

## Summary

This study into the implementation of the revised child protection legislation is an interim evaluation. In 2015, Regioplan has established an evaluation framework, including a set of indicators. It has also carried out a baseline measurement and a state-of-affairs measurement. The present interim evaluation builds on this. The concluding evaluation will take place in 2020. This study aims to find answers to the following problem definition: *How does the implementation of the child protection legislation proceed? Are there bottlenecks or key considerations to pay attention to? What are the interim results of the child protection legislation and to what extent do these results approximate the intended goals?*

### Goal of the legislation

With the legislative amendment, the legislator aimed at a more effective and efficient child protection system. An effectively and efficiently functioning child protection system can be attained by child protection measures that are well aligned, a clear distinction between voluntary assistance and assistance in a compulsory context, and decision-making centring on the child's interest.

This primary goal consists of five subgoals: 1) to make the child's development central; 2) to prevent the improper use of (the extension of) the family supervision order; 3) to guarantee the stability and continuity of the child's upbringing; 4) a transparent and goal-oriented execution of the family supervision order; and 5) a broadening of the access to child protection measures. To attain these goals, the legislation has been adapted.

The Revised Child Protection Measures Act has resulted in far-reaching changes in the material child protection legislation. The changes in the grounds for a family supervision order, related to the new article that makes it possible to terminate parental authority, take care of the first three subgoals.

The legal base of the family supervision order (Art. 1: 255, paragraph 1 Civil Code) has been given a new component, *'the refusal to (sufficiently) accept the necessary assistance'*, to replace *'the (foreseeable) failure of assistance'* included in the old legal grounds for a family supervision order. This is a shift in emphasis, from the result of the assistance to the acceptance of assistance. Thus, the legislator aims to make a clear distinction between a voluntary context and compulsory assistance. Furthermore, the legal grounds for the family supervision order have been changed by means of the addition of the *'acceptable term criterion'*. The aim of the concept of the acceptable term is to strengthen the interest of stability and continuity in the child's upbringing and to prevent improper extensions of the family supervision order. A family supervision order with an out-of-home placement is legal only when it is reasonable to expect that the parents in authority will again be capable of taking responsibility for the child's care and education within an acceptable period.

In the article on the termination of parental authority (Art. 1:266 Civil Code), the term *'acceptable period'* has been formulated as a mirror image of the family supervision order. If the minor is seriously threatened in his or her development, while the parent(s) in authority are unable to take responsibility for the care and education (as meant in Art. 1:247, paragraph 2 Civil Code) within a period that is acceptable in view of the person and development of the minor, then termination of parental authority is the starting point. In addition, the Child Care and Protection Board [called 'the Board' from now on] has been given an advisory function in case of a (possible) extension of a family supervision order with an out-of-home placement after two years, to prevent an improper family supervision order. The juvenile court judge must grant permission to change the minor's residence when the minor has stayed with a foster family for more than a year (the foster parents' so-called right of blockade), to enhance the stability and continuity in the child's upbringing. Point of departure is, furthermore, that in case of a termination of parental authority, the authority (in the form of custody) is assigned to the actual carers (usually the foster parents).

With the new Article 799a paragraph 2 Civil Procedures Code, the opinion of the minor has been given a more central role, to make an improved weighing of the child's needs possible.

To increase the transparency of the family supervision order, an obligation has been included in Article 1:255 paragraph 4 Civil Code to include the actual threat to the child's development in the decision. To make the family supervision order more goal-oriented, child protection has been granted a number of powers, such as the assignment of partial authority in case of an out-of-house placement, the request to establish a parental access arrangement and the request to confirm the written instruction. Child protection has also been authorized to request information from third parties without the parents' consent.

To conclude, the amended legislation has generated a clear hierarchy regarding the submission of a request, while access to the family court judge has been broadened as well. The Board is the primary institution responsible for submitting a request for a family supervision order or a measure to terminate parental authority (although the Public Prosecutor can submit a direct request as well). If the Board decides not to submit such a request, the child's parent or carer is also authorised to request a family supervision order or a termination of parental authority. In addition, the mayor is authorised to request that the Board asks the family court judge to assess the necessity of a family supervision order when the Board has decided to refrain from making such a request.

