility and discounting the practice to refer minors to adult law is highly recommendable.

Overall, the CPT should broaden the extent to which it refers to the rights of minors throughout its activities. For instance, it could incorporate mentions of the work of the CRC Committee or of the CoE guidelines on child friendly justice. In consequence, this might reinforce and underpin the thoroughness of its comments and further complement the relationship among international human rights instruments. Moreover, the CPT could embrace a work in a way showing more pressure and urgency with regards to children's rights guarantees. More precisely, the focus should be on asserting its critiques are adhered to as swiftly as possible. Another favourable development, which might prove as insightful, concerns the possibility of conducting visits merely incorporating places where juveniles are deprived of their liberty. This would enable the CPT to funnel its attention on this specific group entirely. Ultimately, it is of utmost importance that during *each* visit places of detention with juveniles are included.

A worrisome observation made concerns the Austrian government responding to reports of the CPT in form of denial. Where critiques were voiced, the response was to

reiterate the view that national safeguards sufficiently protect juveniles. Thereby, the government questions the credibility and reliability of the CPT. The Austrian government responded in such a way to a recommendation raised with regards to the issue that a parent or legal assistant has to be present during the interrogation of a juvenile (Austrian Government, 2010).

5 Conclusion

"I would there were no age between sixteen and three-and-twenty, or that youth would sleep out the rest" (Shakespeare, 16th century).

Even though the CPT has made an important progress towards and had a substantial impact on the knowledge about the extent to which children's rights are protected in criminal proceedings and how this can be improved, there is still a considerable capability to be filled to extend the role of the CPT on these issues. This needs to be done by paying due attention that this body functions with a clear focus on juvenile-friendly components and that it conducts its activities by utilising its expertise to highlight the importance of rights of minors. This might be achieved by specified strategies and by reference to a coherent, consistent catalogue of principles to be adhered to by governments when dealing with minors.

This thesis' object concerned the critical examination of the entanglement of issues and comparison of juveniles and their rights when faced with the law enforcement of the Netherlands and Austria. Overall, the thesis set out to bring clarity to the ambiguities of national juvenile justice systems by offering a stepwise, exploratory analysis of comparison of two regimes. As shown in the analytical part, various peculiarities of the two systems have been identified. The comparative analysis shed light on both strengths and weaknesses of both systems currently in place. Put in a broader context, this paper moreover clarified the obstacles faced when aiming unifying practices in the area of juveniles' rights among countries. Light was shed on the complexity of legal regimes and the limited potential of international independent bodies to contribute to juvenile justice being taken more seriously worldwide. Since the thesis delivered a comparative study, the findings show limited strength in being generalisable. However, this research reveals the wider implications for the feasibility of having a strict implementation of national guidelines and safeguards on domestic levels when it comes to juvenile justice. With regards to juveniles and their justice system it remains questionable what kind of narrative guides law-making processes. Are children a danger to society or is society to be seen as dangerous to children? Despite the fact that the international community has gone a long way, they are not close to the goal to be reached that children are taken as rights holders and not as objects and moreover, that they have access to justice as victims, witnesses and perpetrators alike.

In terms of limitations of the research and findings it should be noted that the research followed a qualitative approach rather than a quantitative one, which also would not have been possible practically considering the limited timeframe and resources available.

The study had an exploratory character; therefore it did not fall within its scope to study the relationship between defendants' specific characteristics and the extent to which they were enabled to participate. Therefore, for instance, no conclusions can be drawn with regard to the influence of background characteristics of juveniles, such as gender, age and cultural or ethnic background, on their participation in the criminal proceedings. Not within the scope of this thesis, it would however to be of interest to take into consideration theories and concepts from psychology and development regarding youngsters to enrich the findings, thereby taking a multidisciplinary approach to this area under research. Therefore, future research in this field might examine reasons for the lack of adherence to CPT recommendations in a comparative way to unfold further dynamics of withholding in form of cross-country analyses.

