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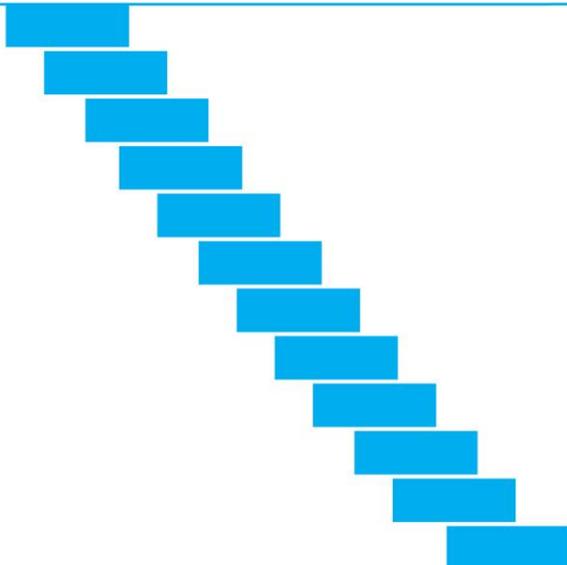


Fighting parents, the child in a fix

Advisory report on improving the position of children in confrontational divorces

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The story of Suzanne, 14 years old

"My parents separated when I was eleven. Before that, they weren't even really fighting. But they often disagreed. So it was quite a shock and I worried about it a lot.

My father moved out to live elsewhere, my sister and I stayed with my mother. Every weekend, and sometimes on Wednesdays, we went to my father's for one evening, night, and day. That went pretty well at first, even though it was weird. But then, my father started to grumble at my mother increasingly more often. She didn't do this and that right. He said she took away all his money. That was not nice. My mother was angry because my father took us back too late and didn't wash our clothes, but sent us home with a bag of dirty laundry. Whenever my mother took us back to him, they fought increasingly more. First, about my sister and me, then about the house, then about the lawyer, and eventually, about my sister and me again. It was enough to drive you crazy.

By now, it is over two years later. It still hasn't been solved. When I turned twelve, my mother said I finally got to choose and it would all stop. I was allowed to tell the judge my story. That was very tense for me. But it led to nothing. I still live with my mother and I still have to go to my father. But to be honest, I don't want to anymore. It leads to so much hassle and fights every time. It's not pleasant anywhere anymore. My father also called child protection and child welfare. Child welfare offered help. That only helped when they were there. Afterwards, mom started to yell again anyway. I also never felt that they listened to what I wanted.

It's driving me crazy. I can't concentrate at school anymore, my grades are not as good as they used to be. I also ran away once, because I could no longer handle all these things. My father and mother were both frightened, but after that, they got mad at each other. Soon, we have to go to court again, it will be about parental access again. What can I do to make this stop? What are my rights? Who can help me? I want peace."

The above story is comprised of the various stories of children who approached the Ombudsman for children in 2013 with questions, complaints, and concerns about their parents who were separating.

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Preface

Since my assignment as the Ombudsman for children in April 2011, I have been frequently approached by children who indicate that they are having trouble with their parents' divorce. These children say that the fights are making them desperate, that they feel torn between their parents, or that they have lost contact with one of their parents after the divorce. These stories greatly affect me, because they show the vulnerability of children. The basic sense of trust and safety, and of not having to choose between two people you love, which is a right all children have, is put under pressure for these children. Normal children, so to speak, who still have two parents. Two parents who find themselves in a confrontational divorce and can no longer recognize or who are no longer capable of recognizing their responsibility as parents.

The stories of these children often make me feel powerless, too. Taking the interests and views of children into account is a basic right, but being the Ombudsman for children, I can usually do very little for their individual cases. You would want to grab the parents - who are often unaware of the impact of their behavior - by the shoulders and show them the damage they are inflicting on their children. Therefore, this advisory report is, in the first place, an appeal to parents to recognize their responsibility as parents. Really, the key to the problem primarily lies in your hands. Research points out that a divorce in itself has no harmful effects on a child, but that the way in which a divorce proceeds is all-decisive. As a parent, you have a choice in this regard.

If parents are really incapable of putting their emotions aside, the government should regulate or intervene. As the Ombudsman for children, I consider it my job to assess whether the government performs this task in a sufficiently powerful manner. Are there enough tools available - on the policy level, but also for the judiciary and for social assistance? At which points in the divorce chain is it useful to highlight or improve matters, so that children will not be damaged?

This advisory report is no scientific study. It is a representation of the interviews I held on the impact of confrontational divorces on children late 2013 and early 2014. These interviews were the basis of my research into existing interventions and the efforts made by the government in this regard.

Of course, I was unable to speak with everyone, and I do not pretend to have been complete. However, the interviews produced a number of concrete

proposals, which are described in this report. I hope to enter into further dialogue on this subject matter with the various links in the chain in the near future.



Marc Dullaert
the Ombudsman for Children

Introduction

This advisory report is the result of interviews conducted from late 2013 through March 2014 by the Ombudsman for children with many experts by experience (children and parents), representatives, and professionals who work with children and parents who are in a divorce situation. The interviews were intended to gain an insight into existing bottlenecks in policy and practice, and to explore how the interests of children could be safeguarded in a better way. A concrete set of recommendations, which are described in this advisory report, emerged from the interviews.

It is not the first time that the Ombudsman for children examines the interests of children of divorced parents. In May 2012, for example, the report 'Special curator: a gem?' was published, which showed that in practice, the voice and the interests of the child are insufficiently safeguarded in the Dutch Law of Persons and Family Law. In November 2012, the report, 'De ondertoezichtstelling bij omgangsproblemen' (Placement under supervision in the case of companionship problems) was published in collaboration with the National Ombudsman, which pointed out that the Child Welfare Council and the Youth Care Offices should develop and mutually exchange more best practices in cooperation with the Ministries of Health, Welfare, and Sports (VWS) and Security and Justice (VenJ) as well as with judges. Furthermore, it is recommended to examine and evaluate the effectiveness of placement under supervision (OTS) in conflict divorces. It was also found that the range of social assistance for parents and children does not provide nationwide coverage.

Both previous researches touched on individual aspects of the issues surrounding children of divorced parents. In this advice, the Ombudsman for children strived towards having an overarching look at the issue and building on existing knowledge and initiatives in the country. After all, there are many organizations, methods, pilots, conferences, and programs on this theme. Consequently, the research question was: what are the lessons to be learned from all these sources of knowledge? Which concrete additions or changes would effectively help children?

Two important recent meetings which the Ombudsman for children sought to build on are the conference organized by the association of family lawyers (vFAS) on September 13, 2013, and the expert meeting on November 20, 2013, which was initiated by the Board of Procurators General and the Child Abuse Taskforce. Experts from various disciplines participated in these meetings. Some important findings were the following:

- Often, parents are ignorant about the impact of their divorce on their child, or they are incapable of stopping it;

- Children often feel that no one hears them and they are insufficiently informed about what is going on, while their lives are turned upside down;
- The court only comes into play if it has already escalated and judicial procedures are more focused on the conflict between the parents than on the interest of the children;
- Professionals are reticent to get involved and information is insufficiently streamlined: sometimes, professionals work at cross-purposes, and the worlds of aid and lawyers can collide;
- A lawsuit can have an escalating effect, because there is a winner and a loser, which results in a poor basis for collaboration in the future;
- There are perverse incentives that need to be overcome, such as the fact that an adversarial procedure results in higher lawyer fees than a non-adversarial procedure or in the case of a joint request. Therefore, lawyers have a(n) (financial) interest in further litigation rather than encouraging mutual agreement;
- Mediation is less compensated for by the Legal Aid Council than divorce proceedings with a lawyer. The announced cutbacks on subsidized legal assistance cause mediation to be rather less than more attractive for parents in the future;
- Confrontational divorces can be defined as a form of child abuse.

On February 18, 2014, the Ombudsman for children convened a roundtable meeting with several experts. There, he presented a number of concrete ideas for improving the position of children. The elaboration of these ideas form the basis for this advisory report.

Terminology

The term ‘confrontational divorce’ has its limitations. Parents can feel stigmatized by it, and the term emphasizes the confrontation, whereas one would rather want to emphasize shared parenthood. Therefore, many professionals prefer to speak of ‘complex divorces’ or ‘conflict divorces.’ The Ombudsman for children, however, chooses to use the term ‘confrontational divorce’ in this report anyway. The word has become so well established that people immediately know what it refers to, and the term reflects what it means to children by calling a spade a spade. After all, to them, the problem is the confrontation between their parents.

Reader’s guide

In the first chapter, the theme is outlined in the light of children’s rights. Both the international and the Dutch judicial context will be described, and a view of children’s rights will be provided. The second chapter discusses the facts and figures regarding divorces and confrontational divorces in the Netherlands. What do we know about their effects on children? Chapter three provides an overview of a number of important tools and interventions that are currently being used, either in social assistance or in the courtroom. A number of interventions that are currently being used locally, or are in development, but are showing good first

results, are also described here. Chapter four provides an analysis of the gaps that still exist in the approach of confrontational divorces. Chapter five contains a description of the conclusions and recommendations for further filling these gaps from the Ombudsman for children.

Chapter 1 Children of divorced parents and a child's rights

International judicial context

In the Netherlands as well as worldwide, the International Convention on the Rights of the Child (CROC) of the United Nations is the most important tool that safeguards the rights of children. This Convention on the Rights of the Child was adopted in 1989, took effect on September 2, 1990, and in the year 2014, 193 countries have become members. The Netherlands ratified the Convention on the Rights of the Child in 1995 and, in doing so, made a commitment to adhere to the provisions of the Convention. The Convention on the Rights of the Child contains several provisions that are relevant to the position of children in the case of a divorce¹:

Article 3

In all actions concerning children, the best interests of the child shall be a primary consideration. If the parents of the child, or other individuals legally responsible for him or her, do not fulfill their obligations, States Parties will provide the child with care as is necessary for his or her well-being. Institutions, services, and facilities responsible for the care or protection of children shall conform with the standards established by States Parties in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 5

States Parties shall respect the rights and responsibilities of parents and relatives regarding the provision of guidance of the child in its exercise of the rights recognized in the Convention, in a manner consistent with the evolving capacities of the child.

