EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT)

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Report

to the Dutch Government on the visit to the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

from 7 to 12 October 2024

The Government of the Netherlands has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2025) 18.

Strasbourg, 20 June 2025

Contents

Subject: Treatment of children held in closed residential youth care (*JeugdzorgPlus*) institutions in the Netherlands

Priority issues:

- Full implementation of the legislation in force.
- Development of nation-wide standards both on the manual restraint techniques to be applied in *JeugdzorgPlus* establishments and the training of staff given thereon.
- Every incident resulting in an injury to a child should be the subject of an immediate, comprehensive internal inquiry.
- Introduction of a medical examination after every incident of use of means of restraint on a child.
- Reinforcement of external monitoring of *JeugdzorgPlus* establishments.

Good practice:

- The presence of confidential counsellors in all *JeugdzorgPlus* institutions.

EXECUTIVE SUMMARY

At least since the publication of the 2019 report *"Onvoldoende beschermd, geweld in de Nederlandse jeugdzorg van 1945 tot heden*" ("Insufficiently protected, violence in Dutch youth care from 1945 to the present") by the *Commissie Onderzoek naar Geweld in de Jeugdzorg*, the prevention of violence including ill-treatment in youth care, and in closed residential youth care (*JeugdzorgPlus*) in particular, has been an expressed priority for the Dutch authorities. Nevertheless, allegations of ill-treatment of children by staff working in *JeugdzorgPlus* establishments continue to be reported in national media.

The objective of this ad hoc visit to the Netherlands was to examine the measures undertaken by the Dutch authorities to counter violence amounting to a violation of Article 3 of the European Convention on Human Rights (ECHR) in *JeugdzorgPlus* institutions. To this end, a delegation of the CPT visited three *JeugdzorgPlus* establishments: IHub, location Oost Gelre, in Harreveld; Schakenbosch in Leidschendam; and ViaJeugd in Cadier en Keer.

During this visit, no allegations of deliberate physical ill-treatment by staff of the children in their care were received. On the contrary, most children interviewed by the delegation mentioned that they were treated well by staff. Violence between children did occur and, in general, staff intervened rapidly.

However, the CPT received several allegations from children of excessive use of force by staff, particularly during the application of manual restraint (holding and grabbing) and found reports of several incidents of this nature in the files consulted, resulting in pain and bruising for the child. Further, although manual restraint techniques causing pain are prohibited, from interviews with children and staff alike it became clear that such techniques are still in use. In the view of the CPT, the use of pain-inflicting restraint techniques may very well amount to ill-treatment under the terms of Article 3 ECHR.

As the application of means of restraint may lead to injuries, in the view of the CPT, a medical examination should be introduced after every incident of restraint. Such medical examination is for the benefit of the child, as it would lead to an investigation if injuries were detected, and acts as a safeguard against the use of certain harmful techniques.

To reduce and better regulate the use of manual restraints and other restrictive measures, new legislation had been introduced from 1 January 2024. However, even before its entry into force, it was already known to the Netherlands authorities that the law would not be implemented in full: by means of a letter addressed to the State Secretary for Health, Welfare and Sport, representatives of the closed residential youth care facilities made it clear that they would continue to lock children in their rooms, although prohibited under the new law. Further, in the individual establishments visited, the CPT found that various other provisions of the law had not been implemented in practice. Through its interviews with staff, the CPT learned that safety concerns were often a reason for non-compliance. Specifically concerning the application of manual restraint, the CPT observed confusion as to which techniques are permitted under the new legislation. Also, it could not be guaranteed that all staff applying manual restraint had been properly trained to do so. In this context, the CPT holds that the Dutch authorities should take responsibility for setting child-appropriate standards, and subsequently ensure their proper implementation, to remove the risk of ill-treatment when applying restrictive measures and to protect these children, who are under the care of the state, from violence.

In its report, the CPT recalls the human rights obligation resting upon the Netherlands: it should ensure the safety of children placed by the state in private institutions, in particular through fit-for-purpose inspections and a well-functioning complaints mechanism. While it is positive that the Health and Youth Care Inspectorate has once again assessed its working methods to improve its ability to detect violence against children, its capacity remains limited.

As to the formal complaints mechanism, it appeared that this is rarely used. Further, even if complaints alleging ill-treatment are lodged, there is no certainty that these complaints are properly investigated.

Under these circumstances, the Dutch authorities should seriously consider equipping both the Children's Ombudsman and the Netherlands National Preventive Mechanism with adequate staff and a suitable mandate to carry out complementary monitoring as to the treatment of children in *JeugdzorgPlus* institutions.

I. INTRODUCTION

A. The visit, the report and follow-up

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Convention"), a delegation of the CPT carried out a visit to the Netherlands from 7 to 12 October 2024.

The visit was considered by the Committee "to be required in the circumstances" (cf. Article 7, paragraph 1, of the Convention) and its objective was to examine the measures undertaken by the Netherlands authorities to counter violence, and in particular violence amounting to a violation of Article 3 of the European Convention on Human Rights (ECHR), in closed residential youth care (*JeugdzorgPlus)* institutions, in the light of the 2019 report "Onvoldoende beschermd, geweld in de Nederlandse jeugdzorg van 1945 tot heden"[1] by the Commissie Onderzoek naar Geweld in de Jeugdzorg and the 2024 report "Eenzaam Gesloten"[2] by Jason Bhugwandass, as well as earlier reports on the effective protection from violence of youth placed in these institutions, and various media reports on recent cases of violence within *JeugdzorgPlus* establishments.

It was the Committee's 13th visit to the Netherlands.[3]

2. The visit was carried out by the following members of the CPT:

- Gunda Wössner (Head of Delegation),
- Tom Daems.

They were supported by Marco Leidekker (Head of Division) of the CPT Secretariat, and assisted by two experts: Ursula Kilkelly, Professor of International Children's Rights Law (Ireland) and Heidi Hales, Consultant Psychiatrist in Adolescent Forensic Psychiatry (United Kingdom).

3. The report on the visit was adopted by the CPT at its 116th meeting, held from 10 to 14 March 2025, and transmitted to the authorities of the Netherlands on 24 March 2025. The various recommendations, comments and requests for information made by the CPT are set out in bold type in the present report. The CPT requests that the authorities of the Netherlands provide within three months a response containing a full account of action taken by them to implement the Committee's recommendations, along with replies to the comments and requests for information formulated in this report.

B. Consultations held by the delegation and co-operation encountered

4. At the outset of the visit, on 7 October 2024, the delegation held consultations with senior officials from the Ministry of Health, Welfare and Sport as well as representatives from *Jeugdzorg Nederland*, representing the institutions in charge of *JeugdzorgPlus* facilities. The delegation also met Margrite Kalverboer, Children's Ombudsman, and representatives of the Health and Youth Care Inspectorate (*Inspectie Gezondheidszorg en Jeugd (IGJ)*), representatives of *JeugdStem*[4] as well as persons active in the area of concern to the CPT, including Jason Bhugwandass, author of Eenzaam Gesloten, and Mariëlle Bruning, Professor of Child Law at Leiden University and former member of the *Commissie Onderzoek naar Geweld in de Jeugdzorg*.

On 22 November 2024, the delegation presented its preliminary observations to Vincent Karremans, State Secretary for Youth, Prevention and Sport. Following the presentation, the State Secretary decided to share these observations with Parliament on 19 December 2024 along with a letter setting out action undertaken, or to be undertaken, following the CPT visit.[5] The CPT welcomes such

1. In English: "Insufficiently protected, violence in Dutch youth care from 1945 to the present".
2. In English: "Solitarily Enclosed".
3. The visit reports and the responses of the Netherlands authorities on all previous visits are available on the CPT website: https://www.coe.int/en/web/cpt.
4. Jeugdstem provides confidential counsellor services to *JeugdzorgPlus* establishments.
5. TK 2024–2025 31 839 Nr. 1060.

expeditious action by the Dutch authorities on its preliminary observations. The information contained in the letter has been taken into account in the relevant sections of the present report.

5. On the whole, the CPT delegation received excellent co-operation during the visit from the Dutch authorities at all levels. The delegation had rapid access to the *JeugdzorgPlus* establishments it wished to visit, was able to meet in private with those persons, including children, with whom it wanted to speak, and was provided with access to the information, including information from medical files, it required to carry out its task.

The Committee wishes to express its appreciation for the assistance provided to its delegation during the visit by the management and staff in the establishments visited, as well as for the support offered by its liaison officer from the Ministry of Justice and Security, Nelleke Koffeman.

C. Background and focus of the visit

6. On an order of a juvenile court ("*machtiging"*), a child may be placed in a closed institution for its own protection, in case:

- "youth care is necessary in connection with serious growing up or upbringing problems that seriously impede the development of the young person towards adulthood;

- the admission and stay are necessary and suitable to prevent the child from withdrawing from this youth care or being withdrawn from it by others; and

"

- after all other options, including temporary placement in foster families, ambulant care or open residential facilities have been considered".[6]

The duration of placement in a closed residential youth facility is one year maximum. For an extension, a new order will need to be obtained. The order may be imposed on children as of the age of 12[7] and ends ultimately when the minor reaches the age of 18 years and six months.[8]

7. Alternatively, a child may also be placed in a closed institution following an emergency order (*spoedmachtiging*)[9] or a temporary order (*voorwaardelijke machtiging*).[10] The validity of these supervision orders expires after six months, and four weeks respectively, but a temporary supervision order may be extended. According to the delegation's interlocutors, a significant number of children are admitted on such emergency supervision orders.

8. An order of a juvenile court to place child in a closed institution concerns exclusively children on whom already supervision (*Ondertoezichtstelling (OTS)*) has been imposed by a juvenile court.[11] The supervision is put in place for a maximum of one year but may be extended for one year at a time. The supervision may be imposed on children as of the age of 12 and usually ends when the minor reaches the age of majority (18 years of age).

6. Article 6.1.2 Youth Act.
7. In specific circumstance, a supervision order, including in a closed setting, may be imposed on children younger than 12 years of age. During its initial round of talks with representatives of *JeugdzorgPlus* establishments at the outset of the visit, the delegation was informed that children as young as nine years of age have been accommodated in *JeugdzorgPlus* establishments.
8 Article 6.1.2 (4) Youth Act.
9. Article 6.1.3 Youth Act.
10. Article 6.1.4 Youth Act.
11 See Article 1:255 Civil Code:
"The juvenile court can place a child under supervision of a certified institution if a child grows up in such a way that his development is seriously threatened, and:
a. the care that is necessary for the child or for his parents or the parent exercising custody in connection with the removal of the threat is not or insufficiently accepted by the child, and
b. there is a justified expectation that the parents or the parent exercising custody will be able to bear the responsibility for the care and upbringing referred to in Article 247, paragraph 2, within a period that is considered acceptable in view of the person and the development of the child."

9. Until 2008, children deprived of their liberty for their own protection were accommodated in establishments under the Ministry of Justice (*Justitiële Jeugdinrichting (JJI)*), together with children who had committed a criminal offence.[12] Public concern with this arrangement, combined with the emergence of international standards[13] advocating the separation of children detained on criminal law from those held on civil law grounds, led to the creation of establishments for closed residential youth care.[14]

In the years after 2008, certain justice establishments became closed youth residential facilities and were transferred to the Ministry of Health, Welfare and Sport (*Ministerie van Volksgezondheid, Welzijn en Sport (VWS)*).

10. Since 2015, the legal framework underpinning closed residential youth care is formed by the Youth Act (*Jeugdwet*),[15] as amended, and the underlying Ministerial Decision (*Besluit Jeugdwet*) and Regulation (*Regeling Jeugdwet*).