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Annex

	Austria	The Netherlands
1st periodic visit	Report to Austria, Visit: 20 May to 27 May 1990 (CPT, 1991)	Report to the Netherlands, Visit: 30 August to 8 September 1992 (CPT, 1993)
	- "Particular mention should be made of young people, who, since the coming into force (1 January 1989) of amended **legislation relating to their judicial protection** (Jugendgerichtsgesetz), have been **subject to special rules**, whatever the type of offence. - They have a right to contact with a friend or relative and a legal advisor or probation officer and to be assisted by them from the time of their arrest and throughout the period of police custody. - They are entitled to psychological assistance by a person of their choice during questioning. - Like adults, young people may relinquish the above rights."	"Youth Detention Centres - The delegation heard no allegations of torture and few allegations of other forms of physical ill-treatment of prisoners by staff in the establishments visited. Further, the CPT's delegation heard **few allegations of such treatment** having occurred in other prison establishments or **Youth Detention Centres in the Netherlands**. - The CPT would **like to receive information** on the number of complaints of ill-treatment by prison officers or members of the staff in youth detention centres made in the Netherlands during 1991 and 1992 and on the number of cases in which disciplinary/criminal proceedings were initiated, with an indication of any sanctions imposed. **Alexandra Youth Detention Centre** - The CPT recommends **that facilities for sport in the establishment be improved.** - The CPT considers that it would be desirable **to supplement the**

		therapeutic content of the psychological services available at Alexandra Y.D.C. by employing a psychologist at the Centre on a full-time basis. **Het Nieuwe Lloyd Youth Detention Centre** - The CPT invites the Dutch authorities to **review the programmes of education** provided, with a view to their intensification. **Requests for information** - the **number of complaints of ill-treatment by prison officers or members of the staff in youth detention centres** made in the Netherlands during 1991 and 1992 and the number of cases in which disciplinary/criminal proceedings were initiated, with an indication of any sanctions imposed"
2nd periodic visit	Report to Austria, Visit: 26 September to 7 October 1994 (CPT, 1994)	Report to the Netherlands, Visit: 17 November to 27 November 1997 (CPT, 1998)
	---	**"King Willem II Detention Centre for Foreigners** - The delegation was also concerned to note that, contrary to the impression given by staff at the outset of the delegation's visit, **juveniles (aged 16 to 18) were interspersed with adults**

		in various parts of the establishment. The so-called "J" section of Unit D, which purportedly contained 22 places in 4-person rooms reserved for juveniles, actually accommodated only six juveniles, who were sharing their rooms with nine adults. This was apparently the case elsewhere in the establishment, for example six other juveniles were placed among the adults in another part of Unit D. - There was no separate regime of activities for the juveniles being held at Willem II. In this respect, **the CPT wishes to emphasise that the regimes offered to juveniles should be adapted to their specific needs; in particular, they should include a significant element of physical education and be supervised by carefully-selected staff who have been trained in working with the young.** - Secondly, the delegation was concerned to find that **adolescents were occasionally admitted to the FOBA** (Dutch national psychiatric and forensic observation centre for prisoners). At the time of the visit, a 16-year-old boy was being held there. Although the CPT

		welcomes the fact that the youth in question was subsequently transferred to an appropriate institution, it nonetheless wishes to register its concern about the occasional placement of psychiatrically disturbed adolescents together with adult prisoners. The CPT considers that adolescents (i.e. persons under the age of 18) should not be admitted to the FOBA; it invites the Dutch authorities to fix a definite lower age limit for admissions to the establishment."
3rd periodic visit	Report to Austria, Visit: 19 to 30 September 1999 (CPT, 2001)	Report to the Netherlands, Visit: 17 to 26 February 2002 (CPT, 2002)
	"Recommendations - Specific measures to be met to guarantee **minors activities adequate for their age**. **Police dentention centres** - The provisions relating to asylum and migration law regarding the deprivation of liberty of minors needs to be strictly adhered to."	**"Sint Jacob Care Centre & Wittenberg Nursing Home** - Staff at both homes indicated that there had been very rare instances, involving younger residents (suffering from Huntington's chorea or another organic brain disease), of imposing a brief period of seclusion. **The CPT would like to be informed of the formal legal basis for the resort to such a measure**. **Triport at Schiphol International Airport** - The recent increase in the number of drugs couriers arriving at the airport