## Set-up of the study

This study has yielded an interim, periodical picture. As much as possible, our research method and instruments have been in line with those developed by Regioplan. Our remeasuring of the indicator scores and the comparison with the scores of the baseline measurement show whether the child protection system is indeed moving in the intended direction.

The study consisted of four substudies:

1. *Analysis of the registrations and files.*

We have collected the relevant data as much as possible through the Central Bureau of Statistics. In addition, we have requested nation-wide data from the Board. We have also conducted a study of the files, both from the Board and from Certified Institutions of Youth Protection.

2. *Research on jurisprudence regarding the acceptable period.*

The objective of the substudy on jurisprudence was to provide a global overview of the ways in which legal practice deals with 'the acceptable period'. Within the legal area of 'civil law', we have examined cases in which a request for the termination of parental authority has been submitted, based on Art. 1:266 Civil Code, between May 2015 and April 2017. We have obtained the verdicts for the jurisprudence study at Rechtspraak.nl.

3. *Interviews with those involved (professionals of the Board and Certified Institutions, family court judges, and (foster) parents/children.*

To establish to what extent the revised Act meets the goal, we have examined the experiences of the institutions and people involved. To this end, we have conducted interviews with professionals from the Board (n=19), from Certified Institutions of Youth Protection (n=18) and with family court judges (n=6). We have also talked to foster parents (n=18), parents (n=18) and 4 children (aged 12 and older).

4. *Focus groups.*

During the focus group sessions, we have gained more insight into the intended and unintended effects of the new Act on the implementation practice. We have organised five focus group sessions in total: with Board staff members, Certified Institutions staff members, family court judges, staff members of organisations from the local field and, finally, a collective concluding meeting.

## Results of the interim evaluation

### *Making the child's development central*

The ground of 'acceptance of assistance', included in the legal base of the family supervision order, is not strictly applied. Beside acceptance in the sense of 'the willingness to accept help', acceptance is also understood to mean 'being capable of taking away the serious threat to the child's development'. One third of the requests for a family supervision order submitted by the Board show a pattern of acceptance of help and willingness, with the Board nonetheless asking for a family supervision order because the carers are *incapable* of taking away the serious threat to the child's development. According to those involved, the term 'acceptance of assistance' gives rise to more contestation in court. In the voluntary context, the term causes confusion. This can lead to situations in which cases remain uninvestigated for too long, while a (temporary) family supervision order with an out-of-house placement is only requested when crises get very serious. For

this reason, many people involved think the term '*acceptance of assistance*' is ill chosen. Regioplan has concluded that, in practice, the ground of '*acceptance of assistance*' is workable. Yet, this interim assessment presents a subtler picture. These research results give cause to pay serious attention at the next evaluation to the question whether, on this point, the legal base of the family supervision order needs to be adapted.

The ground of the '*acceptable period*' is argued, on the one hand, from the specific perspective of the child and is seen as a pedagogical term, as various factors are weighted against one another. In law, this is called a '*casuistic interpretation by the judge*'. On the other hand, standard periods are taken as a starting point. Figures also show a steady decrease in the average length of ongoing family supervision orders. In case of requests for extension of a family supervision order with an out-of-house placement, the term '*acceptable period*' is interpreted in relation to requests for the termination of parental authority. The measure ending parental authority aims to offer the minor certainty about the location where he or she will be growing up and to prevent improper extensions of family supervision orders. The termination of parental authority is indicated when parents are incapable of taking up their responsibility for the upbringing of the minor within an acceptable period. There has been an increase in the number of custody pupils from 9,320 in 2015 to 10,080 in 2017. After an initial increase, the intake has decreased again, in keeping with expectations. The Act implies that parental authority must be terminated when parents are unable to take responsibility for the minor's upbringing. After 2015, in light of the revised Act, many files concerning family supervision orders that had been extended multiple times in the years before, have been converted into requests to terminate parental authority. The next year this accumulated larger number had been processed, resulting in fewer terminations of parental authority. It might also have been caused by the subtler way in which the procedure to terminate parental authority is started. The study reveals that the termination of parental authority is often, but not always, in the child's interest if the parents are not taking care of the minor. The reasons given for this are diverse.