Article 9

Each child has the right to grow up with its parents and to maintain contact with both parents if it is separated from one or both parents, except if it is contrary to the child's best interests.

Article 12

Every child has the right to express its views in all matters affecting the child, the views of the child being given due weight.

Article 18

Parents have the primary responsibility for the upbringing of their children. They will be assisted by States Parties in this regard. States Parties shall render appropriate assistance to parents in the performance of their child-rearing responsibilities.

¹ Convention on the Rights of the Child, translation of Unicef 2009 ('the blue book')

Article 19

States Parties shall protect the child from all forms of abuse by parents or any other person who has the care of the child. States Parties shall also establish social program to prevent abuse and provide victims with support.

Article 27

Each child has the right to a standard of living adequate for its physical, mental, spiritual, moral, and social development. Parents have the primary responsibility to provide their children with an adequate standard of living. States Parties shall take appropriate measures to assist parents in complying with the obligations resulting from this responsibility, and will ensure they act accordingly.

Dutch judicial context

Apart from the Convention on the Rights of the Child, a number of specific characteristics are important to the Dutch situation.

Parental authority

Since 1998, ex-partners who both have parental authority over the children both have – in principle - authority after the divorce, too. Before that time, authority over the children was usually assigned to one of the two ex-partners – in practice, it was usually the mother. After January 1, 1998, however, courts still have been appointing sole authority to one of the parents due to ongoing conflicts. This happens approximately 5,000 times each year². If children threaten to get stuck or lost between their parents, the court may assign the authority to one parent. Also, if decisions regarding a child pose a serious conflict, such as the choice of a school, undergoing medical treatment, or applying for a passport, the court determines that it is necessary in the interest of the child that the main decisions are made by one parent.

The child has the right to maintain contact with both parents (provided that it is in his or her interest), regardless of whether one or both parents have authority. Consequently, if one of the parents does not have authority over the child, the parent who does have authority should ensure that the child can have contact with the other parent. In practice, parents appear to translate this into *their* right to a relationship with the child. However, the question whether this is in the child's interest should be prevailing. This results in complex situations if allegations or suspicions are raised (rightly or not), or if parents simply no longer trust in each other's parenting skills, or if it is unclear what the interest of the child is. For example, it may occur that the conflict escalates in such a manner that it is better for the child to temporarily stop having contact with one parent.

² Bron: CBS 2006

Mandatory parental plan

Since 2009, married and registered parents, either with or without joint authority, and cohabiting parents with joint authority are required to show the court a parental plan³ containing agreements on the division of care and responsibility for the children⁴. The parental plan is aimed at encouraging parents to think about the interpretation of parenthood after the separation at an early stage and make proper agreements on it, so that conflicts are prevented to the highest possible extent. The parental plan is based on 'equal parenthood,' meaning that both parents with authority have rights and duties towards the child in equal measure.

Research conducted by the Wetenschappelijk Onderzoek- en Documentatiecentrum (WODC; Research and Documentation Center) on the functioning of the mandatory parental plan points out⁵ that in reality, it is currently impossible to say whether the mandatory parental plan will result in a better situation for children in the long term. Whether the number of confrontational divorces increased following the introduction of the mandatory parental plan cannot be determined based on the WODC research, either. Further research is required for this. Possibly, the economic situation also causes people to get divorced in a more discordant manner, because people are dealing with financial problems, unemployment, or two mortgages more often. Even though it appears that children are more frequently involved in agreements between parents in recent years, this makes no difference as to the extent to which they are satisfied with the agreements. An interesting finding is that the percentage of divorces in which interim provisions were applied for decreased between 2007 and 2011. This may indicate that the parents themselves manage to agree on solutions more often.

Following this evaluation, researchers Spruijt and Van der Valk state – based on their own research – that the number of confrontational divorces increased since the introduction of the mandatory parental plan. They even mention a 15% increase and a 20% decrease in the well-being of children⁶. The researchers primarily attribute this to the use of the term 'equal parenthood,' which causes parents to fight for an equal division of time and caring tasks, even if this division was different before the divorce. As a result, parents would continue to fight about an equal division instead of a feasible division which is in the interest of the child. Incidentally, the WODC states that these conclusions cannot be drawn based on the research conducted by and commissioned by the WODC⁷.

The interviews conducted by the Ombudsman for children show that professionals believe that due to its mandatory nature, the parental plan has by now become an end in itself instead of a means that allows parents to enter into a

³ Promotion of Continued Parenting and Proper Divorce Act

⁴ Promotion of Continued Parenting and Proper Divorce Act

⁵ WODC, Cahier 2013-8, p.82

⁶ www.trouw.nl/tr/nl/4492/Nederland/article/detail/3603763/2014/02/26/Verplicht-ouderschapsplan-levert-alleen-maar-meer-ruzie-op.dhtml

⁷ Zie: www.wodc.nl/Import_3/index.aspx

dialogue on the care and upbringing of their children. Moreover, professionals state that in the drafting of parental plans, too much emphasis is placed on quantitative aspects (time, money, frequency of contact). The plans are therefore too technical in nature and provide too much room for conflict, and too little room for constructive dialogue. A better balance with qualitative aspects should be struck in these documents: what do parents find important regarding the upbringing, how do we communicate towards each other and about each other to the children, how do we inform each other about the development of the child, what are our qualities as parents that we will continue to deploy after the divorce? According to some, a parental plan should, ideally, be drafted at children's birth, as a working document that evolves along with the child's develops, both before and after a possible divorce. Incidentally, it is still doubtful to what extent children are currently involved in the realization of the parental plan; and whether or to what extent parents are giving sufficient weight to the interest of their children in the process⁸.

Finally, the interviews show that in the experience of many professionals, it is not so much the realization of the parental plan itself that leads to major problems, but the implementation of and compliance to it. The struggle between parents often continues after this, too, or flares up again when circumstances change. An evaluation of the agreements after some time is currently no standard practice.

View of children's rights

Together, the international and national judicial contexts described above determine the playing field in which divorces in the Netherlands occur. With this foundation, the Ombudsman for children formulated a number of basic assumptions that are important when weighing the interests of children in a divorce.

Interests of the child should be a primary consideration

The Convention on the Rights of the Child requires that the interests of the child shall be a primary consideration in all decisions and that a comparative assessment of the impact of a decision on the child as well as its rights shall be made systematically. This applies to the government, but to parents as well.

Parents are primarily responsible

The Convention on the Rights of the Child determines that parents are primarily responsible for the safe upbringing and the development of their children. Parents who decide to separate also have the responsibility for putting the interests of their child first. This means that parents should ensure that their divorce proceeds in such a manner that it damages the child to the least possible extent. More than

⁸ Interesting in this context are the current PhD research of Veronica Smits, LL.M., at the University of Tilburg on the question: 'Is it desirable for a child to be given a place in a legal separation process, and if yes, in which manner can this position be filled in?' as well as the covenant for children drafted by the organization Gezond Scheiden voor Kids (Getting Divorced in a Healthy Manner for Kids).

that, the interests of the child must be their first consideration. And if they are incapable of doing this, they should bring in reliable assistance.

Government obliged to provide support and intervene

If parents who are getting divorced nonetheless appear to be incapable of protecting their children against harm, the government is responsible for protecting the rights and interests of the child. If the threat is so serious that intervention is required, the way in which this should be done depends on several factors, such as the seriousness and nature of the risks for the safety and development of the child, as well as the extent to which the parents are willing and able to sufficiently solve problems under their own responsibility. Here, a parallel exists with the consideration of governmental intervention in the event of child protection in a broader sense⁹.

In the Netherlands, this assessment of seriousness in terms of discordant divorces is made by the court, which, in turn, may be advised by lawyers, the Child Welfare Council, or other youth professionals. The court can then steer towards voluntary assistance, and, as an extreme consequence, impose assistance or a settlement. The court should also involve the opinion of the child itself in doing so. According to the law, this obligation is applicable starting at twelve years, but in practice, courts hear younger children as well, if their development allows it.

Parallel confrontational divorces and child abuse

Experts generally agree that involving children in a confrontational divorce should be regarded as a form of child abuse. Mental violence and emotional neglect can be just as damaging to children as physical violence. If parents use their children as a means of power, if they disparage the other parent in front of the child, or if they even commit violence as the children witness it, it is damaging to children; even if parents act with the best intentions and believe that that they are acting in the child's best interest. It is for a reason that there is an increasing number of such cases in which the Child Welfare Council decides to start a so-called 'protection research' in order to examine whether a placement under supervision is required.

The Ombudsman for children believes that a serious threat to the development of children and emotional neglect, which are a consequence of their parents' confrontational divorce, should indeed be regarded as a form of child abuse. After all, child abuse is defined as "each form of interaction with a physical, psychological, or sexual nature that is threatening or violent to a minor, which parents or other persons with whom the minor has a relationship characterized by dependency or a lack of freedom, impose, either actively or passively, causing or

⁹ The Child Welfare Council uses knowledge on risk and protective factors as well as knowledge on development domains, social assistance, and upbringing. The definition of 'seriousness' is always context-based.

threatening to cause serious damage to the minor in the form of physical or psychological injury.”¹⁰

The national government described its policy on the topic of child abuse in the action plan ‘Kinderen Veilig’ (Children Safe). The approach of child abuse is aimed at preventing, identifying, stopping, and limiting the harmful consequences of child abuse. By now, these four pillars have become generally accepted in the child protection field and are therefore stuck to in this advisory report on the topic of confrontational divorces.