		has presented Dutch law enforcement officials with a variety of difficulties, a major one being the treatment of persons suspected of carrying drugs in their bodies ("body-packers" or "swallowers"/"bolletjeslikkers"). The risks involved are well-illustrated by a serious incident which occurred the day before the delegation visited Triport, involving the death of a young woman from acute intoxication; unbeknownst to staff, she had been carrying drugs in her body. This case highlights the need for appropriate arrangements permitting the medical supervision of persons placed in the units at Triport. **The CPT would like to be informed whether such arrangements (which should include specialised medical equipment and the presence of appropriately trained staff) are envisaged at Triport."**
4th periodic visit	Report to Austria, Visit: 14 to 23 April 2004 (CPT, 2005)	Report to the Netherlands, Visit: 4 to 14 June 2007 (CPT, 2008)
	- "The CPT paid particular attention to the **application of specific safeguards concerning young persons apprehended in relation to criminal offences**.	- "The delegation visited, for the first time, the **De Hartelborgt Closed State Youth Detention Centre**, in Spijkenisse.

	Establishments under the Federal **Ministry of the Interior** **Safeguards against ill-treatment of persons deprived of their liberty** **Recommendations** - Allegations made by a number of juvenile detainees – sometimes as young as 14 – of **physical ill-treatment and threats in order to obtain confessions** - The delegation was particularly concerned to find from interviews with detained juveniles and police officials, as well as from court and police documents, that persons as young as 14 were questioned for long periods and "invited" to sign statements admitting to criminal offences without the benefit of the presence of either a person of confidence or a lawyer. This is totally unacceptable**.** The CPT recommends that steps be taken to **ensure that juveniles do not make any statement or sign any document related to the offence** of which they are suspected **without** the benefit of a **trusted person and/or a lawyer being present**. - **A specific version of the information sheet** provided to	- In the isolation unit, there were two rooms that could be used as short-term accommodation for new residents for whom there was temporarily no place on the De Bolder reception unit. These rooms were sparsely furnished, containing only a bed; they should be equipped with a table and chair. - The CPT recommends that the **outdoor exercise yard of the isolation department be redesigned**. - The CPT would like to receive the comments of the Netherlands authorities on **how they intend to tackle the staffing challenges**. **De Talie intensive care unit** - **Lengthy seclusion** with little contact with staff can hardly be described as appropriate treatment, and is difficult to reconcile with the pedagogical objectives of placement in a juvenile detention facility. **The CPT recommends that the Netherlands authorities take the necessary measures to improve the regime afforded to juveniles on the De Talie unit.** - **The CPT recommends that the Netherlands authorities ensure that greater efforts are made to draw up**

	persons in police custody, setting out the **particular position of detained juveniles and young persons**, should be developed and given to all such persons taken into custody. In this connection, the Austrian authorities should take into account the recent **Recommendation Rec(2003)20 of the Council of Europe's Committee of Ministers** concerning new ways of dealing with juvenile delinquency and the role of juvenile justice (paragraph 31). Establishments under the Federal **Ministry of Justice** **Linz Prison** **Recommendations** - **Material conditions:** The **mixing of juvenile and adult prisoners** to be discontinued as a matter of priority. It inevitably brings with it the possibility of domination and exploitation. Juvenile prisoners should be held in separate accommodation, staffed by persons trained in dealing with the young and offering regimes tailored to their needs (education, sport,	**an individualised pedagogical or treatment plan for each resident of De Hartelborgt.** - The CPT recommends that operational guidelines be drafted to ensure that there is a **clear distinction between the application of an order measure and a disciplinary sanction.** - The CPT is particularly concerned about the **placement of juveniles in conditions resembling solitary confinement**, a measure which can rapidly have harmful consequences for them. **The Committee considers that resort to such a measure must be regarded as highly exceptional.** - The CPT recommends that the Netherlands authorities send a clear message to the staff of De Hartelborgt that **disciplinary sanctions or order measures other than those described in the house rules and relevant legislation are not permitted.** - Another concern for the delegation was the use of the so-called "time-out", whereby a juvenile is sent to his room in order to cool down. **The CPT recommends that clear instructions be given to the staff of De Hartelborgt about the proper application of a time-out.**