The reason may be age and whether or not insecurity is experienced about childrearing. When the child has a good relationship with both his or her foster parents and biological parent(s) and does not feel insecure about his or her upbringing perspective (and wants the parents to remain in authority), a termination of parental authority is not in the child's interest. Another reason may be that, although the parent will never be capable of taking responsibility, there is no stable situation to be found except with the parent. That parent is, in fact, the only stable factor for the child. The attitude of the parent can play a role as well, for instance when the quality of the education can still be improved. For parents, parental authority is of great emotional value and sustaining it may be in the child's interest. Finally, the absence of sufficient assistance plays a role, although this is more of a bottleneck in the execution and not a reason to refrain from a termination of parental control, as the jurisprudence shows. The above proves that the term '*acceptable period*' must be interpreted casuistically, and that the goal, seeing to more stability, is not always served by taking away parental authority. Whether or not the minor experiences insecurity about the location of his or her upbringing depends on the situation.

The assessment study also shows that the concerns in the balance are very diverse. This is not only caused by the fact that the factors involved are different for each case, but most of all because it is unclear how the factors should be interpreted in view of the acceptable period. The Act leaves room for the judge to refrain from a termination of parental authority in concrete cases, even though there is no chance that the child will return home. This study has established that a difference of opinion exists with respect to the question how much room there should be for this. We recommend that the different partners in the regions (the Board, the Certified Institutions of Youth Protection, social district teams, Safe at Home) enter into a dialogue about the considerations weighted against one another, to come to a collective deliberative framework that may foster a more consistent decision-making process.

Beside the more child-oriented formulation of the grounds for a protective measure, making the child's development central is also promoted by the obligation to indicate whether a minor older than twelve has been heard and how he or she has responded to the application. Judges emphasize that (in specific courts), professionalism has increased in talking with children. Sometimes, when a minor expresses a clear opinion, this opinion is decisive, for instance in the decision to not impose a termination of parental authority. Although, according to the professionals, the hearing of children aged twelve and older means progress, the study of the files shows that not all children older than twelve are heard (a fifth at the Board and a third at the Certified Institutions). Sometimes, a valid reason is given for not hearing a minor, but this certainly does not happen in all cases.

There is a difference between the chain partners' intention to hear the child and talking to the children involved in actual practice. Good initiatives do occur, but hearing the children needs improvement with respect to both frequency and quality; how can the minor be (further) encouraged to offer his or her opinion? And how can this opinion be part of the decision-making? This also applies to children younger than twelve, who should be heard more often even though this is not required by law, as the focus groups have pointed out.

#### *Prevention of the improper use of (extension of) the family supervision order*

The new grounds for the family supervision order have the additional goal of prevention of the improper use of the family supervision order and of presenting a clear distinction between voluntary and compulsory assistance. For this reason, the Board has been required to assess whether a further extension of the family supervision order with out-of-house placement is desirable when the measure has been in effect for two years or longer. The Board tests this based on the file provided by the Certified Institutions of Youth Protection.. In the final assessment, closer attention might be paid to the question whether the file is of sufficient quality to serve as the base for a marginal assessment.