¹⁰ Kinderen Veilig, Actieplan aanpak kindermishandeling 2012-2016, p.11 (Children Safe, Action plan for the approach of child abuse)

Chapter 2 Facts and figures

Numbers

Annually, approximately 70,000 couples with underage children decide to end their relationship¹¹. This means that 1.6 percent of children living at home have to go through a divorce each year. We refer to a confrontational divorce whenever a divorce has such a discordant nature that the parents lose sight of the interests of the other parent and/or the children¹². The consequences for children may entail damage to their development, social-emotional damage, or damage in terms of well-being and prosperity. The exact number of confrontational divorces is not known, but it is estimated that approximately 3,500 children get trapped in a confrontational divorce each year, and that currently, approximately 16,000 children are seriously affected by their parents' confrontational divorce¹³.

Profile of children in a confrontational divorce

A divorce is always a radical change in children's lives. Family relationships change and emotions may run high. One of the parents (or both) will be living elsewhere, and sometimes, children have to move or go to another school. Often, there is less money available to spend, because two households need to be financed. Parents are focused on their own emotions and often, they can devote less attention to the upbringing. A new partner of one or both parents may appear, who possibly has other children. Children can experience feelings of grief, uncertainty, and guilt¹⁴. At the same time, it is known that a divorce is not always harmful to children, for example, if it means peace after a period of conflicts, or if parents separate in relative harmony. Especially children who experienced prolonged and frequent conflicts between their parents have an increased risk of problems¹⁵. For approximately 10 percent of the children, this results in specific negative consequences after the divorce, such as loyalty conflicts, parental alienation, and parental disownment. In practice, especially fathers appear to lose contact with their children in the case of a divorce.

Furthermore, research points out that youngsters who experienced a discordant divorce have a higher risk of delinquency, aggressive behavior, and smoking, and are more likely to have problems such as a low self-esteem, feelings of depression, issues in friendship relationships, a weaker relationship with parents, and more problems at school¹⁶. Moreover, the quality of the contact parents maintain with their children after the divorce is linked to the contact they have with their ex-partner. The arrangement concerning parental access established

¹¹ Number calculated by Spruijt and Kormos (2010), based on the number of divorces per year, an estimate of the number of cohabiting couples that separate annually (De Graaf 2005), and figures on the number of couples with children living at home until the age of 22 years.

¹² Some professionals prefer the term 'conflict divorce.'

¹³ Source: Youth Care Netherlands

¹⁴ Scholieren en Gezinnen 2010, Universiteit van Utrecht

¹⁵ Fischer, T. en De Graaf, P.M., Ouderlijke echtscheiding en de levensloop van kinderen, 2001

¹⁶ Amato, P.R., Research on divorce, 2010

directly after the divorce turns out to be a significant predictor of the degree of the future contact between parents and child¹⁷.

About 75 percent of children of divorced parents live with their mother immediately after the divorce. In 6 percent of the divorces, children live with their father. In 20 percent of the cases, parents are co-parenting after the divorce¹⁸. In the event of co-parenting, the parents have a more or less equal role in raising and housing the children. Co-parenting has advantages, but it is not always the best solution for a child. Research points out that children from co-parenting families have more sad feelings than other children of divorced parents and hope for a reunification of their parents¹⁹. Of the children for whom co-parenting is not at issue, 18 percent have completed stopped seeing their other parent (who is living away from home)²⁰.

Profile of parents in a confrontational divorce

In practice, highly-educated parents relatively often appear end up in a confrontational divorce and go to court for placement under supervision in the case of divorce issues, for example. Professionals explain this from the fact that these parents have the skills and financial resources to continue to litigate against the former partner. However, less highly-educated parents end up in such situations as well. The experience of professionals is that if the communication between parents was poor during the relationship, this dynamic continues after the divorce.

Interviews with professionals point out that roughly three categories of divorcing parents can be distinguished:

1. Parents who arrive at agreements on the implementation of their parenthood to the (reasonable) satisfaction of all those concerned in (some degree of) harmony and consultation (with or without using voluntary mediation).
2. Parents whose emotions run so high that they can only have a conversation with each other under professional guidance, and whose agreements come into being with great difficulty. They are on the verge of a confrontational divorce.
3. Parents whose mutual communication is purely discordant and for whom hurting the ex-partner seems to have become a goal. They lose sight of the interests of the other person as well as those of the children and are constantly in a fighting mode.

¹⁷ De Graaf, P.M. en Fokkema, T., Contacts between divorced and non divorced parents and their adult children in the Netherlands, 2007

¹⁸ Spruijt, E. en Kormos, H., Handboek scheiden en de kinderen, 2010

¹⁹ Spruijt, E. en Kormos, H., Handboek scheiden en de kinderen, 2010

²⁰ De Graaf, P.M. en Fokkema, T., Contacts between divorced and non divorced parents and their adult children in the Netherlands, 2007

Only in the third category, we actually speak of a confrontational divorce. This does not alter the fact that in the first two categories, children may be damaged by their parents' divorce as well.

Incidentally, parents with divorce issues who used to be married or have a civil partnership come into the picture in social assistance sooner than parents who were never married. After all, the latter do not have to go to court if they decide to separate. Unmarried ex-partners often only come into the picture once they take legal action against each other, for example, if contact with one of the parents cannot be established. The fact remains, however, that the same issues can arise with parents who never made an official commitment, and that the recommendations in this report also apply to this group.

Chapter 3 Tools and interventions

Established tools and interventions

Below, an overview of a number of existing and most common tools and interventions in the area of children in confrontational divorces is provided. The purpose of this overview is to draw a picture of the resources available and to give an impression of the existing possibilities. The Ombudsman for children did not strive towards completeness in this regard.

There are interventions that are aimed at arriving at agreements between parents on the divorce, in which the interests of the child are discussed either implicitly or explicitly. Moreover, there are interventions that are aimed at supporting children in issues they experience as a consequence of the divorce. Below, the interventions are clustered in the four pillars that are also used in the approach to child abuse: preventing struggles, identifying struggles, stopping struggles, and limiting damage.

Preventing struggles

If parents succeed to continue the dialogue with each other and arrive at proper agreements at an early stage, their actions result in a prevention of harm to children. As stated earlier, it is not so much the divorce itself that causes harm, but the rise and persistence of conflict²¹.

Mediation

Parents who decide to separate can get guidance from a divorce mediator at their own request. The mediator mediates in reaching agreements on the parental plan, alimony, division of assets and debts, and division of property. Mediation avoids a legal battle, because parents share one mediator instead of having a lawyer each. The official divorce application to the court still must be submitted by a (joint) lawyer. Interesting developments in this regard are the 'separation modules' of legal expenses insurers²².

Collaborative divorce

The American method 'collaborative divorce' is relatively new in the Netherlands. In a collaborative divorce, the future ex-partners, their lawyers, a financial expert, and a coach sit around one table to negotiate right from the start. The ex-partners agree that they will not go to court, but will reach an agreement in consultation. The difference with mediation is that the lawyers²³, who can heighten the tension, and the experts are sitting at the table from the very start and think along about a solution, while everyone treats each other with respect and the joint importance of

²¹ Fischer, T. en De Graaf, P.M., *Ouderlijke echtscheiding en de levensloop van kinderen*, 2001

²² See, for example, DAS Scheidingshulp at www.das.nl/scheidingshulp

²³ Incidentally, lawyers and divorce mediators who are affiliated with professional association vFAS also provide a form of collaborative divorce, which may not include a contract and financial experts, but in which it is attempted to reach agreements by establishing an amicable settlement through so-called four conversations.

the family and the children are kept in mind. Because of this, both quantitative and qualitative agreements can be made that cannot be reached in a confrontational divorce. Optionally, a child coach can be added to the team²⁴. Through the efforts of several professionals, this form is more expensive than a regular mediation process. For some parents, this may be a threshold for choosing this method.

BOR Humanitas

Parents who allow BOR Humanitas to provide them with guidance are assigned a trained volunteer, supported by a professional coordinator, who assist them to jointly reach agreements on care, access, and finances. Parents may voluntarily appeal to this guidance, and, in doing so, avoid a legal process. Experience figures reveal that guidance by BOR Humanitas has a high success rate. In approximately 70 percent of the cases, parents manage to reach a settlement by themselves after the guidance period.

Villa Pinedo

As a platform for children of divorced parents, Villa Pinedo has gotten an important voice in the debate on this topic in recent years. Villa Pinedo makes parents aware of the effects a divorce may have on children by having children share their experiences in training courses, workshops, videos, and publications. By allowing children to speak out, parents are made aware of their responsibility as well as the effects of their behavior.

Identifying struggles

Because divorce issues occur in the private sphere and parents are often focused on themselves and on the struggle, in practice, it appears to take a long time until a possible confrontational divorce and the ensuing problems of children in confrontational divorces are identified, whereas early intervention is essential to prevent further damage.

Lawyers and mediators

Lawyers and mediators are among the first to identify it when a divorce turns into a confrontational divorce. For example, if a parental plan is not established or if a struggle between parents becomes a legal one. Lawyers and mediators can even play an important role in escalating or de-escalating the conflict.

Primary assistance

Confrontational divorces and resulting problems often first spotted by primary social workers, such as general practitioners, youth and family centers, or social work. The extent to which one is aware of the positions of children in such a situation and whether one acts upon it varies by institution and even by professional.

²⁴ Source: Vereniging Collaborative Divorce Holland, www.overlegscheiden.com

School

Often, schools spot the first signs in children who are not feeling good or are experiencing problems at home – for example, through their behavior, mood, or personal care. Again, whether the signals are picked up and whether one acts upon them varies per school and per professional. It may occur that divorce issues is recognized late or not at all, or that children are wrongfully labeled.