11. Following the adoption of the Youth Act in 2015, the operational responsibility for youth care was transferred from the 12 provinces to the 342 Dutch municipalities. In this system, municipalities negotiate the price and quantity of services or places to be purchased with youth care providers, following an estimation of need. The CPT was told that this decentralised system leads to a price per child which may differ per establishment.

Municipalities have expressed with increasing vehemence their concerns about this arrangement, which they claim does not come with sufficient financial means to provide for the increasing demand for youth care.[16] Similarly, from financial monitoring by the Youth Authority (*Jeugdautoriteit*)[17] it appears that *JeugdzorgPlus* establishments are barely cost effective, limiting their ability to make investments in care or infrastructure. This financial precarity may explain why most *JeugdzorgPlus* establishments are either part of a much larger care conglomerate (Harreveld) or are in the process of upscaling through mergers (ViaJeugd).

The CPT would like to be informed about any initiatives by the Dutch authorities to improve the financial sustainability of the J*eugdzorgPlus* establishments in the interest of the children whose care they provide.

12. In a deliberate choice to mark a clear break from the bureaucratic legal safeguard-based culture dominant in juvenile institutions under the Justice Ministry, the Youth Act provides that the interaction between child and educator (*groepsleider)* is based on a care plan (*hulpverleningsplan*).[18] [19]

13. Over the course of time, to significantly reduce the resort to restrictive measures, and means of restraint in particular, and to bring consistency to their application, it was decided to regulate restrictive measures more closely. For this reason, on 1 January 2024, the Youth Law was amended by the Act on the Legal Position in Closed Residential Youth Care (*Wet rechtspositie gesloten jeugdhulp*) (See paragraph 56 and further below).

12. See CPT/Inf (2008) 2; paragraph 75.
13 United Nations Rules for the Protection of Juveniles Deprived of their Liberty ("Havana Rules") and European Rules for juvenile offenders subject to sanctions or measures.
14. *Jeugdigen in justitiële jeugdinrichtingen en jeugdzorgplus: gescheiden, maar ook een andere rechtspositie?* Jolande uit Beijerse, Tijdschrift voor Familie- en Jeugdrecht 2016/9; page 36. Letter from the State Secretary for Public Health, Welfare and Sport to Chairperson of the Second Chamber of Parliament on 8 July 2022.
15. Youth Act, Chapter 6.
16. See for instance *Gemeenten komen in financiële problemen door duurdere jeugdzorg*, 8 November 2024, NOS Nieuws, and *Steeds meer jongeren in de knel, gemeenten draaien op voor stijgende kosten van jeugdzorg*, NRC, 2 October 2024.
17. The Youth Authority has been tasked to supervise the financial health of any youth care providers with a minimum turnover in youth care of €2 million.
18. *Jeugdigen in justitiële jeugdinrichtingen en jeugdzorgplus: gescheiden, maar ook een andere rechtspositie?* Jolande uit Beijerse, Tijdschrift voor Familie- en Jeugdrecht, 2016/9; page 36.
19. Article 6.1.4 (5) and (6) Youth Act.

14. On 8 October 2012, a committee led by Rieke Samson, a former high-ranking public prosecutor, published its report on sexual abuse in youth care.[20] This report revealed, among other things, that children placed in an institution by the authorities were twice as likely to report sexual abuse as children living at home.

15. According to the Ministers of Health, Welfare and Sport and of Legal Protection, it became clear to the authorities after the publication of the Samson report that in youth care institutions there was not only sexual abuse, but also physical and psychological violence, sometimes in combination with sexual abuse.[21] Therefore, in 2015, the Government of the Netherlands commissioned Micha de Winter, then Professor of Social Education and Youth Policies at Utrecht University, to study the occurrence of violence in youth care,[22] including in closed residential youth care, in the period since 1945.

16. On 12 June 2019, the Commissie Onderzoek naar Geweld in de Jeugdzorg[23] ("De Winter Committee") published its report *Onvoldoende beschermd, geweld in de Nederlandse jeugdzorg van 1945 tot heden.*[24] The Committee estimated that one in ten children in youth care had experienced violence often or very often. In the years up to 1970, victims mainly reported physical and psychological violence by educators and foster parents. After 1970, the physical violence shifted primarily to children inflicting violence on other children. Further, prevalence of psychological violence became more significant.

17. The De Winter Committee concluded that the authorities of the Netherlands had failed to protect children under the state's care and made 13 recommendations, including recommendations specifically aimed at preventing future harm[25], such as:

- avoiding placement in (closed) institutions as much as possible (Recommendation 4);
- reduction of the group size (Recommendation 5);
- ensuring well-trained staff and pedagogical continuity (Recommendation 6);
- organising proactive, stronger and independent supervision by the Health and Youth Care Inspectorate (Recommendation 11); and,
- discussing violence with children in youth care during admission and afterward (Recommendation 12).[26] [27]

18. In its responses to the De Winter report, the Netherlands' Government acknowledged its failure to protect and offered its apologies.[28] While noting that the recommendations are in line with policy decisions already taken, the authorities accepted by and large the recommendations of the Committee and indicated that it will initiate meetings with the establishments, united in *Jeugdzorg Nederland*, to discuss their implementation.

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20. "Omringd door zorg, toch niet veilig. Seksueel misbruik van door de overheid uit huis geplaatste kinderen, 1945 tot heden" *(Surrounded by care, yet not safe. Sexual abuse of children placed outside the home by the Government, 1945 to the present).*

21. See letter on 12 June 2019 by the Ministers of Health, Welfare and Sport and of Legal Protection to the Chairperson of the Second Chamber of the States General (reference: 1541204-191889-J).

22. These are children who have been placed under the responsibility of the Government in institutions and homes, residential youth care, foster care, in youth mental healthcare and, in the past, even several times in (adult) psychiatry, institutions for the blind and deaf, closed (judicial) youth care and shelters for unaccompanied minor foreign nationals.

23. In English: *Commission for Investigation into Violence in Youth Care.*

24. In English: *Insufficiently protected: Violence in Dutch youth care from 1945 to the present.*

25. The other recommendations concern recognition of the victims of violence and additional research to be carried out.

26. Commissie Onderzoek naar Geweld in de Jeugdzorg; Onvoldoende beschermd, geweld in de Nederlandse jeugdzorg van 1945 tot heden; page 92-100.

27. In his report Eenzaam Gesloten, Jason Bhugwandass made recommendations similar to recommendations 11 and 12.

28. Letters from the Minister of Health, Welfare and Sport and the Minister for Legal Protection to the Chairperson of the Second Chamber of Parliament on 12 June 2019 (TK 2018-2019, 31 015, nr. 174), 8 November 2019 (TK 2019-2020, 31 015, nr. 178) and 21 February 2020 TK 2019-2020, 31 015, Nr 191).

19. Following the publication of the report by the De Winter committee, the prevention of violence in youth care, and in closed residential youth care in particular, has been a policy priority for the Dutch authorities, and it appears to the CPT that the recommendations of the De Winter committee have become guiding in the authorities' approach to preventing violence in *JeugdzorgPlus* establishments.[29]

20. Although a comprehensive review of the current state of implementation of the De Winter recommendations seems to be missing (see paragraph 24 below), a number of recommendations have in fact been adopted as policy. For instance, group sizes have been reduced to a maximum of six children.

21. Other policy associated with the recommendations appears to have developed over time. For instance, Recommendation 4 has evolved from an objective to reduce the placement of youth in a closed, but small-scale setting, to a policy goal to bring placement in a closed residential setting to an end altogether by 2030.[30] This ambitious objective, for which the Dutch authorities have reserved €180 million, has led to prolonged debates in Parliament and with the institutions, with the latter expressing safety concerns; in their view an open setting without the possibility of applying restrictive measures (the use of which by law is limited to a closed setting) may not be suitable for all children currently placed in closed residential youth care. Several authoritative bodies such as the Council for the Administration of Criminal Justice and Protection of Juveniles (*Raad voor Strafrechtstoepassing en Jeugdbescherming (RSJ)*),[31] the Ombudsman for Children (*Kinderombudsman*)[32] and the Health and Youth Care Inspectorate[33] have expressed similar views.

22. In May 2023, the Health and Youth Care Inspectorate began monitoring the transformation of closed residential youth care. On 5 November 2024, the Inspectorate published its conclusions on the transformation process. Besides noting that open youth care is often not appropriate for the children in closed residential youth care, the Inspectorate found that closed residential youth care is not improving fast enough in terms of, inter alia compliance with the Youth Law and that, despite the attention given to the problems in youth care, these have not been resolved.[34] **The CPT would like to be informed about the future of closed residential youth care, whether it will continue to exist and, if so, in which format.**

23. Whatever the outcome of the discussion, during its visit the CPT noted the uncertainty as to the future of closed residential youth care, both within the *JeugdzorgPlus* institutions themselves, including children the delegation spoke with, and with the municipalities which finance them, at times leading to a lack of necessary investment to comply with legal requirements (see paragraph 77 below).

24. In the letter of 12 June 2019, the Ministers[35] state that they shall keep Parliament informed about progress made as to the execution of the De Winter Committee's recommendations. As far as the CPT could ascertain, a comprehensive update was sent to Parliament twice, on 21 February 2020 and 27 October 2020.

Further, the Ministers inform Parliament that they have requested the National Rapporteur on Human Trafficking to include the recommendations of the De Winter Committee in his ongoing research into

29. Letter from the Minister of Health, Welfare and Sport and the Minister for Legal Protection, 21 February 2020.
30. Letter from the Secretary of State for Public Health, Welfare and Sport to the Chairperson of the Second Chamber of Parliament on 8 July 2022.
31. Letter of 6 November 2024 to the state secretary for Youth, Prevention and Sport Mr V. Karremans and state secretary for Legal protection Dr Mr T.H.D. Struycken, about "concerns and recommendations on youth care and child protection" (reference 5674894).
32. Meeting with the CPT on 7 October 2024.
33. Zorgen om hulpaanbod voor jongeren met een complexe problematiek; Eindrapportage af- en ombouw JeugdzorgPlus (gesloten jeugdzorg), Health and Youth Care Inspectorate, October 2024.
34. Zorgen om hulpaanbod voor jongeren met een complexe problematiek; Eindrapportage af- en ombouw JeugdzorgPlus (gesloten jeugdzorg), Health and Youth Care Inspectorate, October 2024.
35. Letter from the Secretary of State for on 27 October 2020; Letter of the Minister of Health 21 February 2020.

the implementation by the Netherlands authorities of the recommendations of three other expert committees, which had examined the presence of sexual exploitation of children in the areas of sports (De Vries Committee), youth care (Samson Committee) and within institutions run by the Catholic church (Deetman Committee).[36]

25. In his report *Building Protection*,[37] which addresses the issue of implementation of recommendations of these three expert committees, the National Rapporteur on Human Trafficking notes that: *"(W)hat is missing is a finger on the pulse with which the government can fulfil its duty of protection. The government does not have a good idea of where it stands with the recommendations and more importantly, it does not know whether children and young people can actually count on better protection against sexual violence. As a result, the government is not sufficiently accountable for the impact of the recommendations on the implementation level and the effects thence. Much has been left to the sectors themselves, while they do not always have the necessary preconditions in place to be able to get started effectively. The government has too little information about developments within those sectors."*[38] [39]

26. After its visit to the Netherlands and the delegation having spoken with many parties, including government officials, academics, representatives of the *JeugdzorgPlus* establishments and resident children, the CPT has come to similar conclusions; the implementation of the De Winter recommendations appears to be considered a collective effort of the parties involved (which includes youth care providers, municipalities and central authorities), without the central authorities taking clear and unambiguous leadership. The CPT understands that this collective responsibility follows the Dutch constitutional order, in which municipalities have a large autonomy as to the execution of tasks delegated to them, as well as the fact that youth care providers are private institutions.

