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## **Standing at the edge between meddlesomeness and caring**

Research into Eigen Kracht conferenties (FGC) in Overijssel and how Eigen Kracht relates to the Youth Care Act.

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### **Part C: Eigen Kracht and the Youth Care Act**

#### **1 Introduction**

The project 'Eigen Kracht in Overijssel' ('FGC in the Province of Overijssel') was launched on 1 January 2004. One year later, the new Youth Care Act went into force. According to this legislation, the Youth Care Agency is granted exclusive rights to arrive at indication-for-treatment decisions. This raised the question, both in the professional literature and among FGC initiators, of how a FGC conference could be a means of decision-making whilst the Youth Care Act had granted this right solely to the Youth Care Agency. The Ministry of Health, Welfare and Sport was also interested in this question, as well as in how the project in Overijssel has managed to employ the FGC conferences in accordance with the principles on which the Youth Care Act was based. For this reason, a study initiated by the Ministry of Health, Welfare and Sport was included in the FGC Project in Overijssel.

This chapter reports on a part of this study, which goes beyond the provincial boundaries. It is based on a brief literature study (see Appendix 3), interviews with key informants, and a meeting of experts that included academics and policymakers (see Appendix 4).

The chapter begins by providing a concise summary of the part of the Youth Care Act relevant to running the FGC conferences. This is followed by the principles upon which the Youth Care Act and FGC are based. The chapter concludes by addressing how these principles are actually applied and by discussing FGC as a part of youth care services.

## 2 The Youth Care Act

The Youth Care Act went into effect on 1 January 2005. This piece of legislation reflects a lengthy discussion about how to improve the system of youth support services. Its predecessor, the Youth Services Act of 1989, was more inwardly directed and primarily written in the language of professionals and specialised care providers. Clarijs (2003) describes how, since 1950, 'the treatment paradigm' had crept imperceptibly into the youth support sector. Characteristic of this period, he states, were 'the problem-oriented methods applied to pupils, keeping parents at a distance, and the central role played by staff members' and the maze of 'a provision of care accountable to itself.'

The key points of the new law, however, primarily seek relevance with elements beyond the specific boundaries of youth care itself, giving importance to the broader and more generally available youth services, but also to collaboration with regional youth policymakers, and to the internationally ratified Rights of the Child. Another objective was simplicity: citizens of each province would have just one Youth Care Agency that they could apply to without having to go through a series of other agencies.

The Youth Care Act regulates many matters such as access and entitlement to youth care, youth protection, participation in decision-making, the right of complaint, quality and supervision. Since an FGC conference is a decision-making model, we limit ourselves here to the provisions relevant to obtaining youth care services.

According to Article 3, the provincial government is responsible for ensuring that clients in their province can realise the care that they are entitled to. The condition for this is that the Youth Care Agency has formalised in a decision (the 'indication-for-treatment decision') that the (minor) client in question indeed requires care with regard to development, parenting or psychiatric problems. Such care can also be required due to problems of the client's parents, stepparents or other family members. The first section of the law emphasises the importance of the family. The client is defined as 'a youth, as well as those who care for and raise him or her within their family.'

The client's own interests are given first priority: decisions that make entitlement to youth care services possible are arrived at upon the request of a client. A decision can also be arrived at on the initiative of the Youth Care Agency (Section 5, paragraph 3).

Should the development of a child be threatened (e.g. when child abuse is suspected), the Youth Care Agency is obliged to consider the necessity of taking a youth protection measure. If so, such a proposal has to be submitted to the Child Care and Protection Board (Sections 8, 9, 11).

At the heart of the new law is the concept that youths benefit from a safe environment in which to develop and should receive only the kind of care needed to contribute to this objective: no more invasive than necessary, as close to where they live as possible, and as short-term as possible (Section 5, paragraph 4).

The decision to refer a client for care is the basis for entitlement to youth care services. These services can consist of youth care, out-of-home placement, and diagnostic observation. The indication-for-treatment decision must provide at least the following information:

- a description of the (imminent) problems that necessitate care
- possible causes of the problems
- a description of the required youth care
- the objective of the required youth care
- the necessary duration of the required youth care
- the time limit within which the youth care should be provided

(Van den Berg, Vlaardingerbroek, 2005)

The law provides no further rules about the content of a decision or about how it should be arrived at, except that the explicit request of the client has to be its point of departure. If a client is unable to articulate such a request, his or her consent must be obtained in one way or another. In any event, the client's need or request is the guiding mechanism for obtaining care.

The government's objective in establishing the Youth Care Agency was to officially establish a single access to the range of care options. The agency is first and foremost a provider of services: intending to support clients in implementing their entitlement to youth care services. This support lies, according to the explanation given by the state secretary during the final debate with the Upper House, on the borderline of social services itself. But the most important aspect is promoting the development of a cohesive social services plan and working together with clients in following and evaluating the care provided: helping clients get what they need and no more than that (Section 10).

### 3 Basic principles

#### *Reinforcing the client's position*

In 1994, the government's position as stated in 'Management of Youth Care' was a reaction to the political need to improve the Youth Services Act in force at that time. Key concepts that played an important role during and after this time were: improving the cohesion between systems of youth services, improving accessibility by taking a demand-driven approach, and adapting to the empowerment of clients themselves.

The policy framework of 2000 contains the outline of the new law. The basic principle is that the legislator opts for youth care as a supplement to the care provided by parents and other significant persons in the youth's environment. The emphasis lies on the responsibility of persons within the direct family environment. Attention is given to the more generally available provisions within the environment. The law is intended to strengthen the position of the client and to increase the simplicity, transparency and cohesiveness of youth care services.