Advies- en Meldpunt Kindermishandeling (AMK; Registration Point Child Battery)

Professionals and individuals in the environment of the involved parents and children can obtain information from the AMK on how to act if they identify a child in a fix after its parents' divorce. Moreover, they can file a report if they believe that an investigation into a child's safety is required.

Stopping the struggle

If parents turn out to be incapable of reaching a parental plan or its proper implementation, the court may decide on what the custody, access, and financial division should look like. The court has various tools to obtain information on what this decision should look like. With its decision, the court forces parents to stop the legal battle. In practice, however, the struggle often continues, even after the judicial decision has been made – over the implementation of the agreements reached, for example. Reproaches and procedures accumulate, and the struggle is not ended.

Special curator

The court may appoint a special curator to determine which solution would be in the child's best interest. The special curator is an independent person, to date, often a lawyer, but it can also be a remedial educationalist or a psychologist, and sometimes, a non-professional. The main objective of the special curator is to express the voice and interests of the child towards the court. However, previous research conducted by the Ombudsman for children, *The special curator, a gem? Advisory report on the safeguarding of the voice and interests of children in practice*, points out that only a few special curators were appointed (in general and in divorce cases), and that this possibility was not very well known among citizens, nor among lawyers. The research also reveals that usually, a lawyer is appointed, who may not always have the necessary skills to work with children.

Forensic mediation

Forensic mediation, or parenthood investigation, is a relatively new tool for family courts. The court may appoint a forensic mediator to investigate what an arrangement concerning parental access should look like. The forensic mediator (often a behavioral expert or a team consisting of a behavioral expert and a lawyer) conducts conversations with ex-partners, children, and, possibly, others in the network with the primary objective to test whether the parents are still able

to find a solution themselves. If this partially succeeds or does not succeed at all, the expert advises the court, which then decides on custody, access, and other agreements based on the investigation. In the case of forensic mediation, parents are obliged to cooperate, which forces them to resume the dialogue with each other (possibly a favorable side-effect). A recent scientific study on forensic mediation, conducted by the Council for the Judiciary, reveals that in half of the cases, parents manage to find a solution, either fully or partially, with the help of parenthood investigation²⁵. The courts and experts involved in the recent evaluation of parenthood investigation are positive about the tool. According to them, parenthood investigation serves as a last resort to improve the relationship between persons who have been in a serious conflict with each other for a long time²⁶.

Child Welfare Council research

The court may ask the Child Welfare Council to investigate the situation of a child in the context of a divorce. Which division of care and parenting tasks or which arrangement concerning parental access is in the child's best interest? In 2013, the Council conducted 5,601 of such investigations²⁷. The Council can, of its own accord, extend a case with a child welfare investigation if it appears that a child is seriously threatened in its development during the running investigation. In that case, the Council can request a supervision order for divorce issues from the court, and, in extreme cases, it can request to impose care proceedings. In 2012, this occurred in 21 percent of the custody and access cases.

Limiting damage

The responsibility for support in parenting and upbringing lies with municipalities. Consequently, they should also create a suitable offer for children who are confronted with the consequences of a divorce of their parents, and in doing so, ensure that damage to children is limited.

The access house

Access houses offer children a neutral and safe place for parental access with professional guidance and supervision. Access houses are established in increasingly more regions. The aim is to enhance the parenting skills of (one of the) parents and increase the mutual trust between parents, so that parental access may be taken up independently in due course. Parents can register themselves, but social assistance or the court may also refer parents. For parents and children, it may take conflicts away because confrontations fail to occur, and damage can be limited as children can have contact with (one of) their parents in a safe environment and with less tension. A concern here is that at present, a

²⁵ Kluwer, E., *Het ouderschapsonderzoek: een aanpak bij vechtscheidingen*, 2014

²⁶ Aanbiedingsbrief Raad voor de Rechtspraak, Research Memorandum 'Het ouderschapsonderzoek: een aanpak bij vechtscheidingen' (kenmerk: UIT 7897 STRA / SV), 24 maart 2014

²⁷ Bron: www.kinderbescherming.nl/over_de_raad/feiten_en_cijfers

clear framework or guideline that access houses must comply with is still missing, and that there is great diversity.

Interventions aimed at children

To reduce the adverse effects of a divorce, there are a number of interventions recognized by the Netherlands Youth Institute (NYI)²⁸. The following are a few examples. 'JES! The Zwolle Bridge Project' is a preventive course for children between the ages of 8 and 12 and their parents during the period of the divorce. 'Children in Divorce Situations (KIES)' is a play and discussion group for children from 7 years old and youngsters of divorced parents. 'Dappere Dino's' (Courageous Dinosaurs) teaches children to cope with problems and emotions that surround their parents' divorce²⁹. Naturally, it is also possible that other – recognized or unrecognized interventions – are successful in supporting children; as is the commitment of individual child psychologists and trauma therapists. Incidentally, not all interventions turn out to be appropriate for all target groups. For example, children with more severe or multiple problems need more specialist support. Another important note is that a child-focused intervention may have the unintended negative side effect of a child becoming more aware of the problems and getting more concerned about them, which may result in the child becoming even more trapped in the struggle.

Interventions aimed at parents

Furthermore, there are several interventions available that support parents in their role as parents after the divorce. The following are a few examples. Triple P Family Transitions is a skills training that is aimed at a positive transition process and regaining balance after a divorce, which is accomplished by strengthening the competences of parents and the resilience of children. The method Parenthood Continues is provided in Youth and Family Centers and is aimed at improving communication between parents in the event of a divorce as well as reaching proper agreements on care and upbringing. Parenthood Continues also exists as an indicated offer, aimed at parents and children in the case of whom contact with the parents living away from home does not occur or occurs in a problematic manner. This intervention was recently assessed by the accreditation committee and recognized as well-founded with reservation.

Recent initiatives in the Netherlands

There are several interesting (local) initiatives and developments which deserve to be further elaborated, followed, or monitored. During the research, the Ombudsman for children studied a number of initiatives. As in the previous paragraph, this is not a complete overview of all existing initiatives.

²⁸ Further information: www.nji.nl/Scheiding-Praktijk-Richtlijnen

²⁹ Source: Nederlands Jeugdinstituut, www.nji.nl/scheiding

New session approach: the question model

In 2013, an experiment was conducted with a new session approach in the courtroom, where a strong appeal was made to the parties in order to indicate what they are truly seeking to achieve. Once that is clear, experience shows that the atmosphere of a session changes and a constructive dialogue can be held. The new session model, also known as the question model, functions on the basis of four phases, in which facts are only facts if both parties agree on them and in which all other matters are 'problems' that will be addressed no sooner than in phase 2, including all emotions and feelings that play a role. Subsequently, parties are asked what they truly want, what their goals are, in phase 3. At the end of this phase, the question whether the goals of both ex-partners may receive attention is posed. If yes, this is the starting point for jointly exploring if and through which actions the goals can be realized in phase 4. If there are no common goals, the action in phase 4 may involve a court making a decision. It may also entail a parenthood investigation, which can still lead to both parties being open to each other's goals. In this session approach, the court is expected to adopt an active role and know the facts. The court should be able to ask the right questions and be aware of the range of possibilities for phase 4. This should prevent an accumulation of reproaches and procedures and bring a solution closer³⁰. A judgment that is interesting to mention in this context is that of the Supreme Court at January 17, 2014³¹. In it, the Supreme Court ruled that an active attitude may be expected from a judge in cases involving contact between parent and child, that he should take all appropriate measures, and that he devotes every effort to enable the right to family life. The tasks and attitude that the Supreme Court attributes to the judge in this judgment seem to move towards the role of a directing judge.

Youth Care Office North Brabant: Divorce Expedition

Since March 2013, Youth Care Office North Brabant works with a new method for implementing a placement under supervision in the case of divorce issues. Important basic assumptions are: the child is central, mandatory joint conversations with both parents, setting clear frameworks, and offering divorce education. In the initial conversation with the family guardian, the parents jointly receive information on the implications of a divorce for the development of children. In the follow-up meetings, both parents are present, along with any assistance, to work on a better collaboration as parents. Lawyers do not attend these meetings. Children conduct individual conversations with the youth protection worker. The child's desires and needs are, subject to their consent, brought up in the conversations with parents. If the child is emotionally strong enough, it may express its feelings in a joint conversation. If desired, children receive emotional support in a separate assistance program. For Youth Care Office North Brabant, the new aspect of this approach is that the focus is not

³⁰ A detailed description of this new method can be found in an article in *Trema*, November 2013, *De zitting: naar de kern van de kwestie; verslag van twee experimenten met een nieuw zittingsmodel*, drs. M.J. Smilde en C.R.A.M. van Leuven.

³¹ See www.rechtspraak.nl, ECLI:NL:HR:2014:91

placed on ending the struggle, but on reaching the shaping of joint parenting and, if possible, a faster completion of the placement under supervision based on the needs and emotional safety of children. The method is currently described and monitored and will be evaluated over time. For now, a positive signal is that Youth Care Office North Brabant has noticed a decline in the number of complaints in custody and access cases. Because there is an intensive collaboration with parents and they actually have to get to work, it takes less time to clarify who can offer the child (emotional) safety – at least, it appears to be this way at the moment. Initially, the method seems to be especially suitable for parents who are capable of some degree of reflection and who do not have a psychiatric or violent past.

Youth Protection Table The Hague: parents and child take part in the conversation

Recently, at the youth protection table of the Municipality of the Hague, a new method has been implemented in a number of districts. The youth protection table aims to reach agreements with parents on – as of that moment – formal assistance in order to possibly prevent a child protection order. So: urging, but no coercion yet. In confrontational divorce situations, both parents sit at the table, as does the child, along with the care reporter (this might be someone from the Youth Care Office's voluntary assistance, or someone from the Child Abuse Report and Advice Center) and a neutral chairperson from the municipality. With everyone involved around the table, the concerns are discussed and agreements are made in order to improve the situation within the voluntary framework, so that a board examination can be prevented. The method in which parents and children are present at the youth protection table is unique in the Netherlands. The first signals are positive: parents and children are closely involved in a tailored solution, are aware of the possible routes, and the relationship of trust with social workers is better, because problems are discussed openly.