27. In its role as a preventative body, the CPT has never distinguished between private and public institutions or central and decentral government as regards the responsibility of a state to ensure that effective safeguards as to the prevention of ill-treatment have been put in place for persons deprived of their liberty by a public authority; whether a person is deprived of his liberty in a private or in a public institution and whether the central authorities or decentral authorities, such a municipality, a province or a region, is responsible, is immaterial under the terms of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

This position also has a firm basis in the case law of the European Court on Human Rights. The Court has consistently held that the responsibility of a state is engaged if a violation of one of the rights and freedoms defined in the ECHR is the result of non-observance by that state of its obligation under Article 1 ECHR to secure those rights and freedoms in its domestic law to everyone within its jurisdiction. Further, in *Costello-Roberts v The United Kingdom*[40], a case concerning the treatment of a child in a private school, the Court added that the state cannot absolve itself from such

36. The National Rapporteur on Human Trafficking started its research following concerns expressed in Parliament that many recommendations from previous reports on sexual abuse and ill-treatment have been adopted, but that the attention to the actual effect of the measures taken in practice could at times be better (TK 2017-2018 34843 nr. 32).
37. Nationaal Rapporteur Mensenhandel en Seksueel Geweld tegen Kinderen, Bouwen aan bescherming: Onderzoek naar de aanbevelingen van vier onderzoekscommissies naar seksueel geweld in de Rooms-Katholieke Kerk, de sport en de jeugdzorg. 2022.
38. Nationaal Rapporteur Mensenhandel en Seksueel Geweld tegen Kinderen, Bouwen aan bescherming: Onderzoek naar de aanbevelingen van vier onderzoekscommissies naar seksueel geweld in de Rooms-Katholieke Kerk, de sport en de jeugdzorg. 2022.; page 189.
39. The CPT notes that the National Rapporteur on Human Trafficking does not stand alone in its call for more leadership from the central authorities as regards the provision of youth care. The Health and Youth Care Inspectorate has already, on several occasions, urged the Netherlands central authorities to take on their responsibility as to the necessary improvements in the provision of youth care. For instance, by letter dated 9 September 2022, the Health and Youth Care Inspectorate and the Justice Inspectorate jointly addressed the Minister of Justice and the Secretary of State for Health, indicating that the Government fails in protecting vulnerable children by not taking responsibility in improving the access of children to youth care. More recently, supported by the Association of Dutch Municipalities (*Reactie VNG op het Eindrapport Af- en ombouw JeugdzorgPlus*), the Inspectorate calls upon the authorities to take responsibility in ensuring the availability of suitable youth care to children in need.
40. Application 13134/87.

responsibility by delegating its obligations to private bodies or individuals. In other words, a state maintains responsibility for any failure to secure the rights guaranteed under Article 3 ECHR to persons under its jurisdiction, regardless of that state's internal organisation.

28. In further case law, the Court elaborates on the state's positive obligations under Article 3 ECHR and establishes that the responsibility rests with the state to guarantee the existence as well as the enforcement of effective guarantees against ill-treatment, especially when the state is aware of the risk of violence and ill-treatment, which is clearly the case in the Netherlands.

To recall, in the case of *O'Keeffe v. Ireland,*[41] the European Court for Human Rights found a violation of Article 3 ECHR when the Irish state failed to guarantee the implementation and enforcement of such guarantees in respect of children placed in state-financed schools, despite these schools being private institutions. The Court held that it was an inherent obligation of government to ensure the protection of children from ill-treatment, especially in a primary education context, through the adoption, as necessary, of special measures and safeguards.

In *O'Keeffe v. Ireland*, the Court emphasised that the existence of useful detection and reporting mechanisms were fundamental to the effective implementation of the criminal law designed to deter abuse, particularly when the abuser was in a position of authority over the child. A state could not absolve itself from its obligations to children in primary schools by delegating those duties to private bodies or individuals. In particular, the rules in force in Ireland at the time did not refer to any obligation on a state authority to monitor a teacher's treatment of children or provide a procedure for prompting children or parents to complain about ill-treatment directly to a state authority. On the contrary, complaints about teachers were channelled directly to non-state managers, generally the local priest, as in the case of these private schools. Further, the system of school inspectors did not specifically refer to any obligation on the inspectors to inquire into or monitor a teacher's treatment of children, their task being principally to supervise and report on the quality of teaching and academic performance.

With the Court, the CPT holds that to protect children from known risks to their safety, a state should ensure, at minimum, effective special measures and guarantees against ill-treatment in place in both private and public institutions. In the light of the above, **the CPT would like to receive the comments of Dutch authorities as concerns its responsibility in the implementation of the recommendations from the De Winter Committee, which by and large have been endorsed by the Netherlands authorities.**

29. Despite the awareness of the risk of violence within (closed) residential youth care by all parties concerned and the measures taken following the publication of the report of the De Winter Committee, Dutch media continue to report on cases of violence within *JeugdzorgPlus* establishments, such as the use of chokeholds in the *Lindenhorst*[42] and allegations of the application of pain-inducing restraint techniques at *Woodbrookers.*[43] [44]

30. Further, on 11 March 2024, a report on the conditions in two ZIKOS departments[45] in IHub, location Oost Gelre, in Harreveld ("Harreveld"), and the ZIKOS department in Pactum, location Zetten, was published.[46] This report, already mentioned above, was drafted by Jason Bhugwandass, a former resident of a ZIKOS department at Harreveld, and reflects the experiences of 51 former ZIKOS residents in the period between 2015 and 2023. The report was prompted by what Bhugwandass perceived as lax oversight by the Health and Youth Care Inspectorate over the ZIKOS departments.

41. Application *35810/09.*
42. *Met mes op verlof, nekklem en wurggreep: zo ervaren jongeren jeugdinstelling Lindenhorst*, Algemeen Dagblad, 14 October 2022.
43. Omropfryslan.nl/misstanden-zorginstelling-woodbrookers; omropfryslan.nl/pijnprikkels-in-woodbrookers
44. A criminal investigation by the Public Prosecutor into allegations of application of pain-inducing restraint techniques at Woodbrookers led to a decision not to prosecute as no criminal offences had been committed. See omropfryslan.nl/geen-vervolging-in-zaak-woodbrookers-protocollen.
45. ZIKOS stands for "Zeer Intensieve Kortdurende Observatie en Stabilisatie afdeling"(In English: *Unit for very intensive short-term observation and stabilisation*).
46. The ZIKOS departments had six beds each.

Amongst other matters, such as the lack of education and children being locked frequently in their bedrooms, the report contains various allegations of ill-treatment of children by staff and between children themselves,.[47] If confirmed, some of these allegations would be serious enough to qualify as criminal offences.

31. Following the publication of the Jason Bhugwandass report, in an immediate reaction, Dutch municipalities decided to refrain from placing children in the ZIKOS departments. Further, the Health and Youth Care Inspectorate, having been informed a few weeks before about the report's findings, carried out an inspection to the three ZIKOS departments, which confirmed important elements of the report: in Harreveld, children spent almost the entire day alone in their room with the door locked and did not attend any education or therapy, and in Zetten, there were major concerns about the lack of competent staff and the application of pain inducing restraint techniques.

Following the inspection, the ZIKOS departments in both institutions were placed under a procedure of enhanced supervision by the Health and Youth Care Inspectorate, which resulted in demands for improvement and additional visits by the Inspectorate.

32. At the time of the CPT visit, the ZIKOS departments had all been closed.

33. During its visit to Harreveld, the CPT asked about the institutional follow up to the report. The CPT's interlocutors expressed criticism on the report, in particular its methodology, and were of the opinion that not all incidents described had actually taken place and that others had been taken out of context. However, they also said that an internal analysis had made clear that over time, due to a lack of institutional oversight, an oppressive culture had indeed been allowed to develop in the ZIKOS departments, with staff growing overly cautious and protective towards the children who, they emphasise, had a high risk of suicide and self-harm. Therefore, as a lesson learned, the establishment had instituted enhanced managerial supervision over the different units within Harreveld.

At the time of the visit, the CPT was told by the management that several of the staff members who had been working on the ZIKOS departments, and who had been suspended immediately after publication of the report, had not (yet) returned to work. As there had been no complaints lodged with the judicial authorities, no criminal investigation into the allegations of ill-treatment had taken place.

34. The CPT takes note of the institutional follow up given to the Jason Bhugwandass report at Harreveld and would like to be informed about the follow up given to this report at the Zetten institution. Further, the CPT would also like to be informed whether investigations, penal, disciplinary or otherwise, have taken place in respect of the allegations of use of chokeholds in Lindenhorst. Also, it would like to receive information about the measures taken, disciplinary or institutional, in respect of the allegations of application of pain-inducing restraint techniques at Woodbrookers.

47. The basis of the enquiry was a questionnaire sent to several former residents, who had made contact through a chat group. Apparently, the questionnaire did not solicit information about violence or ill-treatment and the allegations included in the report were volunteered by the respondents.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

1. Preliminary remarks

35. At the time of the visit, 11 establishments were mandated to offer closed residential youth care (*JeugdzorgPlus*).[48] Although exercising a public function, *JeugdzorgPlus* establishments are private institutions, contracted to provide services on behalf of the state.

36. With an overall capacity of 546 places, the *JeugdzorgPlus* establishments were accommodating 437 children in total on 2 October 2024[49], which is a sharp decrease from the more than 2 000 children in closed residential youth care only a few years ago.[50] Whilst being a positive development, the CPT interlocutors cautioned that, as a consequence, at present *JeugdzorgPlus* establishments accommodate a concentration of children with complex needs, many of them suffering from serious emotional or behavioural problems, leading to conflicts with the law, at times related to gang- or organised crime. Similarly, it was claimed, that the focus on reducing the number of children placed in closed residential youth care has led to an increase in the number of children with complex needs being placed in open youth care facilities, putting high demands on each establishment to keep the children and staff in the institution safe. **The CPT would like to be informed by the Dutch authorities on the measures envisaged to address the issues raised above.**

37. In the course of this ad hoc visit to the Netherlands, the delegation visited three *JeugdzorgPlus* establishments: IHub, location Oost Gelre, in Harreveld; Schakenbosch in Leidschendam; and ViaJeugd in Cadier en Keer.

38. IHub, location Oost Gelre, in Harreveld was a large, two-storey building in the centre of the village, constructed in the 1990-ies. It was built on large grounds which included a large green space, educational facilities, workshops and a family house, for families undergoing therapy together. IHub, location Oost Gelre, is situated 50km east of the city of Arnhem, towards the German border.

Schakenbosch consisted of an educational facility (*Schakenbosch College*), an administrative building and two separate buildings with a total of 12 living units, outside the town of Leidschendam, in the agglomeration of The Hague.

ViaJeugd was accommodated on large grounds in the village of Cadier en Keer, a few kilometres outside Maastricht, and consisted of a large 19th century castle-style edifice, with four pavilions with living units in its close vicinity as well as a school; one of the pavilions was under renovation. The delegation was shown plans for the establishment's future renovation, which would include the closure of the main building.

Both ViaJeugd and Harreveld, are former juvenile detention centres. In contrast, Schakenbosch was a purpose build facility, which opened in 2013.

39. On the day of the visit, with a capacity of 72, Schakenbosch was accommodating 71 children (of which 66 with a court mandate for accommodation in a closed setting) (99% occupation); in ViaJeugd, for a capacity of 62, there were 55 children (89% occupation) and in Harreveld, there were 32 children for a capacity of 42 (76% occupation). The placement of all the children in these two institutions was mandated by court.