The aim of the family supervision order should be to provide the kind of assistance that will take away the serious threat to the minor's development within the duration of the measure. This does mean that the assistance provided to the family needs to be in order. This is a concern, however, as has come up in the interim evaluation of the Child Protection Act as well. Our study also shows that there are situations in which a family has been helped with a lengthy family supervision order without an out-of-home placement. At the moment, the current emphasis on a short family supervision order has an adverse effect. When the family supervision order has been lifted and the family goes through a crisis once again within half a year, a new procedure is started for another family supervision order (after a temporary family supervision order). It might bring more peace if the chain partners were to realise that the legislator has emphasized that a long-lasting family supervision order without an out-of-home placement is a real option under the new child protection legislation. These families might also be supported by the child protection system in a so called 'preventive trajectory'. At the moment, however, it is unclear what a preventive trajectory entails and there are great differences between the regions. There are also questions about the legal safeguards in a preventive trajectory. It seems that the goal of the Act, to make a clear distinction between a voluntary and compulsory framework, is not getting accomplished based on the new grounds of '*acceptance*' and '*acceptable period*'. More research into the reach of preventive trajectories and the relation between their legal basis and safeguards is recommended.

#### *Safeguarding the stability and continuity in the upbringing*

The criterion of '*actual threats*' has contributed to a more concrete indication in the Board's opinions and decisions of what the threats and working objectives are. In the decisions made on the extensions of family supervision orders, the serious threat is indicated less often (it is assumed to be present), but they do indicate the actual objectives that need to be worked on.

At this stage, the family plan does not seem to take much shape. The views on its usefulness and necessity among the employees of Certified Institutions of Youth Protection are strongly divided. However, they do generally acknowledge the usefulness of involving a family's social network. Drawing up a family group plan and involving the social network requires a change of culture in which staff members need to be supported and trained. Parents' main interest is to draw up a plan of approach with the child protection worker, but they do not always feel the need for a family group plan.

Child protection workers make use of their new powers, especially where enrolling children in educational institutions is concerned. Compared to the figures of Regioplan, a slight increase has occurred. Requesting information from third parties has also become easier. Yet, with respect to enforcing compliance with indications, in practice not much seems to have changed.

#### *A transparent and goal-oriented execution of the family supervision order*

When a minor is brought up in a foster family, family ties ensue, which in law is called '*family life*' (Art. 8 ECHR). Based on the idea that the child develops family ties with his or her foster parents, the right of blockade has been created for foster parents. Although foster parents usually are aware of this right, the foster parents we talked to have never made use of it. In its findings, Regioplan has argued that the right of blockade generates needless execution costs. Our interim measurement does not confirm this.

Another issue is that, when we start from the need for stability and continuity regarding the minor's residence, as assumed in the amended Act, the actual childrearing and authority should be in one hand. Generally, however, this is not what happens. In practice, after a termination of parental authority, that authority is not invested in the foster parents but in the Certified Institutions.

#### *Broadened access to child protection measures*

In practice, broadening access to the judge, through the Board or otherwise, is not or very seldom applied. Municipal institutions are not always aware of the possibility, while a recognisable procedure for municipalities is lacking. This gives rise to the question whether an investment is needed in making this broadened access to the judge clearer. Another option is to invest in a sound dialogue between the Board and the chain partners on the reasons for either submitting a request for a family supervision order or refraining from it.

#### *A more differentiated picture*

After two years, compared to the outcomes of Regioplan, the developments after the legislative amendment show a more differentiated picture. During the final evaluation, the desirability should be examined of a renewed amendment with respect to the term '*acceptance of assistance*', against the alternative: more debate among the professions (Board staff, Certified Institutions staff, Safe at Home staff, local teams) about how to make the term fit better to the ultimate goal, which is taking away the serious threat to a child's development. Furthermore, additional insight is needed into the existing room to refrain from the termination of parental authority, even when the parents do not offer any child-rearing perspective. Attention should also be paid to the group in need of long-term support; is a long-term family supervision order improper or necessary for this group? Another issue in need of attention is the insight that talking with the child is of vital importance to bringing about his or her thorough protection. Such talks should take place, not only with children aged twelve and older, but also with younger children. The frequency and, most importantly, the quality of such conversations needs attention. Finally, this evaluation has made clear that in the future, more attention should be paid to the question whether the custody context is in need of (more) legal regulation.