	vocational training, recreation and other purposeful activities). **Units for juvenile prisoners and young adults at Vienna-Josefstadt Prison** - **Material conditions:** The CPT has recommended that steps be taken to improve the provision of food to the inmates and review the hours at which it is distributed. - The situation as **regards activities** was far less favourable. The juveniles were subject to an **impoverished regime, which was totally unadapted to their needs**. The daily schedule was heavily circumscribed by the shortage of staff and the staff shift system. At the end of the visit, the delegation made an **immediate observation**, calling upon the Austrian authorities to significantly increase the number of hours during which juveniles can engage in out-of-cell activities. Further, the Committee has recommended that steps be taken to ensure that all juveniles held at Vienna-Josefstadt Prison can fully benefit from their entitlement to two hours of	- The CPT recommends that the Netherlands authorities **review the systematic use of handcuffs for all transfers to the isolation unit**; their application should in each case be based upon a risk assessment. Further, the Netherlands authorities should remind FOBA staff not to handcuff residents when they are being transferred to the isolation department. - The CPT recommends that the Regulation on the **use of mechanical means of restraint on juveniles be reviewed.** - The CPT recommends **the introduction of a special register on the application of mechanical restraints in De Hartelborgt.** - The CPT recommends **the introduction of a comprehensive medical file for FOBA residents at De Hartelborgt.** - Particular efforts should be made to ensure that **juveniles are not detained in police cells for prolonged periods** and are transferred to appropriate juvenile detention facilities expeditiously. - The CPT recommends **measures to be taken in De Hartelborgt to ensure that staff remain actively involved with juveniles placed in**

	outdoor exercise per day. **Units for juvenile prisoners and young adults at Vienna-Josefstadt Prison** (follow-up visit to examine the conditions under which juvenile prisoners were held there) **Recommendations** - steps to be taken to improve the **provision of food** to juveniles and young adults at Vienna-Josefstadt Prison and review the hours at which food is distributed - steps to be taken to ensure that all juveniles held at Vienna-Josefstadt Prison can fully benefit from their **entitlement to two hours of outdoor exercise per day** **Requests for information** - **the number of juveniles in units D2 and E2 actually benefiting from the increased possibilities for out-of-cell activities** and the average number of hours per day spent by them engaged in such activities, as well as measures taken in respect of units D1 and E1 **Health care** to inmates at Linz and Vienna-Josefstadt Prisons	**isolation.** - The CPT requets comments of the Netherlands authorities on the case referred to in paragraph 84: **In this case, placement on the De Talie unit was related to the young man's offence rather than to his behaviour.** His file did not make reference to extreme violence or other behavioural difficulties. Yet, after his arrival at De Hartelborgt from a juvenile establishment in Vught, he spent around three-and-a-half months on the FOBA, during which time he was not on any medication."