40. The units in the institutions visited were generally mixed gender, apart from a few units where 'vulnerable' girls, frequently with a history of sexual exploitation, were accommodated. Both in Harreveld and ViaJeugd, there were units for boys with a 'forensic profile': Einder 1 and 2 in

48. Staatscourant 19 February 2024, Nr 4876. At the time of the visit, one of these establishments ('s Heerenloo, in Ermelo) did not offer *JeugdzorgPlus,* despite having received the authorisation to do so. A second establishment, Woodbrokers, had been closed.
49. Information provided by the Dutch authorities on 4 October 2024.
50. Information provided by the Dutch authorities on 7 October 2024.

Harreveld, and Albatros in ViaJeugd. In Harreveld, a boy with a 'forensic profile' was accommodated on his own in a unit, while spending most of the day with his peers.

41. During the visit, the delegation was told that Harreveld is most likely to be closed in 2026. Nonetheless, staff and management had some hope that the institution could continue, albeit in a different format. As several of the children will be moved to Schakenbosch, the latter institution had works ongoing to enlarge its capacity and to adapt its infrastructure.

There were also works ongoing in ViaJeugd, although the delegation was informed of the intended closure of ViaJeugd during the presentation of its preliminary observations to the State Secretary on 22 November 2024.

42. The CPT would like to receive confirmation that both Harreveld and ViaJeugd will be closed in the near future, and if so, wishes to receive information about the timelines of those closures. Further, the Committee would like to be informed whether the children currently residing in these institutions will be reallocated to other institutions, and how this will be done, as such transition may represent a high risk to the wellbeing of some children.

2. Ill-treatment

43. For the proper understanding of the CPT role in the prevention of violence, it should be recalled that the task of the CPT is to examine the treatment of persons deprived of their liberty by means of visits, with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment. In other words, the CPT is not an investigative or judicial body, but uses the findings of its on-site visits to formulate recommendations on strengthening the protection against violations of Article 3 ECHR.

To be sure, the scope of Article 3 ECHR goes well beyond physical ill-treatment. Besides acts of deliberate physical ill-treatment such as punching or kicking, or abuse of a sexual nature, negligent professional interventions, such as the painful application of means of restraint, or threats and verbal abuse may also fall within its scope, as do forms of violence between children themselves when insufficient measures are taken to prevent such violence.

In its work, the CPT is conscious of the particular vulnerability of children who are deprived of their liberty.

44. During this visit, no allegations of deliberate physical ill-treatment by staff of the children in their care were received by the delegation. Rather the contrary, most children interviewed by the delegation mentioned that they were treated well by staff. Violence between children did occur and, in general, staff intervened rapidly. Neither did the delegation receive any allegations concerning abuse of a sexual nature.

45. The CPT received several allegations of excessive use of force by staff directly from children, and found several incidents reported in the files consulted by the delegation, in particular during the application of manual restraint, resulting in pain and bruises on the child. For instance, in ViaJeugd, the delegation was informed about a formal complaint in 2023 to the institution's complaints committee about injuries sustained pursuant to the application of means of restraint. The child claimed he was injured in the face and on his arms and legs. (See paragraphs 117 to 121 below).

Further, although manual restraint techniques causing pain are prohibited, from interviews with children and staff it became clear that such techniques are indeed still in use. In the view of the CPT, **the use of pain-inflicting restraint techniques may very well amount to ill-treatment under the terms of Article 3 ECHR**.

3. Living conditions

46. In the prevention of ill-treatment in a place of deprivation of liberty, the quality of the establishment's living conditions play an important role, especially for children who besides deprived of their liberty are also taken out of their familiar surroundings, including their families. With sufficient activities, access to education and appropriate material conditions, such as individual rooms of suitable size, the risk of ill-treatment, in particular amongst children, decreases significantly.

In the context, the CPT notes that in Schakenbosch, every six months the Leiden University of Applied Sciences carries out a survey into the living climate in the establishment. In addition to staff, children are asked to complete a survey, to which they appear to respond in sufficient numbers. Based on the response, the researchers suggest 'points of attention'. For instance, in its report on the first semester of 2024, the researchers concluded that children viewed the quality of the living climate less positively than in the previous semester. **The CPT welcomes this initiative and encourages the institution to take the outcomes of these surveys on board in future policy development.**

47. Material conditions were very good in the three establishments visited and the children interviewed appeared content with their surroundings. All the premises seen by the delegation were clean and in a good state of repair. The children had an individual room of sufficient size, with access to natural light and artificial lighting and suitably equipped with a bed, a desk, and storage space and *en suite* bathing and toilet facilities. The children could decorate their room if they wished. All rooms could be locked from the inside by the child.

In the three establishments visited, the rooms were grouped together in units, which also had a large common space, usually consisting of, at minimum, a TV corner with comfortable seating, a dining room, a kitchen and a staff office.

The three establishments were situated in large, green areas.

48. Despite extensive renovation works, during which window bars had been removed and metal doors had been painted in pleasant colours, the carceral atmosphere in Harreveld and ViaJeugd, former juvenile detention facilities, could not be made undone completely despite the real efforts to create a home-like environment. In particular, in ViaJeugd's castle-like main building, the high ceilings, long, narrow corridors and high windows were reminisced of the juvenile prison it once was.

49. In Harreveld, several children claimed that they had not been outdoors for several days in a row. It concerns children accommodated in units situated on the first floor, without direct access to a yard. Apparently, in these units, outdoor exercise had to be requested and could be refused when the staff was too busy.

Similar complaints were received in Schakenbosch, which is surprising as the school is located in a separate building and all living units have access to a secured yard. **The CPT recommends that the Dutch authorities ensure that all children accommodated in closed residential youth care have an entitlement to enjoy daily outdoor exercise for a minimum of two hours.**

50. Within the institutions, the therapeutic interventions were directed at restoring a child's independence and autonomy and create a positive self-perception, including through emotional regulation. The approach was pedagogic rather than medical, although several children were found to have been prescribed medication, at times related to a psychiatric disorder.

51. Almost all children interviewed followed a form of education for most of the day on weekdays (9h to 15h), either in the form of regular secondary education or in the form of vocational training. For this purpose, the three institutions visited had a school on their grounds. These schools were organisationally independent from the youth care establishments they serviced and received inspections from the Inspectorate of Education. The three schools were well-equipped with sport facilities, workshops (including training kitchens) and classrooms. If the appropriate education could not be provided by the school on the grounds, children would be inscribed in a school in the community.

52. During their spare time, children could watch television, play video games, do sports or make music. Further, staff organised additional in-house activities, such as cooking, gardening or playing board games, or outings to a forest, a climb wall, fishing pounds or paintball center. In Harreveld, horse riding was an option. The children interviewed appeared to value these activities.

53. The children had ample contact with the outside world, including through leave, visits and phone calls. The rules in place in the three institutions visited, allowed the children in principle to access to their mobile phones. Further, none of the children complained about access to a doctor, and all had been seen by a doctor or a nurse upon admission. All three establishments had contact with hospitals or health clinics in case specialist care was needed. Psychiatric care was also accessible, although ViaJeugd at the time of the visit was without a psychiatrist, due to retirement. **The CPT would like to be informed whether ViaJeugd meanwhile has the guaranteed availability of psychiatric care if needed.**

4. Restrictive Measures

54. The CPT findings suggest that the risk of ill-treatment is most important in the context of the application of means of restraint (see paragraphs 44 and 45 above). These findings confirm the concerns raised by certain of the CPT interlocutors with the delegation at the outset of the visit.

55. In January 2024, chapter 6 of the Youth Act was amended through the Act on the Legal Position in Closed Youth Care (*Wet rechtspositie gesloten jeugdhulp*), including by introducing Article 6.3.2. on "restrictive measures".

In terms of the Youth Act, "restrictive measures" comprise the application of means of restraint (manual restraint and segregation in a safe room or a child's own unlocked room or other living space), body and room searches, the obligation to undergo a medical treatment as well as measures such as urine tests, electronic surveillance and certain restrictions on means of communication (letters or visits) or activities.[51] The law also requires the *JeugdzorgPlus* establishments to register the application of restrictive measures and send statistics twice a year to the Health and Youth Care Inspectorate.[52]

56. The law specifies that restrictive measures may only be applied to a child when included in a care plan,[53] and with the objective of:

a. guaranteeing the safety of a child or others;
b. averting danger to the health of a child or others; or
c. the achievement of the objectives intended by youth care for the development of the child, which are included in the care plan.[54]

57. Further, restrictive measures may only be applied under the conditions that:

a. there are no less onerous alternatives for the child, in view of the intended purpose;
b. the measure is proportionate in relation to the objective pursued; and,
c. it can reasonably be expected that the measure will be effective.[55]

58. Also, a decision to apply a restrictive measure must be put in writing and justified, and a copy of the decision should be given to the child. The child must be informed that a complaint may be lodged, and that advice and assistance maybe requested from the confidential counsellor. The application of a restrictive measure is phased out as soon as possible in consultation with the child.

51. Articles 6.3.2.2 to 6.3.2.5 Youth Act.
52. Article 6.7.3 Youth Act.
53. Article 6.2.10 (d) Youth Act.
54. Article 6.3.1.1 Youth Act.
55. Article 6.3.1.2 Youth Act.

59. If a restrictive measure has not been provided for in a care plan, it may only be applied in case of an emergency, to be approved by a "behavioural specialist" (*gedragsdeskundige*), usually a psychologist or a pedagogue.

The exception to this rule is the case of segregation in a safe room, which by law is the only restrictive measure that may not be included in a care plan, and therefore may be used only in case of an emergency.

60. The care plan is to be established within six weeks of arrival in the institution and updated as required. As far as the delegation could ascertain, all children who had stayed longer than six weeks in the establishments visited had an individual care plan. The delegation went through these care plans and found that, in general, the care plans were well-drafted, written in a child friendly language and personalised. All care plans contained a section on the application of restrictive measures. These sections tended to be well-elaborated and well-motivated, setting out in detail under which circumstances which restrictive measure might be applied, for how long and who could make such a decision.

61. As provided for by law, the care plans reflected the views of the children and evidenced the consultation with parents or legal representatives. The law provides for the possibility that a confidential counsellor be consulted as well (see paragraph 136-142 below). In a few cases, this did indeed appear to have been the case.

62. However, an important number of children interviewed told the delegation that they had not had a significant influence over the content of their care plan or did not seem to understand its importance. It is important that the child's views are taken into account during the drafting of their care plan and that the child is adequately supported to participate in a meaningful way in this process. **The CPT recommends that, as a rule, a confidential counsellor should be included in the process of constituting a care plan, unless the child, the parent or legal representative opposes such presence. In such decision-making process, due attention should be paid to the views of the child.**

63. The CPT welcomes the objective behind the 2024 amendment to the Youth Act, intended to fill a vacuum in which restrictive measures, and means of restraint in particular, were applied without a proper legal framework.

a. means of restraint: the legislation and its implementation in practise.

64. In line with CPT standards, mechanical means of restraint are not allowed in closed residential youth care. Instead, the Youth Act authorises the application of two types of means of restraint: manual restraint[56] and segregation.[57]

i. manual restraints

65. The Youth Act authorises both holding *("vasthouden*") and grabbing ("*vastpakken*") to guarantee the safety of a child or others, or to avert danger to the health of a child or others.

According to the children interviewed, holding and grabbing occurred almost every day, but usually only after verbal de-escalation techniques were unsuccessful. In most cases the children interviewed did not perceive these restraint measures as excessive. They also reported rarer incidents in which several staff from different wards would be called to physically restrain a child. Some children reported distress observing such techniques being used on other children.