Guideline for youth care professionals: Divorce and children's problems

The Dutch Association of Psychologists (NIP), the Association of Educationalists in the Netherlands (NVO), and the Dutch Association of Social Workers (NVMW) are developing a guideline for 'Divorce and children's problems' in cooperation with the Netherlands Youth Institute and the University of Utrecht. The purpose is for professionals who are working in youth care and Youth and Family Centers have a uniform guideline for recognizing, identifying, supporting, and treating problems of children and their parents who find themselves in a divorce situation or who are divorced, so that they can expertly deal with the problems. The guideline also provides information on the interventions that can be deployed and the manners in which the collaboration with professionals can be enhanced. The guideline is expected to be ready in 2015.

Methodology Parenthood after divorce and children out of a fix

In Haarlem, the 'Lorentzhuis,' the center for systemic therapy, collaborates with the Kinder- en Jeugd Traumacentrum (KJTC; Child and Youth Trauma Center) to provide a form of therapy which many professionals regard as innovative in the treatment of parents and children who find themselves in a discordant divorce. Multiple divorced parental couples are placed in a group together, and their children are placed in a separate room. The parents are confronted with their own behavior (as well as that of others), which provides them with insight into the impact of their actions. The children work with creative methods to express their feelings about the divorce, and they present their work to the parents. Parents can register themselves for this form of therapy or are referred to it by the Youth Care Office. The willingness of both parents to participate is essential for participation. The VU University Amsterdam is currently examining the method of the Lorentzhuis³².

Knowledge Center Child and Divorce: joining forces of expertise

In the Knowledge Center Child and Divorce in Friesland, interventions and methods regarding divorce issues are combined. Part of the knowledge center is a provincial consultation in which the partners in the chain that are active in the area of divorce and access problems jointly sit around the table and form a tight network. This consultation includes parties such as Youth Assistance Friesland, Humanitas, the Salvation Army, the Youth Welfare Office, the Child Welfare Council, the court, Fier Fryslân, lawyers, mediators, Youth and Family Centers, and neighborhood teams. Because of this, referrals are made in a smooth manner, and children and parents are helped better and faster as the assistance which is needed at a particular moment is deployed. Complex cases come into the picture sooner, and signals can be anticipated at an earlier stage³³.

Judiciary: Pilot Child Coaches

The position of children often remains underexposed. Children need support and someone who represents their voice and interests; if this cannot be done by its parents, it should be done by a professional. In that sense, the special curator is recommended by the Ombudsman for children. In practice, this frequently appears to be a lawyer, while confrontational divorces often already involve enough lawyers sitting around the table, and the child needs attention to be devoted to its well-being rather than (just) its legal position. A pilot is in the works from the administration of justice in which child coaches will be appointed as special curators with the dual task of focusing on the well-being of the child and informing the court. Due to the difficult task and qualities that may be expected from the special curator in such situations, it has been decided to start working with child coaches³⁴.

³² Further information: www.lorentzhuis.nl

³³ Further information: www.jeugdhulpfriesland.nl

³⁴ Among other things, see the announcement in the article of C.A.R.M. van Leuven, LL.M., in *Voortgezet ouderschap en zorgvuldig scheiden, hoe verder?*, Tijdschrift voor conflictantering, 2014/1,

'Front office' Child Welfare Council: intake and advice (triage)

In 2013, the Child Welfare Council made a start with the development and design of a new service: the Front office. Municipalities and healthcare providers can appeal to the expertise of the Council through the Front office – for example, in the area of divorce issues and its consequences for the development of children. If problems in the parenting situation are identified, the Council brings in its expertise at the request of professional partners. Then, a joint risk assessment is made. The Council provides advice on the most appropriate action and constantly weighs carefully between voluntary and compulsory framework. In doing so, the safety of the child is paramount, and parents or guardians and their environment are explicitly involved in the search for solutions.

Child Welfare Netherlands: method complex divorces

Child Welfare Netherlands, the partnership of the regional Offices of Child Welfare, works on the development of a method for complex divorces on a national level. Child Welfare Offices Amsterdam, Drenthe, Friesland, Gelderland, North Brabant, North Holland, Utrecht and South Holland actively collaborate on it. This method provides youth protection professionals with an improved ability to act appropriately if they are dealing with a confrontational divorce. The method is aimed at providing appropriate assistance to parents and children at an earlier stage, and to force parents to stop fighting. The method is expected to be ready in the summer of 2014.

Interesting developments at a global level

Other countries also have experiences that we can learn from in the Netherlands. A small-scale exploration points out that (mandatory) mediation in neighboring countries is a common tool to a greater or lesser degree. Its interpretation, access, and possibilities differ. Moreover, there are experiences with the directing judge as well as mandatory divorce education for parents.

The UK: mandatory mediation

Since 2011, it is mandatory to have tried mediation if one wants to divorce in the UK. As of April 1, 2014, people are even required to follow a 'mediation information and assessment meeting,' which determines whether mediation is a feasible option. In principle, only divorce cases in which domestic violence or child welfare play a role can be submitted directly to court in that event. There are indications that the average duration and costs of divorces in the UK have decreased significantly because of mandatory mediation. Moreover, as of April 1, 2014, separating couples can no longer appeal to legal aid for procedures. It is expected that the popularity of mediation will further increase as a consequence.

Norway: mandatory mediation

In Norway, separating parents are required to take part in (a maximum of) three four-hour mediation sessions before they go to court. These sessions are reimbursed. An interesting fact is that in Norway, people do not speak of divorce mediation or family mediation, but explicitly about parental mediation in order to emphasize the responsibility of the parents, including unmarried parents.

Belgium: no mandatory mediation, but a mandatory parental plan

Despite the repeated advice of the Flemish Kinderrechtencommissariaat (Commission for Children; the Flemish equivalent of the Ombudsman for children), mediation is not mandatory in Belgium. According to the 2007 divorce law, the court must inform both parties on mediation and may refer them to a mediator, but this is no standard practice³⁵. Since 2009, however, a parental plan is mandatory in Belgium.

Germany: the Cochemer Model of the directing judge

In Germany, the approach varies by state. In the Cochem region in western Germany, a method, in which divorces involving children are guided by multiple professionals (court, lawyers, and social workers) as well as the network of parents, has become common since 1992. Collaborating is not so much the goal, but the means for reaching agreements that everyone (parents *and* children) is able to agree on. The method contains a code of conduct for lawyers, which points out the appropriate attitude when the goal is not to win the case, but to find a good solution for the children. The judge has a prominent directing role³⁶.

Canada: mandatory divorce education

In Canada, parents who are separating are required to attend a meeting in which they are informed of the possible impact of a divorce on children, and on the manner in which they can protect their child as much as possible.

United States of America: legal framework for collaborative divorce

In a number of American states, there are Collaborative Law acts in which the Collaborative Divorce has been given a legal framework. A collaborative divorce is a form of mediation in which parents commit to preventing a legal battle and sit around the table with a financial expert, a psychologist, and their lawyers.

³⁵ Advies Kinderrechtencommissariaat 2007

³⁶ Further information: www.ak-cochem.de

Chapter 4 Analysis

Conversations with experts and professionals point out that there is a lot of existing knowledge on the effective elements in the approach to confrontational divorces and bottlenecks that make it difficult to break through the conflict mode.

The following effective elements can be cited:

- Professional guidance tailored to parents and child at the earliest possible stage;
- Making both parents aware of the interests of their children and their joint responsibilities therein;
- Involving both parents in designing a solution;
- Involving children in designing a solution;
- Control over the divorce should lie in the hands of one person in the case of escalation, so that identifications and corrections can be made.

The following bottlenecks that contribute to escalation are cited:

- Often, families come into the picture no sooner than in court and at youth protection, when the escalation is already a fact;
- Parents are focused on their ex-partnership rather than on their joint parenthood;
- Parents are often unaware of their share in the damage to their child; they possess insufficient knowledge on loyalty problems for children;
- Social assistance is often aimed at parents and too infrequently on children;
- There are too many potential accumulated procedures and lawyers do not de-escalate enough;
- Funding for legal aid is too focused on additions and litigations, while making direct investments (in a special curator, for example) can prevent subsequent rising costs;
- There are indications that the emphasis that the current policy places on an equal 50/50 division of the care for children leads to more conflict: equal parenthood does not necessarily stand for an equal division of time. The interests of the child should be paramount, and quantity does not necessarily equal quality;
- There are insufficient possibilities for youth protection workers to induce parents towards psychological investigation, or to induce them to adhere to agreements. A written indication also brings matters in a legal context;
- Professionals are not always skilled or experienced enough to avoid getting sucked into the conflict;
- A court decision results in a winner and a loser: in that case, the battle will not stop;
- Experiences of failure with wrongly deployed interventions may lead to a loss of confidence in social assistance or an escalation of conflicts.

Existing and new interventions: what are the gaps?