	- As regards Vienna-Josefstadt Prison, the Committee has recommended that **steps be taken to employ a fully qualified specialist in child/adolescent psychiatry to take care of the specific problems of juvenile prisoners.** **Comments** - The Austrian authorities are invited to review the possibilities for juvenile prisoners at Vienna-Josefstadt Prison to make **phone calls.** - The Austrian authorities are invited to consider setting up **separate juvenile police departments**."	
5th periodic visit	Report to Austria, Visit: 15 to 25 February 2009 (CPT, 2010)	Report to the Netherlands, Visit: 10 to 21 October 2011 (CPT, 2012)
	- "The CPT's delegation carried out full visits to Gerasdorf Prison for Juveniles and Innsbruck Prison, and a follow-up visit to Vienna-Josefstadt Prison (where it focussed on the situation of juveniles). In addition, the delegation went to Klagenfurt and Linz Prisons in order to interview newly-arrived remand prisoners and to assess the	- "At **Sprang-Capelle Police Station**, the detention facility consisted of **six confined and windowless cubicles**, immediately adjacent to two interrogation rooms. The police officer in charge informed the delegation that these cubicles could be used "for no more than six hours". However, the delegation met two minors who alleged that they stayed for some 10 hours in the above-

	conditions of detention of juvenile prisoners. - The first **immediate observation** was made in respect of Vienna-Josefstadt Prison, where **young prisoners were not granted outdoor exercise every day**. The delegation called upon the Austrian authorities to take the necessary measures to ensure that all prisoners at Vienna-Josefstadt Prison are able to benefit from their daily outdoor exercise entitlement. - The CPT is very concerned about the fact that **many juveniles** (some as young as 14 years of age) were **subjected to police questioning** (sometimes for prolonged periods) and requested to sign statements without the benefit of the presence of either a trusted person or a lawyer, despite the specific recommendation made by the Committee in the report on the 2004 visit. Such a state of affairs is not acceptable. The Committee must stress once again that in order to effectively protect this particular age group, the onus should not be placed on the juvenile to request the presence	mentioned cubicles, with only a brief interruption of some 20/30 minutes. The CPT recommends that the **use of any such cubicles be strictly limited to very brief waiting periods**, either immediately prior to the questioning of the suspect or immediately before his transfer to a suitable detention facility. The total time actually spent in these facilities should never exceed 6 hours."

	of a trusted person or a lawyer. Such a presence should be obligatory. **The CPT calls upon the Austrian authorities to take steps without delay to ensure that detained juveniles are not subjected to police questioning without the benefit of a trusted person and/or a lawyer being present.** - The **information sheet** provided to persons in police custody contained a special section concerning the rights of juveniles (and young adults). However, as was the case during the 2004 visit, many juveniles met by the delegation indicated that they had **not (fully) understood the contents of the above-mentioned information sheet.** This is hardly surprising, given the convoluted legal language used. **The CPT reiterates its recommendation that a specific version of the information sheet, setting out the particular position of detained juveniles (and young adults), be developed and given to all such persons taken into custody.**	

	This information sheet should be made easy to understand – worded in a straightforward and non-legalistic manner – and should be available in a variety of languages. - At Vienna-Josefstadt Prison, the CPT noted that, following the 2004 visit, provision had been made for additional staff, with a view to improving the regime for juveniles and young adults. However, **subsequent staff cuts** had reduced the staffing levels at the time of the 2009 visit to below that observed by the CPT in 2004, while at the same time the total prisoner population had only marginally decreased and the number of juveniles and young adults had even increased by approximately 40 percent. Low prison staffing levels reduce the opportunities for direct contact with prisoners and prevent the development of positive relations; in general, this results in an unsafe environment, for both staff and prisoners. At the beginning of 2009, there were 416 staff posts whereas in 2004, the number stood at 460. **As regards in particular the**	

	juvenile units, the prison management indicated that an additional 20 posts were required for working with the young prisoner population. - In response to a specific recommendation made by the Committee after the 2004 visit, a part-time adolescent psychiatrist had been recruited. However, the contract with the psychiatrist concerned was about to expire in March 2009 and a decision had apparently been taken by the Federal Ministry of Justice to no longer finance the services of such a psychiatrist at the establishment. Given the large number of young prisoners held in this prison, many of whom suffer from psychological and psychiatric problems, **the CPT recommends that steps be taken to maintain the regular presence of a fully qualified specialist in child/adolescent psychiatry at Vienna-Josefstadt Prison.** **Recommendations** - **special training to be organised for prison officers assigned to work with juvenile prisoners** at	