66. Dutch law[58] stipulates that it is the responsibility of the establishments offering *JeugdzorgPlus* to ensure that manual restraints be applied in a "proportional" and "responsible" manner, and it restricts the right to their use to those who have been trained in its "proportionate" and "responsible"

56. Article 6.3.2.2 (a) Youth Act.
57. Article 6.3.2.2 (e) (f) Youth Act.
58. Article 6.2.3.1 Ministerial decision on Youth Act.

application.[59] Further, although not explicitly stated in the Youth Act, according to the CPT interlocutors, including from the Ministry of Health, Welfare and Sports, it must be understood from the law that the manual restraints techniques in use may not induce pain. This view was confirmed in a recent response by the State Secretary to questions posed by a member of parliament.[60]

67. The delegation found that staff in the institutions visited were struggling with the introduction of the proportionate and responsible use of manual restraint techniques in practise, despite training that individual establishments have apparently provided.

For instance, from interviews both with staff and children alike, the delegation learned that pain inducing techniques were still in use. In ViaJeugd, a girl claimed that during a staff intervention, her arm was placed behind her back and pushed upwards, causing pain.[61] She also mentioned that her arm had been twisted as well as her wrists, and that during the intervention she fell against a bench, causing bruising to her shoulder. Other children described a pain-inducing technique in which the thumb is pushed towards the wrist.[62]

68. From discussions with staff, the delegation learned that the new techniques were not considered as effective as those no longer allowed. For instance, in Harreveld, on 23 September 2024, a child was prevented from absconding by staff pulling him down from a fence. After initially being unable to restrain him, they successfully reverted to a technique no longer authorised: pushing the arms of the child behind his back.

Further, the delegation learned that structural staff shortages[63] led to high numbers of temporary staff being employed by the institutions, and as a result it was not guaranteed that all staff applying manual restraints had received the necessary training. Indeed, the delegation's observations suggest that temporary staff were regularly involved in incidents associated with the application of manual restraints, including when a child's arm was broken. (See paragraph 101 below).

Also, several staff members interviewed said that it was not clear to them which techniques are allowed under the new legislation and which are no longer permitted. This lack of clarity led to hesitation, uncertainty, and reluctance on the unit floor.

69. During its discussion with representatives of the *JeugdzorgPlus* establishments at the outset of the visit, the delegation learned that there is neither a nationwide certified training in manual restraint techniques, nor a list of techniques considered to be fit for purpose. *JeugdzorgPlus* establishments organise their own training, which they offer to staff.

70. As to temporary staff, the arrangements differ per establishment. For instance, in Schakenbosch the delegation was informed that the institution worked with a permanent pool of temporary staff members, who participate in the training sessions organised for permanent staff. In ViaJeugd, staff were recruited through a specialised agency, which supposedly also provided their training in restraint techniques applied in that institution.

71. In his letter dated 19 December 2024, the State Secretary reported to Parliament that the directors of the establishments offering *JeugdzorgPlus* decided to better monitor that only staff, including temporary staff, who had received training could apply manual restraints and that, where necessary, training would be improved.

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59. Article 6.2.3.4 Ministerial decision on Youth Act.
60. Vragen van het lid Bruyning (Nieuw Sociaal Contract) aan de Staatssecretarissen van Justitie en Veiligheid en van Volksgezondheid, Welzijn en Sport *over het niet vervolgen van medewerkers van Woodbrookers naar aanleiding van de aangiften van oud-cliënten* (ingezonden 6 november 2024), TK 2024-2024 Aanhangsel 903.
61. The delegation understood that this technique is called 'butterfly' (*vlinder*).
62. The delegation understood that this technique is called 'goat's foot' (*bokkenpootje*).
63. In Schakenbosch approximately 30% of the staff complement would always consist of temporary staff members, due to the obligation on the establishment to participate in tender procedures for certain contracts, and the risk of losing such contracts after a few years. In its '*Trendanalyse Financiële ontwikkelingen in de jeugdzorgsector'*, published in December 2024, the Youth Authority indicates that reliance on temporary staff members is diminishing, but remains significant.

72. While appreciating the increased vigilance at the level of the establishments offering *JeugdzorgPlus*, the CPT holds that the Netherlands authorities should consider developing nation-wide standards both for manual restraints techniques and training. The CPT visit has shown that the application of prohibited manual restraints techniques, as well as manual restraint techniques poorly applied, may result in pain and injury for children. Therefore, the CPT considers that systematic training as well as clarity about the techniques which may or may not be used, is an important aspect of the prevention of ill-treatment. During their meeting with the delegation, representatives of the *JeugdzorgPlus* establishments said that they would welcome guidance in this area.

73. The CPT agrees with many of its interlocutors and others, such as the researchers of the Verwey-Jonker Institute,[64] that, in line with the recommendations from the De Winter Committee, efforts should be made to reduce the number of temporary staff employed in *JeugdzorgPlus* establishments. In their report analysing incidents reported to the Inspectorate in 2019 and 2020, the Verwey-Jonker Institute underpins this position. The report notes that a high turnover and proportion of temporary workers affect continuity in the institutions and causes unrest, which negatively affects children, and especially children who are in need of consistent standards of care. It states that this may have an impact on the development of conflict and aggression, not only between children but also towards staff. It observes that, although temporary staff are often experienced and skilled care providers, their irregular employment entails certain risks and impedes the building of trust in the relationship with a child on which good quality care depends, also making it more difficult to assess how to act when challenging situations arise. Moreover, temporary staff do not always receive the same training and education in managing incidents of physical violence as more regular care providers, and thus may be less aware of the action protocols.

74. In a meeting with the Netherlands authorities on 7 October 2024, the delegation asked about plans to tackle the lack of qualified permanent staff. It was informed that, in the future, it will be possible to recruit on a permanent basis employees working for several youth care providers at the same time. Whilst the CPT welcomes this innovative approach, it appears that this may only reduce cases of inappropriate application of restraint when there is a broad consensus on the nature of manual restraint techniques to be applied, as part as a broader general approach towards to the preservation of safety in closed residential youth care.

75. **The CPT recommends that the Netherlands authorities take responsibility for the development of nation-wide standards both on the manual restraint techniques to be applied in *JeugdzorgPlus* establishments and the training given therein, including training as a team. This should be part of a broader training programme on the prevention of violence, to include de-escalation techniques and other methods to defuse a situation of potential or actual conflict situation. Such training should also ensure that staff understand the impact that the use of (manual) restraint may have on children, and that they know how to care for a restrained child.**

ii. segregation

76. From interviews with the children, the delegation learned that segregation could be resorted to in case of physical or verbal conflict between the young people, physical attacks on staff, material damage or to return the child to baseline behaviour.

Segregation may take place either in an unlocked room, the child's own or another living space or, exclusively in the case of an emergency, in a special "safe space" (or "safe room"). As to the latter, the ministerial decision sets out the requirements in detail. These include that such a safe space must be, *inter alia* equipped with access to daylight, artificial lighting, a temperature controller, a ventilation system and a clock, and that its walls, doors, floor and furniture have been designed to prevent injury. Further, from the safe room, the child must be able to access a sanitary facility without staff assistance.

64. "Geweldsmeldingen en calamiteiten in de jeugdzorg. Analyse van risico's en interventies", Katinka Lünnemann, Maarten Kwakernaak, Mathilde Compagner, Marije Voorwinden, Utrecht 2021.

77. The CPT welcomes the above-mentioned detailed physical requirements as to the safe space. However, it appears that fulfilling these requirements may demand substantial investment, which is not always made, among other things due to the persistent uncertainty as to the future of certain establishments. For instance, after having closed its 12 separation rooms, Harreveld requested funding for four safe spaces and received money for one, which it constructed on the ground floor of the two-storey building. As the institution has only one ground floor safe room, it cannot use the safe space for children remaining on the top floor as it is unsafe and thus prohibited to transfer a restrained child down a flight of stairs. Consequently, the institution improvises and segregates children in one of the many empty bedrooms or former segregation rooms.

78. In his letter of 19 December 2024, the State Secretary for Youth, Prevention and Sport announced his intention to discuss with the Association of Dutch Municipalities (*Vereniging Nederlandse Gemeenten (VNG*)) the lack of investment in the safe rooms required for the institutions to comply with legal requirements. **The CPT would like to be informed about the outcome of the exchanges of the State Secretary for Youth, Prevention and Sport with the Association of Dutch Municipalities as regards the investments needed in *JeugdzorgPlus* establishments to comply with the Youth Act, particularly in respect of safe rooms.**

79. At the time of the visit, the safe room in Schakenbosch was under construction. In Harreveld, the safe room consisted of two bright rooms, one with a sanitary annex with a sink, a toilet and a shower. The first room was a "chill room", a cosy room with a small table and beanbags to sit on. The adjacent, interconnected room with the sanitary annex contained a bed. As the room had been badly damaged by the first child that had been accommodated in the room, it was out of order when the delegation visited Harreveld. Apparently, it had suffered extensive water damage after the water pipes underneath the sink in the sanitary annex had been broken.

In ViaJeugd, the delegation visited the safe room located in the institution's main building. The room was equipped with a bed and a beanbag to sit on as well as sanitary facilities. There was a window which let in sufficient natural light, as well as an intercom, for direct communication. In its report on the ViaJeugd safe room, the Health and Youth Care Inspectorate noted that the sanitary facility was not resistant to vandalism.[65] ViaJeugd was requested to remedy this situation.

80. The delegation observed in the files it consulted and learned from interviews with children and staff that, in ViaJeugd, girls to be segregated were usually brought to the safe room located on the *Albatros* unit, a unit for 'forensic boys', in the establishment's main building. These included girls accommodated in the *Evenaar* unit, a unit for vulnerable girls, many of whom have been victims of sexually transgressive behaviour at some point in their lives. The delegation did not hear any complaints from the girls about inappropriate language or other forms of harassment when placed in the safe room, and it understands that the segregated girls do not mix with the boys accommodated on that unit. Nevertheless, the CPT considers that such placement is inappropriate, due to the risk of 'retraumatisation', in particular as the Albatros unit deliberately only houses boys, due to some of them having previously displayed sexually transgressive behaviour.

81. In the view of the CPT, despite the fact that the decision has been taken to close both Harreveld and ViaJeugd, as long as these institutions are accommodating children in a closed setting and restrictive measures are applied, including placement in a safe room, the conditions of its execution should comply with the legislation in force. **The CPT recommends urgent measures to be taken to ensure compliance of the safe rooms in *JeugdzorgPlus* establishments with the rules in force. Further, the CPT recommends that the safe room on the Albatros unit no longer be used for girls.**

82. The law provides that a qualified behavioural scientist (a psychologist or pedagogue) must assess within three hours whether the segregation is necessary and appropriate to averting the emergency[66], and that it shall be ensured that the condition of the child be checked at least once every fifteen minutes. Segregation in a safe room may last one day, to be extended once by a

65. https://www.igj.nl/binaries/igj/documenten/rapporten/2025/01/13/kennisgeving-verscherpt-toezicht-via-jeugd-cadier-en-keer/Rapportbrief+vervolgtoezicht+JeugdzorgPlus+Via+Jeugd+Cadier+en+Keer.pdf
66. Behaviour scientists were present in the three institutions visited.

qualified behavioural scientist for a further 24 hours. Further, if the child so wishes, they have the right to be in direct contact with the educator.

83. The CPT welcomes these legal provisions but considers that, in addition, a debriefing should be held with both the child who has experienced the segregation and separately with any child who may have witnessed the segregation, both to ensure their well-being and to provide an opportunity for the child to be heard as part of any post incident review.

In the establishments visited, the delegation was told that, in practice, debriefings of children having undergone segregation do take place. However, according to the children interviewed, these debriefings either did not take place (see paragraph 116 below) or they were focused on the child taking responsibility for the behaviour that led to the segregation. **The CPT recommends that children accommodated in a *JeugdzorgPlus* establishment who are subject of or witness to segregation or the application of another means of restraint, are debriefed and supported in a child-appropriate manner, with their views heard and taken into account as part of the post incident review process.**

84. As regards placement of a child in an unlocked room, including at night, by joint letter of 19 December 2023, the establishments offering *JeugdzorgPlus* reported to the State Secretary for Health, Welfare and Sport not to be in a position to implement the Youth Act in full in this respect. The establishments announce the continuation of the practice of locking children in their rooms, in particular at night, due to safety concerns. Mitigating actions, such as the recruitment of more staff to work at night, were rejected due to high costs and labour market scarcity. The institutions express their intention to monitor the number of times children are locked in their rooms.