The various existing and recently developed tools and interventions that have been described each focus on a particular aspect of confrontational divorces. If we compare the three identified groups of parents against the four pillar or phases, the following matrix can be created:

	Preventing struggle	Identifying struggle	Stopping struggle	Limiting damage
Target group 1: parents arrive at agreements on the implementation of their parenthood in some degree of harmony and consultation	Mediation Collaborative divorce Divorce education, Villa Pinedo, among other things BOR Humanitas	n/a	n/a	Group approach for getting children out of a fix Interventions aimed at children and parents
Target group 2: parents are only able of conducting a conversation under professional guidance; agreements are reached with great difficulty	Mediation Collaborative divorce Divorce education, Villa Pinedo, among other things BOR Humanitas	Lawyers/mediators/AMK/Primary care/School Special curator / child coach Guideline child welfare Method complex divorces of Child Welfare Netherlands	Forensic mediation Question model for session approach Parents and child at the Youth protection table Guideline child welfare Method complex divorces of Child Welfare Netherlands	Group approach for getting children out of a fix Interventions aimed at children and parents
Target group 3: parents lose sight of the interests of the other and those of the children. They are constantly in a fighting mode	n/a	Lawyers/mediators/AMK/Primary care/School Special curator / child coach Guideline child welfare Method complex divorces of Child Welfare Netherlands	Forensic mediation Question model for session approach Council investigation and placement under supervision Divorce Expedition (after placement under supervision) Parents and child at the Youth protection table Guideline child welfare Method complex divorces of Child Welfare Netherlands	Group approach for getting children out of a fix Interventions aimed at children and parents Access house

We see that some interventions focus on the support of parents in reaching agreements or restoring communication, whereas others focus on the emotional support of children or try to ensure that the opinions of children are heard more. Some are aimed at the prevention of pressure or coercion, whereas others try to limit the damage after a supervision order has been pronounced.

It is not necessary or desirable to rate the individual tools. They can function in different manners for different target groups. What is striking is that the existing range seems to provide a fair coverage: on the four pillars, there are (new) tools for all target groups of parents that may contribute to breaking through the confrontational divorce. In practice, however, it turns out that tools are not always available or that they are not effective in all cases. Moreover, for parents who have psychiatric problems, an addiction, or aggression issues, it seems very difficult to break through the confrontational divorce. In the next chapter, the Ombudsman for children will make recommendations to expand the range of tools and, where possible, make it more effective.

Chapter 5 Conclusions and recommendations

Conclusions

According to the Convention on the Rights of the Child, it is a child's right that its parents take responsibility and put its interests first. Another right of the child is that the government supports parents in doing so or intervenes if harm is imminent. The interest of the child should be paramount. By comparing these basic assumptions with the conversations the Ombudsman for children conducted in recent months, the literature he consulted, and the meetings he attended, a picture of the weaknesses in the current 'divorce chain' emerged.

First, the Ombudsman for children concludes that the term 'the interest of the child' is often used as a hollow phrase. Parents often state that they are acting in their child's interest, whereas the continuously accusing, taunting, or fighting the other parent does not fit this. Parents need to shift their focus. They need to take responsibility and realize that they should focus on their *common interest* as parents, namely, their child's well-being. Professionals should support them in maintaining the focus on this common interest.

A second important conclusion is that if a picture of the situation surrounding children is formed at an early stage, and it can be assessed whether a confrontational divorce is imminent, (preventive) appropriate assistance can be provided. This way, legal procedures can be avoided, and serious conflicts are possibly nipped in the bud. Earlier identification, earlier intervention, and controlling from one place seem to be the key concepts. If we look at our neighboring countries, and take their lessons learned to heart, it can be concluded that the Netherlands should strive towards a model in which mandatory mediation, compulsory education for parents, and the employment of a directing judge become standard practice. The standard use of a special curator would be a typically Dutch, yet essential addition.

Below, it is outlined what the best organization of the chain would be according to the Ombudsman for children. As described before, the cited target groups refer to the degree of conflict between the ex-partners, in which 1) parents arrive at agreements in (some degree of) harmony and consultation; 2) parents reach agreements with great difficulty. They are on the verge of a confrontational divorce; and 3) parents seem to have made hurting the ex-partner a goal in itself. They have lost sight of the interests of the other person as well as those of the children and is constantly in a fighting mode.

Roadmap to a divorce: a remote prospect

- Parents who decide to separate, should, at that very moment, already prepare a divorce agreement containing a parental plan as a mandatory component. In addition to the current practice, it should soon be mandatory for all parents to receive support in doing so, either from a divorce mediator or through a collaborative divorce.
- Parents choose a recognized divorce mediator or collaborative divorce practice. If one session is enough to reach agreements, it is sufficient. In the first meeting, parents receive mandatory education on the consequences a divorce can have for children. In any second or third session, parents work on the parental plan (target group 1).
- The parental plan is based on the child's right to maintain a relationship with both parents, provided that it is in the child's best interest. Equal parenthood does not necessarily entail a 50/50 division. From now on, the parental plan should be more than a technical, quantitative document; it should also contain qualitative agreements on upbringing, communication, and a consideration of the child's opinion.
- If the mediator or divorce coach detects that parents have not found a solution after three sessions (target group 2 and 3), and a solution seems far beyond reach, the mediator should be mandated to request a special curator in court, as if (s)he were the person responsible for the child.
- If parents file a petition in court without a parental plan through their lawyers, it is a signal that a confrontational divorce is imminent. The judge should then take over. At that moment, the judge should, as a standard practice, appoint a child coach or a special curator who represents the rights and interests of the child.
- The judge keeps directing throughout the entire judicial pathway and forces parents to stop fighting as soon as possible, for example, through the deployment of forensic mediation, the Child Welfare Council, or by making a decision independently. Parents and children are involved in finding solutions and preventing that compulsory assistance becomes required as much as possible.
- It will become standard practice that the agreements are valid for a year, that litigations will not take place in the meantime, and that after one year, parents will evaluate whether the agreements still comply or should be adjusted. If necessary, parents will sit around the table with a mediator once more, or they will ask the court for enforcement. The one-year period of rest gives parents and children time to get used to the new situation, takes the pressure off with regard to agreements as they do not apply forever, and provides room for consultation.

Recommendations

Below, the Ombudsman for children provides concrete suggestions to actually bring this scenario – this remote prospect – closer.

Preventing

1. Mediation becomes mandatory at an early stage
Recommendation is addressed to: national government, municipalities, Legal Aid Board, lawyers, and mediators
Intervention is aimed at: parents from target groups 1, 2, and 3
All parents who separate (married, registered partners, or cohabiting with joint parental authority) are obliged to receive guidance from a professional. They are the ones to initiate this, and they have to demonstrate this in court when they file an appeal. Parents may choose between divorce mediation (a maximum of three sessions reimbursed by the government) or a collaborative divorce process. If lawyers are consulted at this stage, they should point out this obligation to their client. Municipalities also have an informative role in this regard – for example, through the Centers for Youth and Family. One session will suffice for parents who arrive at a parental plan in consultation. Only after three sessions, parents (target groups 2 and 3) can request a ruling from court.
2. Divorce education will be mandatory at an early stage
Recommendation is addressed to: national government, lawyers and mediators, primary professionals
Intervention is aimed at: parents from target groups 1, 2, and 3
Parents should be made aware of their responsibility and their common interest – namely, the well-being of their children. Considerable knowledge on the consequences of confrontational divorces for children is available. A powerful example is the open letter 'Aan alle gescheiden ouders van Nederland' ³⁷ (To all divorced parents in the Netherlands), which tells parents from a perspective of children of divorced parents what attitude they would have wanted their parents to adopt. Moreover, various videos on children of divorced parents can be found on the internet, as well as all sorts of publications that emphasize the interests and vulnerability of children in divorce situations. However, this information does not always end up in the right place, and it should be made available to parents who decide to separate on a standard basis. This should be done through the first professionals they are dealing with: divorce mediators and lawyers. The national government should ensure this in collaboration with divorce professionals. Primary professionals (general practitioners, social work, centers for youth and family) should endeavor to draw parents' attention to this information.

³⁷ The open letter can be found at www.villapinedo.nl

3. In addition to quantitative aspects, the mandatory parental plan should also describe qualitative aspects, and it should be evaluated
Recommendation is addressed at: lawyers and mediators, family judges
Intervention is aimed at: parents from target groups 1, 2, and 3
Currently, it is not known whether children will benefit from the introduction of a mandatory parental plan. Further research on this is required. Judges and lawyers should aim for parental plans that are not merely technical documents which mainly describe quantitative aspects (frequency of contact, alimony amount); they should also contain qualitative aspects (basic assumptions of the joint parenthood, how do we jointly safeguard the interests of our child?). The focus on an equal division should be shifted to a focus on a division that is based on equality, but that does not need to be strictly fifty-fifty in the interest of the child. An evaluation and potential adjustment of the parental plan after one year should be standard practice, as circumstances change, and because in practice, a strict adherence to the plan appears to result in problems.

Identifying the struggle

4. Strengthen triage at the early stages: finding appropriate assistance sooner
Recommendation is addressed at: municipalities, Youth Care Offices as well as providers of youth and parenting assistance, schools, lawyers, and mediators
Intervention is aimed at: children
Professionals who work with children should have sufficient knowledge on confrontational divorces in order to identify a child getting in a fix. If necessary, an intervention should be made as soon as possible, and it should be ensured that the child receives appropriate support if it is in need thereof. Greater awareness should be raised about interventions aimed at children or parents. If escalation is imminent, one should not (be able to) linger on in the voluntary framework for too long; instead, a council investigation should be considered sooner. Parents should be encouraged to accept such assistance for their children. In preparation for their new tasks in the field of child welfare starting in 2015, municipalities should specifically include divorce issues in their offer of care and ensure that an appropriate offer of care is available at all levels.

5. Standard assignment of a special curator if escalation is imminent
Recommendation is addressed at: family judges, occupational group of special curators
Intervention is aimed at: parents from target groups 2 and 3
If a parental plan fails to be established, and the mandatory mediation goes wrong, this is an indication of an escalation of the case and of an imminent confrontational divorce. This puts the child in a fix, which is sufficient reason for the assignment of a special curator ³⁸ . The mediator should be mandated to request a special curator in court, as if (s)he were the person responsible for the child. At that moment, the judge should, as a standard practice, assign a special curator who represents the interests and voice of the children involved. It is important that the position of the legal arrangement of a special curator is further professionalized through quality requirements, training requirements, and a professional association. Incidentally, lawyers are not necessarily the (only) group that should fulfill this task; professionals with a background in behavioral sciences, of all people, can properly perform this role. The assignment of child coaches as special curators is an interesting development in this regard. The term 'special curator' should be replaced with a more recognizable word, such as children's representative.