	the establishments visited and, where appropriate, in other prisons in Austria - Further, the delegation noted that, in all the prisons visited, very few female prison officers were deployed in custodial functions in the detention areas accommodating male prisoners, including in juvenile units. In view of the potential benefits of mixed-gender staffing for the general atmosphere prevailing within prisons, the CPT invites the Austrian authorities to consider adopting measures to favour the deployment of female staff throughout the Austrian prison system; **in particular, mixed-gender staffing should be ensured in sections for juveniles.** - The CPT invites the Austrian authorities to allow **more frequent showers to juvenile prisoners** (in particular female juveniles) in all the establishments visited, in the light of Rule 65.3 of the European Rules for juvenile offenders subject to sanctions or measures.	

	- Further, at Gerasdorf and Vienna-Josefstadt Prisons, many juveniles complained about the food provided to them. Steps should be taken at both establishments to **review the provision of food to juveniles**, to ensure that the food is adequate for this category of prisoner in terms of both quantity and quality - Whilst acknowledging the steps taken by the authorities since the 2004 visit to enhance **the regime of juvenile prisoners, the CPT considers the improvement made thus far to be minimal**. It is a matter of serious concern that on most weekdays at Vienna-Josefstadt, the vast majority of such prisoners were locked up for the "night" early in the afternoon until the following morning. - The CPT calls upon the Austrian authorities to develop the regime for juvenile prisoners at Innsbruck, Klagenfurt and Vienna-Josefstadt Prisons, so as to ensure that such prisoners enjoy during the week out-of-cell activities throughout the day, up until the early evening. Further, the activities offered to	

	juveniles at Klagenfurt, Linz and Vienna-Josefstadt Prisons should be reviewed, in the light of the above remarks. **All juvenile prisoners should be engaged in purposeful activities of a varied nature (work, preferably of a vocational value; education; sports; recreation/association, etc.).** - **Immediate steps** should be taken at Innsbruck, Klagenfurt, Linz and Vienna-Josefstadt Prisons to provide juvenile prisoners with **increased out-of-cell time during weekends**; basically confining such inmates to a cell over the whole of the weekend is not acceptable. - **Further, the CPT has serious misgivings about the widespread prescription of psychotropic medication for prisoners (including women and juveniles) at Innsbruck Prison.** By way of example, the delegation observed that 19 out of the 29 prisoners in the juvenile unit received psychotropic medication every day. In the CPT's view, this seemed to be used as a means of alleviating the effect of the long periods of time	

	spent locked in the cells. **The CPT recommends that the Austrian authorities review this situation as a matter of urgency.** - It was mostly prisoners under preventive custody (*Maßnahmenvollzug*) and drug-addicted prisoners who benefited from such activities, while the professional **psychological support for the mainstream prisoner population – including juveniles – appeared to be rather limited**. **Steps should be taken to reinforce the psychological services at Innsbruck Prison.** - **The Committee recommends the Austrian authorities to reduce the maximum possible period of solitary confinement as a punishment in respect of juvenile prisoners. Further, whenever juveniles are subject to such a sanction, they should be guaranteed appropriate human contact.** - The delegation observed that, at Innsbruck and Vienna-Josefstadt Prisons, **custodial officers were carrying truncheons in the full view of inmates (including**	

	juveniles). The CPT would like to stress that, in the interest of developing positive relations between staff and inmates, prison staff should never carry truncheons visibly inside detention areas. **The Committee recommends that, if it is considered necessary for prison officers to carry truncheons, the truncheons be hidden from view.** **Requests for information** - comments of the Austrian authorities on the allegations received from juveniles at Linz Prison regarding difficulties in **having access to television sets** - detailed information (including a timetable) on the implementation of the plans to **construct a new institution in Vienna for juveniles deprived of their liberty** **Ill-treatment** - several allegations were received – in particular from juveniles – that they had been **subjected to physical ill-treatment and/or verbal abuse during police questioning**. In two cases, police officers allegedly also **threatened to inflict pain on**	