In his response, dated 7 March 2024, the State Secretary indicates his surprise at the position expressed by the establishments as the law had been based on policy already in place in the establishments, but shares the view that the institutions have the duty to ensure the safety of children and staff alike. He concludes by reminding the institution of their agreement to report about the frequency of incidents of children locked in their room.

85. During exchanges both with staff members and management, dissatisfaction was frequently expressed with the legal prohibition to lock a child in their room. In both Harreveld and ViaJeugd, additional temporary staff members had initially been recruited to reinforce the staff complement during the night. At the time of the visit, these arrangements had been ended. In both Harreveld and ViaJeugd, an electronic system had been installed that would notify a night watch if a child would leave their room at night. Despite such measures, although no longer legal, the practice of locking children in their own room, including at night, was a frequent occurrence in all three establishments visited.[67]

86. In his letter to Parliament dated 19 December 2024, the State Secretary mentioned that in a consultation with representatives of the establishments offering *JeugdzorgPlus,* he had stressed the importance of advancing in setting conditions conducive to the proper implementation of the Youth Act, and that in this context priority should be given to what is needed for institutions to comply with the prohibition of locking children in their rooms. **The CPT would like to be informed by the Dutch authorities of the measures be taken to implement the law in practise as regards the prohibition of locking children in their rooms.**

67. The Health and Youth Care Inspectorate made similar observations in: https://www.igj.nl/zorgsectoren/jeugd/publicaties/rapporten/2024/10/25/eindrapport-zorgen-om-hulpaanbod-voor-jongeren-met-complexe-problematiek

iii. body searches

87. The Youth Act authorises that a child may be searched for contraband. To this end, the institutions visited had drawn up detailed working instructions, which appear to be in conformity with the Youth Act.

88. The legislation in place specifies that during a body search, a child may be asked to undress but stipulates that the child searched should always remain in their underwear.[68] However, in ViaJeugd, the delegation was told by children that in case of suspicion of possession of illicit substances and other contraband, certain children were required to dress in a gown and subsequently remove all other clothing. Then they were told to repeat movements such as squatting, bending over, and jumping with the legs spread, for any contraband hidden inside the body to fall out. From its discussions with staff, the delegation understood that this procedure was applied on the Albatros unit only and is intended to preserve safety for staff and children.

89. In his letter to Parliament on 19 December 2024, the State Secretary reported that the described procedure was discontinued immediately after the CPT visit to the ViaJeugd on 11 and 12 October 2024 and that he had notified the Health and Youth Care Inspectorate about this improvised search procedure. **The CPT would like to be informed about the follow-up given by the Health and Youth Care Inspectorate to the notification of the State Secretary for Youth, Prevention and Sport, as well as the follow-up given by ViaJeugd, including about the new procedure put in place.**

iv. obligatory medical treatment

90. After consultation with a doctor[69] and with their consent,[70] a care plan may include medical treatment, including the administration of medication, to be taken by a child and that a "person responsible for the provision of youth care" (*jeugdhulpverantwoordelijke* (usually a registered child psychologist or registered specialist in youth care))[71] can oblige a child to undergo these treatments. The treatment is carried out by a doctor or, on their behalf, by a nurse. The delegation understood from certain interlocutors that authorisation by a judge is needed as well, while others seemed to be unaware of the need for such authorisation.

91. The CPT is puzzled by this provision as it appears that the inclusion of forced medical treatment in a care plan lowers the threshold for its use. The Youth Law makes clear that when obligatory medical treatment, which is a restrictive measure, is not in the care plan, it may be applied in cases of emergency only. If it is included in the care plan, the threshold for its application lowers to the requirements of Article 6.2.10 (d) Youth Act, that is: guaranteeing the safety of a child or others; averting danger to the health of a child or others; or the achievement of the objectives intended by youth care for the development of the child, which are included in the care plan.

92. It seems to the CPT that the Youth Law offers a rather broad mandate to impose medical treatment on a child, which appears to exceed the concept of medical necessity, usually applied in case were forced treatment is considered. Here the CPT recalls that the ECHR has held in its case law that as a general rule, a measure which is a therapeutic necessity cannot be regarded as inhuman or degrading, but that the Court nevertheless examines whether the medical necessity has been convincingly shown to exist and that procedural guarantees for the decision exist and are complied with. In this context, the CPT also notes with surprise the absence of an express requirement to involve the child's legal representative in the decision-making.

Although the delegation during its visit to the three establishments had not encountered a single case of medical treatment forcibly imposed on a child and moreover the medical staff spoken to assured the delegation that they would always seek consent for a medical intervention, the CPT has

68. Article 6.2.9.1 Ministerial Decision.
69. Article 6.2.9.4 e Youth Act.
70. Article 6.2.10.3 Youth Act.
71. Article 2a Ministerial Decision.

misgivings about a legal provision entitling non-medical staff to initiate medical treatment without the consent of the child.

The current drafting of Article 6.3.2.3 (b) could potentially lead to a conflict between the "person responsible for the provision of youth care", who may wish to initiate a medical intervention for the achievement of the objectives intended by youth care for the development of the child, which are included in the care plan, and a doctor tasked to execute this decision.

93. To avoid such conflict, albeit currently theoretical, the position of the CPT is that, in principle, only a doctor should decide whether medical treatment needs to be forcibly administered, taking into account its urgency and the risks to the child.

As to the latter, the CPT is concerned that a proper estimation of the risk associated with medication, in particular when forcibly administered, is negatively affected in two of the three institutions visited, by the absence of a complete overview of the medication taken by a child with the medical staff. Children could undergo medical treatment, including the administration of medication, during home leave or a visit to the hospital, without the medical staff of the institution being informed; the medical service relies on the educators to update them on medicine use or medical interventions undergone by a child, leaving ample room for oversight. (See also paragraph 101 below.)

94. More generally, in cases when a child's health requires forced medical intervention, a transfer to a hospital, either psychiatric or general, should be considered.

95. The CPT recommends that the Netherlands authorities ensure that the medical file of a child accommodated in a *JeugdzorgPlus* establishment is complete and contains relevant data on all medical interventions taking place during their stay in the institution. This includes assuring that records of medical interventions are sent directly to the establishment's medical team. Further, it would like to be informed about the precise procedure to be followed in order for this provision on nonconsensual or even forced medical intervention to be applied in practice, including the role of the child's legal representative and whether or not judicial scrutiny is part of such procedure.

b. registration

96. Since the entry into force of the amendment to the Youth Act on 1 January 2024, the Health and Youth Care Inspectorate requests biannual updates on the use of restrictive measures, including means of restraint from each *JeugdzorgPlus* establishment.[72]

97. Although the CPT very much welcomes this initiative, its findings on registration practices in the establishments visited suggest that, although it may be possible to detect trends from the data provided, it is very unlikely that the information thus gathered approaches the reality of the practice of restrictive measures in *JeugdzorgPlus* establishments.

Comparing the aggregated data provided by the establishments to the delegation about the application of restrictive measures, with information obtained from interviews with staff and children and files consulted, the delegation found on several occasions that the registration of the application of restrictive measures was lax, unclear and, at times, simply incorrect.[73] Such defective registration not only concerned the data to be provided under the terms of the Youth Act, such as length of application, but also the legal obligations related to the application, such as the check at 15 minute intervals by an educator.

98. The CPT recommends that the Dutch authorities ensure the establishment of a dedicated register for the application of restrictive measures, including means of restraints,

72. Article 6.7.3.2 Youth Act.

73. From the files seen by the delegation, it became clear that certain cases of use of segregation had not been registered. However, this concerns pre-2024 cases only. Certain staff members said that they could not guarantee that all cases of application of restrictive measures had been properly registered as of 2024, but the delegation could not find confirmation of such omissions in the files it consulted or from the interviews it held.

in each *JeugdzorgPlus* establishment. The entries in the register should include the time at which the measure began and ended; the circumstances of the case, including a detailed description of the events leading to the application of restrictive measures; the reasons for resorting to the measure; the name of the behavioural scientist ordering or approving the measure; staff who participated in its application; an account of any injuries sustained by children or staff, and any after incident review conducted including the views of the child concerned. Further, children should be entitled to attach comments to the register and should be informed of this entitlement; at their request, they should receive a copy of the full entry. Also, the CPT would like to receive the data submitted by the three institutions visited as to the application of restrictive measures in 2024.

5. Safeguards

99. Besides the above-mentioned conclusions as regards the Youth Law and its implementation in practice, the CPT findings suggest that improvements are required as regards investigations into incidents having caused injury and internal and external monitoring (in particular in respect of the complaints mechanism and the inspection procedure).

a. inquiry in the event of injury

100. Besides providing a report to the Health and Youth Care Inspectorate (see paragraph 125 below), it should be considered part of the duty of care of a *JeugdzorgPlus* institution to inquire immediately and comprehensively about the cause of any injuries sustained by a child under its care, in particular when the injury is associated with the physical intervention of a staff member "necessary to preserve the safety for the juvenile and for others", as the Youth Act preconditions.

Besides establishing the "proportionality" of the intervention and whether the use of the restraint was "responsible", such inquiry also provides important information to management on the ability of staff to intervene appropriately during moments of agitation and aggression, and on the experience and welfare of children subjected to means of restraint.

101. The CPT finds that, at present, such immediate and comprehensive inquiry into sustained injuries does not systematically take place. For example:

In Schakenbosch, on 9 September 2024, a girl sustained a broken arm during a restraint procedure. From the cursory internal recording, it was not possible to understand the sequence of events, or whether the injury was caused by the unskilled application of a manual restraint technique, or by a fall during its application. The girl's medical file does not contain the outcome of the medical examination carried out by the hospital where the girl was treated for her injury, and indeed contains no reference at all to the broken arm.[74]

The incident was duly reported to the Health and Youth Care Inspectorate, and the delegation was told that an internal inquiry had been ordered to take place. However, at the time of the delegation's visit to Schakenbosch, one month after the incident, this internal inquiry had not yet begun. **The CPT would like to be informed about the outcome of the internal inquiry by Schakenbosch and the lessons learned from the incident, as well as the outcome of any inquiry carried out by the Health and Youth Care Inspectorate.**

In ViaJeugd, on 18 September 2023, a child lodged a complaint with the complaints committee about injuries sustained pursuant to the application of means of restraint four days prior, on 14 September 2023. In particular, the boy mentioned visible injuries to his arms and legs, and swellings to his eye and face (see paragraph 116 below).

During an investigation by the complaints committee, which began two days after the incident and was subsequently aborted (see paragraph 117 below), staff confirmed the presence of visible

74. It was explained to the delegation that during their placement in Schakenbosch, children keep their own General Practitioner, who may – or may not – have received the report on the hospital's medical intervention. This was confirmed by the State Secretary in his letter to Parliament on 19 December 2024.

injuries: swelling to both the child's eye and head. However, in the daily report of the department responsible for this part of the intervention (the establishment's security staff), no details were provided; it only mentions that the intervention took place. Further, the medical record of this child, examined by the delegation's doctor, does not refer to any injury sustained by the child, nor does it contain any information on a visit by a medical professional following the incident.