Stopping the struggle

6. The judge must be more decisive when taking control in the case of escalation and expressly take the child's voice into account in doing so
Recommendation is addressed at: family judges
Intervention is aimed at: parents from target groups 2 and 3
If the parental plan fails to be established and the struggle turns into a lawsuit, the judge should more decisively take control. Currently, there is still too much accumulation of procedures. It would be better for the judge to force parents to stop fighting at the earliest possible stage. This would be possible by deploying tools such as forensic mediation (additional for minimum wage earners), bringing an access house into the case, an investigation conducted by the Child Welfare Council, or because the judge decides on what custody and access should look like. Such a 'directing judge' should have diagnostic and analytical skills as well as knowledge on the various existing referral opportunities. Attention should be paid to this in the family judge curriculum. The judge should also dare to consider unorthodox solutions, such as a restraining order between parents, if that is in the child's best interest. In this context, the Cochemer model and the new session approach with the Question model methods require further

³⁸ See, among other things, Chamber documents II, 30145, no. 6 and Chamber document I, 30145, E. Also, the response of the State Secretary for Security and Justice to the report of the Ombudsman for children of October 16, 2012, in which he states, "If a child threatens to get in a fix or if it's trapped between its parents during the establishment of an arrangement concerning parental access, for example, the judge may independently proceed to designation. (See, for example, Hof Amsterdam, February 9, 2010, LJN:BL5778)".

exploration.

The judge should be attentive to the fact that the child's opinion is known and taken into account. If this is not the case, the child should still be given the opportunity to express its views, if it wishes to. The tools available (such as a personal letter – drafted with or without the help of the children and youngsters' law center or the questionnaire on the website of the Legal Aid Council – or a child's hearing) should be brought to children's attention in a child-friendly manner.

Limiting damage

7. Turn the involvement of parents and children in the shaping of a solution into standard practice

Recommendation is addressed at: youth care offices and providers of youth and parenting assistance, social assistance, municipalities

Intervention is aimed at: parents from target groups 2 and 3

Both in the stage when a supervision order might be required and in the stage when a placement under supervision has already been imposed, the involvement of parents *and* children in shaping a solution should be paramount, with the aim of limiting the damage to children. Interesting experiences of Youth Care Office North Brabant and the Municipality of The Hague point out that involving parents and children results in solutions that are better supported. This also fits into the trend of system thinking that produced methods such as Individual Power and Signs of Safety, which are increasingly in vogue in the domain of youngsters.

Overarching recommendations

8. Passing on the costs and benefits of the various interventions

Recommendation is addressed at: national government, CPB (Netherlands Bureau for Economic Policy Analysis)

Together with the Legal Aid Council, the national government should ensure an adequate organization of the financing of the system proposed above. This means that processes are designed in such a manner that finding a solution together is more rewarding than following legal proceedings. Insofar as perverse incentives currently exist for this, these should be overcome.

The Ombudsman for children is aware of the potentially considerable cost that mandatory mediation, compulsory divorce education, a directing judge, and the more frequent employment of a special curator incur. However, he expects that the investment in the initial stages pays itself back, as afterwards, there will be less legal proceedings (with endless additions and a high economic burden on the judiciary), and because suffering for children and their parents (with all the required assistance) is prevented. Naturally, the ethical question is even more important: what is best for the children?

The recommendations have been concluded in close conversation with

professionals and experts. The fact that the UK and Norway also have mandatory mediation, that a directing judge is employed in Germany, and that divorce education is compulsory in Canada strengthens the idea of the Ombudsman for children that this is indeed an essential step. The national government should ask the Centraal Planbureau (CPB; Netherlands Bureau for Economic Policy Analysis) to make a cost-benefit analysis of this proposal, compared to the costs and benefits of the current divorce chain.

9. Development of a tool for determining the best interest of the child, specifically aimed at children of divorced parents

Recommendation is aimed at: national government, science

In several areas, there are (internationally recognized) tools to objectively determine what the best interest of the child is in a complex situation. For example, there is a measuring rod for children who are dealing with care proceedings, or detention, or for children in an asylum procedure. The most well-known tool is the Best Interest of the Child (BIC) model, which was designed by prof. dr. M. Kalverboer and dr. A.E. Zijlstra³⁹. Such a tool should also be developed specifically for children in divorce situations. The tool should be thus easy to handle that parents as well as mediators and judges will be able to use it when determining the custody and access arrangement necessary for a child. This way, the best interest of the child can be concretized.

All factors taken into account, earlier detection, earlier intervention, and control from one place seem to be the key concepts. Therefore, the Ombudsman for children calls for a mandatory mediation, compulsory divorce education, a directing role for the judge, and a quicker involvement of a special curator or child coach.

How to proceed?

The Ombudsman for children is aware of the fact that there is no magic wand, no universal cure for protecting children from the negative consequences of confrontational divorces. Sadly enough, there will always be children who get in a fix because their parents shift the main focus to their battle instead of their children's interests. However, together (parents, professionals, and government), we can ensure that there are sufficient tools available to intervene where necessary. Also, professionals should keep children's interests in mind and place these above the interests of the parents. The recommendations above form a foundation for this.

The main recommendation applies to all parties together: stop the fight. Parents, take your responsibility and keep the focus on your common interest as parents: the well-being of your children. Professionals surrounding them, ensure that you are not turned into a third party in the fight; that you do not create a fight between

³⁹ Kalverboer, M. and Zijlstra, E., Het belang van het kind in het Nederlands recht, 2006

professionals alongside the fight between parents; and that you do not allow for procedures to accumulate. Each child is the child of two parents. Let's collaborate around that.

The Ministry of Health, Welfare, and Sports (VWS) and the Ministry of Security and Justice (VenJ) will soon come up with a joint policy plan for the approach of confrontational divorce at national government level. This is a positive step. The theme is high on their agenda, too. And at the National Consultation of Chairpersons of Family and Youth Law (LOVF) of courts in the Netherlands, the association of Family Lawyers and Divorce Mediators (vFAS), and Child Welfare Netherlands, the theme is in the picture as well. The Ombudsman for children hopes to enter into further dialogue on this subject matter with all those involved in the near future.

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Bijlage 2 - IVRK

Verdrag inzake de Rechten van het Kind (materiële rechten 1 tot en met 40)

Artikel 1 Definitie van het kind

Ieder mens jonger dan achttien jaar is een kind.

Artikel 2 Non-discriminatie

Alle rechten gelden voor alle kinderen, zonder uitzonderingen. De overheid neemt maatregelen om alle rechten te realiseren en moet ervoor zorgen dat elk kind wordt beschermd tegen discriminatie.

Artikel 3 Belang van het kind

Het belang van het kind moet voorop staan bij alle maatregelen die kinderen aangaan. De overheid moet het welzijn van alle kinderen bevorderen en houdt toezicht op alle voorzieningen voor de zorg en bescherming van kinderen.

Artikel 4 Realiseren van kinderrechten

De overheid neemt alle nodige maatregelen om de rechten van kinderen te realiseren en moet via internationale samenwerking armere landen hierbij steunen.

Artikel 5 Rol van de ouders

De overheid moet de rechten, plichten en verantwoordelijkheden van ouders en voogden respecteren. De ouders en voogden moeten het kind (bege)leiden in de uitoefening van zijn of haar rechten op een manier die past bij de leeftijd en ontwikkeling van het kind.

Artikel 6 Recht op leven en ontwikkeling

Ieder kind heeft het recht op leven. De overheid waarborgt zoveel mogelijk het overleven en de ontwikkeling van het kind.

Artikel 7 Naam en nationaliteit

Het kind heeft bij de geboorte recht op een naam en een nationaliteit en om geregistreerd te worden. Het kind heeft het recht zijn of haar ouders te kennen en door hen verzorgd te worden.

Artikel 8 Identiteit

Het kind heeft recht zijn of haar identiteit te behouden, zoals nationaliteit, naam en familiebanden. De overheid steunt het kind om zijn of haar identiteit te herstellen als die ontnomen is.

Artikel 9 Scheiding kind en ouders

Het kind heeft recht om bij de ouders te leven en op omgang met beide ouders als het kind van een of beide ouders gescheiden is, tenzij dit niet in zijn of haar belang is. In procedures hierover moet naar de mening van kinderen en ouders worden geluisterd.

Artikel 10 Gezinshereniging

Ieder kind heeft recht om herenigd te worden met zijn of haar ouder(s) als het kind en de ouder(s) niet in hetzelfde land wonen. Aanvragen hiervoor moet de overheid met welwillendheid, menselijkheid en spoed behandelen. Het kind dat in een ander land dan zijn of haar ouder(s) verblijft, heeft recht op rechtstreeks en regelmatig contact met die ouder(s).

Artikel 11 Kinderontvoering

Het kind heeft recht op bescherming tegen kinderonvoering naar het buitenland door een ouder. De overheid neemt ook maatregelen om ervoor te zorgen dat het kind kan terugkeren vanuit het buitenland als het ontvoerd is.

Artikel 12 Participatie en hoorrecht

Het kind heeft recht om zijn of haar mening te geven over alle zaken die het kind aangaan. De overheid zorgt ervoor dat het kind die mening kan uiten en dat er naar hem of haar wordt geluisterd. Dit geldt ook voor gerechtelijke en bestuurlijke procedures.

Artikel 13 Vrijheid van meningsuiting

Het kind heeft recht op vrijheid van meningsuiting, dit omvat ook de vrijheid inlichtingen en denkbeelden te verzamelen, te ontvangen en te verspreiden. Daarbij moet rekening gehouden worden met de rechten van anderen.