	juveniles ("wir werden dich quälen" – "we will torture you) **if they did not confess** to a particular criminal offence."	
6th periodic visit	Report to Austria, Visit: 22 September to 1 October 2014 (CPT, 2015)	Report to the Netherlands, Visit: from 2 to 13 May 2016 (CPT, 2017)
	- **"In particular, it is not acceptable that many juveniles (some as young as 14 years of age) are still subjected to police questioning and are requested to sign statements without the benefit of having either a lawyer or a trusted person present.** The situation had not improved as regards access to a lawyer for detained persons who could not afford to pay for a lawyer themselves. - It is a matter of concern that on most days of the week (including at weekends) **juveniles held in this prison were locked up in their cells as of 3.30 p.m. until the following morning.** In the light of the above, the CPT recommends that the Austrian authorities pursue their efforts to further develop the programme of activities offered to juvenile prisoners at Graz-Jakomini Prison so as to ensure that such	- "It is critical of the fact that 16 and 17-year-old **juveniles were not always provided with a lawyer and a trusted adult prior to questioning**. - The CPT regrets that, despite its previous recommendations, the **law still provides for the possibility of holding a person (over 16 years old) on remand in a police cell for up to ten days** (Article 15a of the Penitentiary Principles Act and Article 16a of the Juvenile Detention Principles Act). - The decision to keep a person on remand in a police cell after the expiration of police custody is made by the selection officer (*selectie functionaris*) of the prison service. During the visit, the delegation received confirmation that this possibility was occasionally resorted to. The Committee considers that **police facilities, generally, do not offer suitable accommodation for lengthy periods of detention, particularly as concerns juveniles.**

	prisoners enjoy out-of-cell activities throughout the day during the week, until the early evening. - The CPT reiterates its **recommendation that a specific version of the information sheet**, setting out the particular position of detained juveniles, be developed in the light of the above remarks and given to them without delay upon arrival at a police establishment. The information sheet should be available in a variety of languages. Special care should also be taken to explain the information carefully to ensure comprehension. - It is also a matter of concern that, with some exceptions, remand prisoners (including juveniles) in the establishments visited could usually only receive closed visits (i.e. through a glass partition). The Committee recommends that remand prisoners be, as a rule, able to **receive visits from their family members without physical separation**; visits with a partition should be the exception and applied in individual cases where there is a	**The CPT recommends that measures be taken, including at legislative level, to abolish remand detention in police cells.** - As noted in the 2011 visit report, persons, including juveniles, suspected of "C category offences" (the minor offences under the Criminal Code) were **still not entitled to free legal assistance**. The CPT must recall in this respect that for the right of access to a lawyer to be fully effective in practice, appropriate provision should be made for persons who are not in a position to pay for a lawyer. **The CPT reiterates its recommendation that the restriction on access to free legal aid for persons suspected of "C category offences" be removed.** - **As regards the specific situation of juveniles in police custody, the delegation could not obtain a clear picture of the current practice concerning their obligatory legal representation.** - **The CPT recommends that the Dutch authorities ensure that juveniles are never subjected to police questioning** or requested to make any statement or to sign any document concerning the offence(s) they are suspected of having

	clear security concern. - It is all the more worrying and in fact unacceptable that, **at the time of the visit, a juvenile was even restrained with belts on a ward for adults, and this in full view of an adult roommate**; worse still, medical staff seemed to have no intention to stop this practice. - The CPT urges the Austrian authorities to strive to find alternative **solutions to avoid in the future the placement of juvenile psychiatric patients together with adult patients** in (forensic) psychiatric establishments throughout Austria.”	committed **without the presence of a lawyer and, in principle, a trusted adult person.”**