102. In neither example was an immediate investigation carried out by the establishment despite confirmed injuries to the child.[75] **The CPT recommends that, in addition to being reported to the Health and Youth Care Inspectorate, all incidents having caused injury to a child should be subject to an immediate, comprehensive internal inquiry, as an expression of the responsibility of the state for a child in its care.**

103. At the same time, the CPT notes that such immediate and comprehensive internal investigation would have been seriously hampered by:

- the flaws in the internal registration of both incidents, as either relevant information had been omitted or the description of the incident was too cursory to understand the course of events;
- the absence in the medical files of both children of any information about injuries sustained in the course of the interventions, as no medical examination had been carried out by the healthcare staff attached to the institution;
- relevant information is spread over different registers.

104. The CPT considers that defective recording and reporting seriously impedes an inquiry into incidents, including those resulting in allegations of ill-treatment. For institutions to be able to investigate these incidents, the quality of daily recording (and reporting) would need to improve significantly.

105. In its exchanges with staff about recording practices, the delegation noted that some staff members consider that an obligation to record is firstly an additional burden on their already extensive workload and secondly a sign of distrust in them and the diligence with which they do their work.

The CPT considers, conversely, that the proper recording (and reporting) of incidents offers staff an opportunity to demonstrate their competence and conscientiousness, and protects the institution for which they work, and therefore them, against claims to the contrary. Further, proper recording (and reporting) enables an organisation to learn and to improve, and could thus very well lead to increased job satisfaction. Finally, it is important to note that in the case of children deprived of family care in particular, these records form a personal account of their lives, and this places an added importance on their personal files being complete and accurate.

106. In his letter of December 2024, the State Secretary informs Parliament that the establishments offering *JeugdzorgPlus* have committed to ensuring that the registration of incidents improves where necessary. The CPT welcomes this explicit commitment and **would like to be informed about the specific measures taken at the level of the establishments to ensure the proper recording of incidents, including those leading to the application of restrictive measures.**

107. As the application of means of restraint may lead to injuries**,** a medical examination after every application of a restraint is for the benefit of the child, as it prevents certain harmful techniques from being used, and would lead to an investigation if injuries were detected. It also protects children, staff and the institution against unfounded claims.

In the event that an injury is found during a medical check, the record drawn up after the medical examination should contain a description of the injury, both the staff member and the child's accounts of the cause of the injury and the medical practitioner's observations indicating the consistency between the accounts received and the objective medical findings. Further, injuries should be

75. Although in the case of Schakenbosch the institution's management said to have requested such investigation, this had not been carried out at the time of the delegation's visit, one month after the incident.

photographed and filed in the medical record of the child, and all types of injuries should be recorded in a special trauma register.

108. In his letter of 19 December 2024, the State Secretary wrote to Parliament that, together with the *JeugdzorgPlus* establishments, he would reflect on how a medical check after each incident "which can cause injury" could be optimally introduced. **The CPT welcomes the intention to introduce a medical check by a medical professional after every incidence of restraint, and would like to receive an update as to its implementation.**

b. internal and external monitoring

109. Monitoring through a meaningful complaints mechanism and effective inspection procedures are basic safeguards against ill-treatment. Further, in the Netherlands, besides complaints and inspection procedures, a third, similar safeguard exists: the confidential counsellor.

110. The CPT recalls that the European Court of Human Rights in *O'Keefe v. Ireland* has stressed that the state should have effective safeguards in place for the detection of ill-treatment in privately run institutions where children are placed on behalf of the state, in particular if there is a known risk of harm to them. The Court mentioned in particular that the complaints system as well as the inspection should be geared to this purpose. Also, the De Winter Committee had issued stark recommendations as regards particularly the functioning of the Inspectorate (see paragraph 17 above).

111. As foreseen in the Youth Act and the underlying Ministerial Decision, upon admission in the three establishments visited, all children received precise information about the complaints procedure and were told about the confidential counsellor visiting the establishment. This was confirmed by many of the children interviewed during the visit.

i. complaints mechanism

112. Children accommodated in *JeugdzorgPlus* establishments may complain to various bodies, including the Ombudsman for Children. The CPT was informed that, to date, the Ombudsman has never received a complaint.

113. The Youth Act provides that every youth care institution must have a complaints committee, which is mandated to receive complaints about *inter alia* the conduct of persons working for youth care institutions, the implementation of a child protection measure, and imposed restrictive measures.[76]

A complaint concerning a restrictive measure must be dealt with by a complaints committee consisting of a lawyer and a behavioural scientist. A medical doctor or psychiatrist will be added to the committee if the complaint concerns a medical intervention.[77]

114. The Youth Act statutory complaints procedure consists of two steps: a complaint may be lodged with the internal complaints committee. As a second step, an appeal is possible with the *Council for the Administration of Criminal Justice and Protection of Juveniles,* (*Raad voor Strafrechtstoepassing en Jeugdbescherming (RSJ)*).

115. While the CPT welcomes the existence of such a statutory procedure and has no particular remarks as regards its functioning, it has questions about its efficacy and possibly its consistency with Council of Europe's Guidelines on Child-friendly Justice (in particular Chapter 5 (e) on access to a complaint mechanism).[78] A complaint by a child appears to be a relatively rare phenomenon. For instance, for 2024 in Harreveld, there were five complaints and three for 2023, and in ViaJeugd

76. Article 4.2.1 (1) Youth Act.
77. Paragraph 6.5 Youth Act.
78. Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice adopted by the Committee of Ministers of the Council of Europe on 17 November 2010 and explanatory memorandum.

the delegation counted nine complaints for 2023 and six for 2024.[79] In respect of Schakenbosch, apparently there were zero complaints in 2023 and only one in 2022.

As to the appeal procedure, in 2024 one appeal case was brought to the RSJ, which did not concern the application of restrictive measures, but an alleged breach of privacy.[80]

116. The CPT was concerned to note that, if a complaint is lodged, there is no certainty that it will be heard by the complaints committee, even in the event the complaint alleges ill-treatment and there are visible injuries. For example, on 18 September 2023, in ViaJeugd, a child lodged a complaint about injuries sustained pursuant to the application of means of restraint four days earlier, on 14 September 2023. The child stated that he was visibly injured in the face and on his arms and legs. He also alleged that, due to his throat having been compressed, he was unable to breath. Further, he claimed to have hit his head against a door, causing swelling to his eye and the rest of his face.

Two days later, the complaints committee started an investigation. As a first step, on behalf of the complaints committee, a staff member discussed with the child whether he would wish to enter mediation. The child decided to pursue the complaint. In the meeting report, dated six days after the lodging of the complaint, the staff member gives more precise details about both the meeting and the event which led to the complaint.

As to the details of the event, the child claims that he became agitated and that two educators manually restrained him by holding his hands behind his back. The child claimed that this caused him serious pain in his arms, that he mentioned this to the educators, but that they did not listen. The report states that this led to him resisting even more. Two security officers then became involved, who allegedly both sat on him, giving him the sensation that his throat was squeezed, that he was unable to breath and that he was about to faint. Whilst being placed in a "*time out room*", he hit his head against the door, causing swelling to his eye and face. He remained in the room for four hours. No debriefing with the child had taken place between the event and the visit of the staff member.

Further, the report states that educators working at the child's unit confirm that, the day after the incident, both the child's eye and head were swollen. However, the daily report of the ViaJeugd security service provided no information beyond that they had been asked to intervene. The report ends with the staff member advising the child to see a nurse in case of physical complaints.

The medical record of this child, examined by the delegation's doctor, does not refer to any injury sustained by the child, nor does it contain any information on a visit to a medical professional following the incident.

117. The report dated 24 September 2023 referred to above, which indicates that the child wished to pursue the complaint, was the latest information available to the delegation. When the delegation asked about a follow-up, it was told that the child had withdrawn the complaint, and that the complaints committee had therefore discontinued its work.

118. The CPT has serious concerns about this course of events. The confirmed presence of injuries suggests that the complaint cannot be immediately dismissed as merely unfounded. Further, the CPT notes that its delegation was neither provided with a reason for the withdrawal of this complaint (after the child had initially insisted on bringing the complaint forward), nor was it handed the written withdrawal request by the child, an obligatory formality according to paragraph 9 of the ViaJeugd Complaints Procedure ("*Klachtenregeling ViaJeugd*").

79. In ViaJeugd, two complaints (one in 2023 and one in 2024) were lodged by the confidential counsellor, on behalf of a child.

80. Since the entry into force of the Youth Care Act in 2008 to date, 47 appeal cases have been handled by the RSJ: one case in 2008; none in 2009; five cases in 2010; 10 cases in 2011; eight cases in 2012; four cases in 2013, five cases in 2014, three cases in 2015; three cases in 2016; four cases in 2017; no cases in both 2018 and 2019; one case in 2020; two cases in 2021; no cases in 2022 and 2023; one case in 2024; and in 2025 no case to date. Since 2014, none of the cases concerns restrictive measures.

Also, given the serious nature of the complaint and the presence of testimonies which may have confirmed the allegation comprised in the complaint, the CPT would have expected the complaints committee to enquire from the child in person about the reason behind the withdrawal, in order to ensure no pressure was exerted on the child in this regard. If such an enquiry had taken place, the CPT was not informed.

In addition, as far as the CPT is aware, the complaint was not shared with the ViaJeugd management, despite Article 4.2.2 Youth Act offering such a possibility in case the complaint concerns a "serious situation of a structural nature". To the CPT, a complaint about the possible ill-treatment of a child by staff members may very well qualify as "serious situation of a structural nature". In that case, the institution could have opened an *ex officio* investigation and could have reported the incident to the Health and Youth Care Inspectorate. As far as the CPT could ascertain, none of this had been done.

119. The CPT has concerns that the staff members mentioned in the account of the staff member supporting the complaints committee, had omitted to notify the institution's management about the injuries to the child, which would have allowed the management to start an investigation.

120. The CPT would like to receive an account from the Dutch authorities as to the treatment of the above complaint, including a copy of the written withdrawal request, and any other action undertaken by the ViaJeugd complaints committee in this regard. Further, it would like to receive confirmation that the complaint had not been shared with the ViaJeugd management and, if this was indeed the case, the reason for the omission. Also, it recommends that in the event of a complaint of a serious nature, such as one alleging ill-treatment, the complaints committee has a statutory obligation to be satisfied that no undue pressure was exercised on a child, and that complaints alleging ill-treatment are always investigated either by the complaints committee or by the institution, following the procedures laid out in law and using child-friendly processes. The Dutch authorities should also ensure that staff members are regularly reminded of their duty to report suspicions of ill-treatment to the institution's management.

121. Possibly thanks to the positive relationship between staff and children observed on the units visited by the delegation, many children interviewed said that if they had complaints, they would prefer to address it to their educators directly, rather than writing a formal complaint. In this respect, the CPT is concerned that complaints shared with staff members directly are not always registered and do not always receive a follow-up. **The CPT recommends that the Dutch authorities ensure that all complaints from children given, orally or in writing, directly to members of staff be fully registered and investigated.**

ii. inspection procedures

122. The Youth Act foresees inspections by the Health and Youth Care Inspectorate. These inspections are focussed on the "quality of youth care" and may lead to a targeted intervention by the Inspectorate.[81]

123. In recent years, *JeugdzorgPlus* establishments have been a priority for the Inspectorate and are thus visited frequently. Improvements in the quality of care are often demanded. For instance, in January 2025, two of the establishments visited by the CPT, Schakenbosch and ViaJeugd were told to comply with the Youth Act as regards inter alia their safe rooms within a strict timeframe.[82]

81. Article 9.1 Youth Act.

82. Recent reports by the Health and Youth Care Inspectorate indicate that neither the safe rooms in ViaJeugd (*Verscherpt toezicht voor Via Jeugd in Cadier en Keer, Nieuwsbericht | 13-01-2025*) nor those in Schakenbosch fulfilled the legal requirements (*www.igj.nl/publicaties/rapporten/2025/01/13/kennisgeving-schakenbosch*).