Artikel 14 Vrijheid van gedachte, geweten en godsdienst

Het kind heeft recht op vrijheid van gedachte, geweten en godsdienst en de vrijheid deze te uiten. De overheid respecteert de rechten en plichten van ouders en voogden om het kind te (bege)leiden bij de uitoefening van dit recht op een manier die past bij zijn of haar leeftijd en ontwikkeling.

Artikel 15 Vrijheid van vereniging

Het kind heeft recht met anderen vreedzaam samen te komen, lid te zijn of te worden van een vereniging en een vereniging op te richten.

Artikel 16 Privacy

Ieder kind heeft recht op privacy. De overheid beschermt het kind tegen inmenging in zijn of haar privé- en gezinsleven, huis of post en respecteert zijn of haar eer en goede naam.

Artikel 17 Recht op informatie

Het kind heeft recht op toegang tot informatie en materialen van verschillende bronnen en in het bijzonder op informatie en materialen die zijn of haar welzijn en gezondheid bevorderen. De overheid stimuleert de productie en verspreiding hiervan en zorgt ervoor dat het kind beschermd wordt tegen informatie die schadelijk is.

Artikel 18 Verantwoordelijkheden van ouders

Beide ouders zijn verantwoordelijk voor de opvoeding van hun kinderen. Het belang van het kind staat hierbij voorop. De overheid respecteert de eerste verantwoordelijkheid van ouders en voogden, geeft hen ondersteuning en creëert voorzieningen voor de zorg van kinderen, ook voor kinderopvang als de ouders werken.

Artikel 19 Bescherming tegen kindermishandeling

Het kind heeft recht op bescherming tegen alle vormen van lichamelijke en geestelijke mishandeling en verwaarlozing zowel in het gezin als daarbuiten. De overheid neemt maatregelen ter preventie en signalering hiervan en zorgt voor opvang en behandeling.

Artikel 20 Kinderen zonder ouderlijke zorg

Een kind dat tijdelijk of blijvend niet in het eigen gezin kan opgroeien heeft recht op bijzondere bescherming. De overheid zorgt voor alternatieve opvang, zoals een pleeggezin of indien nodig een kindertehuis.

Artikel 21 Adoptie

Het belang van het kind moet voorop staan bij adoptie. Als er voor het kind geen oplossing mogelijk is in het eigen land, is internationale adoptie toegestaan. De overheid houdt toezicht op de adoptieprocedures en bestrijdt commerciële praktijken.

Artikel 22 Vluchtelingen

Een kind dat asiel zoekt of erkend is als vluchteling, heeft recht op bijzondere bescherming en bijstand ongeacht of hij of zij alleenstaand of bij zijn ouders is. De overheid moet proberen de ouders of andere familieleden van alleenstaande gevluchte kinderen op te sporen. Als dat niet lukt, heeft het kind recht op dezelfde bescherming als elk ander kind zonder ouderlijke zorg.

Artikel 23 Kinderen met een handicap

Een kind dat geestelijk of lichamelijk gehandicapt is, heeft recht op bijzondere zorg. De overheid waarborgt het recht van het gehandicapte kind op een waardig en zo zelfstandig mogelijk leven waarbij het kind actief kan deelnemen aan de maatschappij en zorgt voor bijstand om de toegang tot onder meer onderwijs, recreatie en gezondheidszorg te verzekeren.

Artikel 24 Gezondheidszorg

Het kind heeft recht op de best mogelijke gezondheid en op gezondheidszorgvoorzieningen. De overheid waarborgt dat geen enkel kind de toegang tot deze voorzieningen wordt onthouden. Extra aandacht is er voor de vermindering van baby- en kindersterfte, eerstelijnsgezondheidszorg, voldoende voedsel en schoon drinkwater, zorg voor moeders voor en na de bevalling en voor voorlichting over gezondheid, voeding, borstvoeding en hygiëne. De overheid zorgt ervoor dat traditionele gewoontes die schadelijk zijn voor de gezondheid van kinderen, worden afgeschaft.

Artikel 25 Uithuisplaatsing

Een kind dat uit huis is geplaatst voor zorg, bescherming of behandeling van zijn of haar geestelijke of lichamelijke gezondheid, heeft recht op een regelmatige evaluatie van zijn of haar behandeling en of de uithuisplaatsing nog nodig is.

Artikel 26 Sociale zekerheid

Ieder kind heeft het recht op voorzieningen voor sociale zekerheid.

Voorbehoud: Nederland geeft kinderen geen eigen aanspraak op sociale zekerheid maar regelt

dit via de ouders.

Artikel 27 Levensstandaard

Ieder kind heeft recht op een levensstandaard die voldoende is voor zijn of haar lichamelijke, geestelijke, intellectuele, zedelijke en maatschappelijke ontwikkeling. Ouders zijn primair verantwoordelijk voor de levensomstandigheden van het kind maar de overheid moet hen hierbij helpen door bijstand en ondersteuning zodat het kindop het minst voldoende eten en kleding en adequate huisvesting heeft.

Artikel 28 Onderwijs

Het kind heeft recht op onderwijs. Basisonderwijs is voor ieder kind gratis en verplicht. De overheid zorgt ervoor dat het voortgezet - en beroepsonderwijs toegankelijk is voor ieder kind, in overeenstemming met zijn of haar leerniveau. De overheid pakt vroegtijdig schooluitval aan. De handhaving van de discipline op school moet de menselijke waardigheid en kinderrechten respecteren. Internationale samenwerking is nodig om analfabetisme te voorkomen.

Artikel 29 Onderwijsdoelstellingen

Het kind heeft recht op onderwijs dat is gericht op: de ontplooiing van het kind; respect voor mensenrechten en voor de eigen culturele identiteit, de waarden van het eigen land en van andere landen; vrede en verdraagzaamheid; gelijkheid tussen geslachten; vriendschap tussen alle volken en groepen en eerbied voor het milieu. Iedereen is vrij om een school naar eigen inzicht op te richten met inachtneming van deze beginselen en de door de overheid vastgestelde minimumnormen voor alle scholen.

Artikel 30 Kinderen uit minderheidsgroepen

Een kind uit een etnische, religieuze of linguïstische minderheidsgroep heeft recht om zijn of haar eigen cultuur te beleven, godsdienst te belijden of taal te gebruiken.

Artikel 31 Recreatie

Het kind heeft recht op rust en vrije tijd, om te spelen en op recreatie, en om deel te nemen aan kunst en cultuur. De overheid zorgt ervoor dat ieder kind gelijke kansen heeft om dit recht te realiseren en bevordert recreatieve, artistieke en culturele voorzieningen voor kinderen.

Artikel 32 Bescherming tegen kinderarbeid

Het kind heeft recht op bescherming tegen economische uitbuiting en tegen werk dat gevaarlijk en schadelijk is voor zijn of haar gezondheid en ontwikkeling of de opvoeding hindert. De overheid moet een minimumleeftijd voor arbeid en aangepaste werktijden en arbeidsvoorwaarden vaststellen.

Artikel 33 Bescherming tegen drugs

Het kind heeft recht op bescherming tegen drugsgebruik. De overheid moet maatregelen nemen zodat kinderen niet ingezet worden bij het maken of in de handel van drugs.

Artikel 34 Seksueel misbruik

Het kind heeft recht op bescherming tegen seksuele uitbuiting en seksueel misbruik. De overheid moet maatregelen nemen om kinderprostitutie en kinderpornografie te voorkomen.

Artikel 35 Handel in kinderen

Het kind heeft recht op bescherming tegen ontvoering en mensenhandel. De overheid onderneemt actie om te voorkomen dat kinderen worden ontvoerd, verkocht of verhandeld.

Artikel 36 Andere vormen van uitbuiting

Het kind heeft recht op bescherming tegen alle andere vormen van uitbuiting die schadelijk zijn voor enig aspect van het welzijn van het kind.

Artikel 37 Kinderen in detentie

Marteling en andere vormen van wrede, onmenselijke of onterende behandeling of bestraffing van het kind zijn verboden. Kinderen mogen niet veroordeeld worden tot de doodstraf of tot levenslange gevangenisstraf. Opsluiting van een kind mag alleen als uiterste maatregel en dan zo kort mogelijk. Als een kind wordt opgesloten, moet de rechter zo snel mogelijk beslissen of dat mag. Het kind heeft daarbij recht op juridische steun. Kinderen mogen niet samen met volwassenen opgesloten worden. Alle kinderen in detentie hebben recht op een menswaardige behandeling en op contact met hun familie.

Voorbehoud: in Nederland kan op kinderen vanaf zestien jaar het volwassenenstrafrecht worden toegepast.

Artikel 38 Kinderen in oorlogssituaties

Een kind in een oorlogssituatie heeft recht op extra bescherming en zorg. De overheid waarborgt dat kinderen jonger dan vijftien jaar niet voor militaire dienst worden opgeroepen.

Artikel 39 Bijzondere zorg voor slachtoffers

Een kind dat slachtoffer is van oorlogsgeweld of van uitbuiting, misbruik, foltering of een andere wrede, onmenselijke of onterende behandeling of bestraffing heeft recht op bijzondere zorg - in een omgeving die goed is voor het zelfrespect, de gezondheid en de waardigheid van het kind - om te herstellen en te reintegreren in de samenleving.

Artikel 40 Jeugdstrafrecht

Ieder kind dat verdacht, vervolgd of veroordeeld wordt voor een strafbaar feit heeft recht op een pedagogische behandeling die geen afbreuk doet aan de eigenwaarde en de menselijke waardigheid van het kind, die rekening houdt met de leeftijd van het kind en die de herintegratie en de opbouwende rol van het kind in de samenleving bevordert. Ieder kind heeft recht op een eerlijk proces en op juridische bijstand. De overheid houdt kinderen zoveel mogelijk buiten strafrechtelijke procedures.

Voorbehoud: in Nederland krijgt een kind bij lichte overtredingen soms geen juridische bijstand.