At the same time, it is also clear that the limited number of inspectors available to carry out visits to youth care establishments[83], may force the Inspectorate to shift its attention to other youth care areas in the near future. Apparently, this situation has already led to the Inspectorate carrying out targeted inspections, rather than embarking on comprehensive, all-encompassing monitoring of an institution.

In the context, the CPT recalls the human rights obligations resting on the Netherlands in line with the case of *O'Keeffe v. Ireland,* where the Court considered the presence of an effective inspection mechanism an essential safeguard to prevent ill-treatment of children placed by a public authority in private institutions. **The CPT recommends that the Netherlands authorities carry out an audit as to the number of youth care inspectors needed to fulfil its human rights obligations in this area.**

124. Further, *JeugdzorgPlus* institutions have an obligation to report to the Inspectorate:

- any calamity[84] that has occurred during the provision of youth care; and,
- violence[85] in the provision of youth care.

125. The CPT understands that both a "calamity" and violence of an educator towards a child must always be reported to the Inspectorate. However, the obligation to report violence between children depends on its severity, as explained in the Guidelines.[86] Violence between children should be reported in the event that:

- medical and/or psychological or behavioural treatment of the violence was necessary, as evidenced by a consultation with a care or youth care provider and/or;
- there is a police intervention, or a report to the police or the public prosecutor's office.

The Guidelines specify that incidents of less serious violence between children which are not subject to a reporting obligation should nevertheless be registered and analysed annually at an aggregated level to draw lessons for the future.

126. According to the Guideline for Reports (*Leidraad Meldingen Jeugd)*, reported incidents are either investigated by the Inspectorate itself, or the Inspectorate may agree that the reporting institution carries out this investigation itself. In the case of the latter the Inspectorate may indicate the requirements for such an investigation, which could for instance relate to the independence of the enquiry. In the exchanges between *JeugdzorgPlus* establishments and the Health and Youth Care Inspectorate seen by the CPT, the Inspectorate requested an independent chairperson to be appointed to lead the internal investigation.

127. Failure to report a calamity, violence of an educator or a case of serious violence between children is subject to an administrative fine and qualifies as a criminal offence. **The CPT would like to be informed about the number of times that in the last 10 years failure to report a calamity, violence by an educator or a case of serious violence between children has been subject of an administrative fine or a criminal investigation (and if so, it would also like to be informed about the outcome of such criminal investigation).**

128. In Schakenbosch, in 2023, six cases were reported to the Health and Youth Care Inspectorate and four in 2024. In Harreveld in 2024, five reports were sent to the Inspectorate. During its visit to ViaJeugd, the delegation was informed about four internal evaluation reports from 2023

83. The CPT was told that the Health and Youth Care Inspectorate has 50 inspectors working in the area of youth care.
84. Article 1.1 Youth Act defines a "calamity" as: an unintended or unexpected event that relates to the quality of youth care and that has led to a seriously harmful consequence for or death of a young person or a parent.
85. According to Article 1.1 Youth Act, violence in the provision of youth care concerns physical, mental or sexual violence against a juvenile or a parent, or the threat thereof, by someone who works for the youth care provider, or by someone who works for a legal entity that provides youth care on behalf of the provider or by another juvenile or parent with whom the juvenile or parent stays, with the provider during the day or part of the day.
86. Decree of the Minister of Health, Welfare and Sport and the Minister of Security and Justice of 2 August 2017, reference MC-U-165460, establishing policy rules on the obligation to report violence between clients.

and 2024. These concerned a suicide attempt; a dysfunctional external expert; a case of physical violence between children, and an allegation of sexually transgressive behaviour by a staff member.

The first three cases were eventually reported to the Inspectorate, while the fourth was not as it apparently did not meet the threshold for reporting. It concerned an allegation dated 24 June 2024 by a child who claimed that a staff member had patted his buttocks three times during a playful exchange, which was confirmed by the staff member concerned. Immediately after the allegation was made, the staff member concerned was suspended. The allegation was investigated by a committee consisting of two staff members of ViaJeugd and a chairperson, external to the institution. The police were also informed. After hearing all persons involved, the committee concluded that the educator concerned had acted unprofessionally, but that the threshold for reporting to the Inspectorate had not been met. Eventually, the staff member had resumed his work but does no longer work in the unit where the child concerned is accommodated and was given coaching to avoid this situation to occur again.

129. The CPT has no particular observations to make as regards the system of self-reporting with possible ex post scrutiny by the Health and Youth Care Inspectorate. As far as it could ascertain, during the internal investigations, all parties involved were heard, the investigative team was chaired by a person external to the institution, and measures were taken, even though in one case, the complaint was not considered reportable under the applicable rules.

130. The Committee understands that verifying the proper application of the rules as to reporting of incidents is a standard part of the quality inspections by the Inspectorate. **The CPT would like to receive confirmation that this is indeed the case.**

131. The Court's judgment in *O'Keeffe v. Ireland* was in part based on the absence of detection of ill-treatment as an expressed aim of an inspection. In this respect the CPT notes that the De Winter Committee criticised the Health and Youth Care Inspectorate along these lines: it observed that the Inspectorate lacked the capacity to detect violence and ill-treatment against children. It recommended that the Inspectorate should have more direct contact with the children during its visits to closed residential youth care establishments. The De Winter Committee also recommended that the Inspectorate work more proactively.

132. Following the findings and recommendations of the De Winter Committee, the Inspectorate reflected on its methodology and decided to have more contact with children during its visits. However, the publication of the report by Jason Bhugwandass in March 2024 (see paragraph 30 above) prompted the Inspectorate to turn once again towards scrutiny of its methodology. The report had made the Inspectorate realise that important signals had once again been missed during its inspections and that, due to the relation of dependence between a child and an educator, children may not always volunteer information about transgressive behaviour to which they may have been subjected.

133. On 5 November 2024, the Health and Youth Care Inspectorate published the outcome of its internal reflections.[87] The Inspectorate announces that it plans to adapt its working methodology by placing more emphasis on uncovering any structural insecurity among youth care providers. Amongst others, the Inspectorate intends to:

- always ask about the experiences of children with transgressive behaviour in the supervision of *JeugdzorgPlus* and not only when there are explicit signals;
- also speak with children who recently stayed in the group in question and who can look back on their experiences with more distance from the situation;
- consult with children who previously stayed in *JeugdzorgPlus* on how best to conduct conversations with children from *JeugdzorgPlus*;
- enter into discussions with parties involved other than children, parents and referrers, such as other family or people with whom the child has a relationship of trust.

87. "Rapportage reflectie IGJ toezicht op ZIKOS".

134. The CPT welcomes this more proactive approach by the Health and Youth Care Inspectorate and in general encourages the Inspectorate to take account of the right of the child to be heard in such processes in line with international standards (the Guidelines on Child-friendly Justice).

135. As to other external bodies mandated to carry out monitoring visits to closed residential youth care institutions, apparently the Ombudsman for Children does not have the capacity to organise unannounced visits, while the National Preventive Mechanism (NPM) appears to lack the right to access medical files, which is a serious impediment in carrying out its task of monitoring places of detention. Given the limited capacity of the Health and Youth Care Inspectorate, and the formal complaints mechanism which is seldomly used, the Netherlands authorities should seriously consider to properly equip both organisations with staff and a suitable mandate to carry out complementary monitoring as to the treatment of children in *JeugdzorgPlus* institutions. **The CPT would like to receive the comments of the Dutch authorities on the above in light of the expectation that there is a robust and child-appropriate inspection regime in place.**

iii. confidential counsellors

136. Various interlocutors emphasised that several factors impede children in closed residential care from denouncing the violence they experience in the institutions, through complaints or during an inspection. These can include the vulnerability of children in closed institutions, their dependence on the institutional staff in such settings, and their prior experience of violence as part of their background or upbringing. Indeed, several of the alleged incidents described by children or found in the registers of an institution had not been followed up by a complaint.

137. For this reason, the Netherlands authorities facilitate, financially and in law, the presence of a confidential counsellor in establishments offering *JeugdzorgPlus*. The Youth Act formulates several requirements as to persons who may fulfil the role of confidential counsellor, including the requirement of a (semi) professional background and the absence of a criminal record.[88]

138. Article 6.6.1 Youth Act assures free access of the child to a confidential counsellor and *vice versa*. It provides that the confidential counsellor is available in the *JeugdzorgPlus* institutions at pre-defined moments and that they should receive all cooperation which may be reasonably expected. It is laid down in the Youth Act that all children accommodated in *JeugdzorgPlus* establishments are appointed a confidential counsellor and that they should be able to have private conversations.[89]

Further, the Youth Act provides for:
- the optional presence of a confidential counsellor during the process of adoption of a care plan;[90]
- the optional assistance in lodging a complaint with the complaints board in the context of application of a restrictive measure, as well as further support during the complaints procedure.[91]

139. The Ministerial Decision to the Youth Act sets clear rules as to the content of the information to be given to a child upon admission to the institution, which includes the independent role of the confidential counsellor, the nature and confidentiality of their support as well as the fact that this is free of charge.[92] There were posters introducing the confidential counsellor, with their photograph, in the three establishments. Most children interviewed were familiar with the confidential counsellor visiting their unit, and some of them had, at some point, requested their assistance. At the same time, several children interviewed saw no purpose in contacting a confidential counsellor, as they lacked confidence that such contact could be meaningful or effective in resolving their issues. **The CPT welcomes the role of the confidential counsellor in *JeugdzorgPlus* establishments and**

88. Article 1.1 Youth Act.
89. Article 6.3.2.4 (2) Youth Act.
90. Article 6.2.9 Youth Act.
91. Articles 6.3.1.4 (4) and 6.5.3 Youth Act.
92. The information about the confidential counsellor is part of a larger package of information a child receives upon admission, which further includes: the house rules; the complaints mechanism; and co-decision making (Article 6.2.4 (4) Youth Act).

encourages a permanent reflection on finding ways to increase the confidence and trust of children in the institute of confidential counsellor. Children should be engaged in this process.

140. To carry out this task, *Jeugdstem,* an external organisation, receives financial support and employs approximately 100 confidential counsellors, covering the full spectrum of youth care, and visiting each *JeugdzorgPlus* establishments once a week.

141. Article 6.6.1. Youth Act also tasks the confidential counsellor with reporting "signals" about shortcomings in the implementation of closed residential youth care, insofar as they infringe the rights of a young person, to the Health and Youth Care Inspectorate.

During its discussions with staff members of *Jeugdstem*, the delegation learned that such signals are first discussed with the establishment's management and, when not satisfactorily resolved, may subsequently be transferred to either the Health and Youth Care Inspectorate or the Public Prosecutor. Protocols to this end have been concluded with both organisations. **The CPT would like to be informed about the content of these Protocols.**

142. In 2024, at the time of the visit, as concerns *JeugdzorgPlus* establishments, the confidential counsellors gave one "signal" to the Health and Youth Care Inspectorate and sent 16 reports to the management of the institution concerned.

Given the obligation resting on *JeugdzorgPlus* institutions to facilitate the work of confidential counsellor, as well as the task of a confidential counsellor to signal issues of concern, it seems axiomatic to the CPT that *JeugdzorgPlus* institutions inform confidential counsellors about the action undertaken following a signal. The CPT had been given minutes of a meeting between the Schakenbosch management and the counsellors active in that institution, where the management reports in detail about the follow up given to a 2023 signal. However, such diligence seems not always to be the case. **The CPT recommends that the Dutch authorities ensure that signals given by confidential counsellor receive a timely and systematic follow up by the institution concerned.**

APPENDIX I – ESTABLISHMENTS VISITED

The delegation visited the following places of detention:

- Schakenbosch (Leidschendam),
- iHUB, location Oost Gelre (Harreveld), and
- ViaJeugd (Cadier en Keer).