#### *Coping capacity*

In connection with the FGC conference, four basic principles of the Youth Care Act are significant: the responsibility of the parents themselves, the client's request as the basis for care, and both the support and mobilisation of people and available services in the client's immediate environment and network (empowerment).

These elements are clearly stated in this act's implementation decrees (Bulletin of Acts and Decrees 2004, 703). This means, for example, that the key factor in entitlement to care is not the client's problem but the degree to which he or she is able to cope with the problem, 'and the degree to which parents have lost their grip on parenting or the degree to which the child's development is being hindered' (Chapter 2, implementation decree, page 29). The child's and the parents' own assessment is thus 'of great importance': the entitlement to care emerges when they can no longer deal with the problem themselves.

No entitlement to care exists insofar as clients can sort out their own problems 'whether or not with help from persons in their immediate surroundings or with help from systems other than care providers' (Section 3). In exercising guardianship or a family supervision order, the plan includes the procedure in which parents (or other carers) 'as well as their social environment will be involved in the activities, or reasons why this will not occur' (Sections 40, 43).

#### *Responsibility lies with the family*

The characteristics of FGC conferences agree with this concept and support the principle derived from it that 'more explicitly than what we are used to, the responsibility for children lies with the family and the social network' (Joanknecht, 1998). 'They (the family and close relations) discuss their problems among themselves and with professionals, and then work towards adjustments themselves, either voluntarily or as imposed within the framework of the judicial system' (Van Pagée, 2003).

The Eigen Kracht National Centre for Restorative Action describes the FGC conference as 'a way of letting the family retain its responsibility for far-

reaching decisions relating to problems arising within the family. It gives them the opportunity to devise a plan themselves that makes use of their own capacities and the involvement of outside support. At the heart of this approach is the family meeting in which the family and members of its network draw up a plan for the future together' (Manual, 2002).

In this sense, the employment of the FGC conference is seen as an implementation of how the Dutch legislation follows the UN Convention on the Rights of the Child (Explanatory Memorandum, 2001). Article 5 of this convention requires the state to 'respect the responsibilities, rights and duties of parents to direct and guide their child in exercising its rights, in a manner consistent with the evolving capacities of the child'.

The law and the FGC conference also follow the same line with regard to Article 18 of the international convention: in addition to their own family, parents can involve outside assistance and have the right to support. Dutch law grants clients the right to youth care services. 'The term 'client' includes not just the youths but their parents as well' (UN Convention on the Rights of the Child, Article 18).

#### *Demand-driven procedures*

FGC is compatible with the law's objective to reinforce the client's position and to adopt the client's demand as the point of departure. This is consistent with the trend toward a more demand-driven system of youth care services. Decision-making takes place within a large group of involved parties originating from the family and its network, and leads to a written plan. Important is that the FGC conference is a decision-making method. Families operate within their network in arriving at a plan for the assistance they deem necessary for the child or children in question. Once family members have been informed by professionals and have been able to take advantage of their expertise, they withdraw during a closed meeting (from which third parties are excluded) to discuss the situation involving their child and their family and to draw up a plan. According to Van Pagée of the Eigen Kracht National Centre for Restorative Action, the FGC conference gives youth care organisations 'the best possible opportunity to function according to demand-driven principles. After all, the family itself formulates its preferences, supports the implementation of its plan, and is involved in a major part of this implementation.'

Clarijs calls FGC 'the fundamental breakthrough for the sector that will finally transform care providers into demand-driven agencies.'

#### *Safety*

On principle, an FGC conference allows the Youth Care Agency to use its discretion in encouraging a child protection measure if necessary. Publications, press releases and letters to members of parliament preceding the acceptance of the legislation in the Lower House in June 2003 state: 'Give clients of youth care services the right to make a plan to solve their problems themselves before agencies intervene.' The line of reasoning here is that a Youth Care Agency can always submit an intervention plan to families, but that these families should first be given the opportunity to devise a plan with a solution by themselves.

Because the safety of the child and the provision of a secure environment in which he or she can develop heads the list of priorities, the FGC conference includes the testing of the plan as based on safety criteria. The professionals working with the family will agree with them in the choices included in the plan they present unless the safety of the youth is at issue: 'The professional accepts the plan unless the safety of the child is not guaranteed or if the plan does not comply with the law' (Manual, 2002). This guarantees the responsibility legally imposed on the family supervisor in regard to the safety of the child.

#### *Subsidiarity and proportionality*

Like the former law, the new law is based on the principle of subsidiarity and proportionality of the youth care services being indicated (Van den Berg, Vlaardingerbroek, 2005). This means that legal pressure will not apply until voluntary help can no longer handle the problem and that, if intervention is needed, the services being offered should be in proportion to the client's problems. Comments on the law explain that there are two aspects to the subsidiarity principle: 'giving a maximum of consideration to a multiform society during policymaking, and promoting citizens' own initiative and responsibility with regard to guaranteeing soundness, effectiveness and the democratic process' (Van den Berg, Vlaardingerbroek, 2005).

When asked, M. Drewes, the chairperson of the task force on youth care waiting lists, says, 'The law states that you are entitled to youth care services only when your own family and close environment are unable to tackle the problem. This is an important aspect! Because as long as you have not investigated this thoroughly, you are not actually ready to make an indication-for-treatment decision. We think that a more systematic approach has to be taken in regard to what a family can do itself, with a certain amount of support' (*Perspectief*, June 2004, p. 8).

With regard to subsidiarity, a quote found in the literature about FGC conferences says that, 'solutions that families present themselves [are] preferable to solutions submitted by third parties.' This also means that 'solutions are being sought within the culture of the child and its family. This model thereby offers opportunities to people with another cultural or ethnic background than that of the organisation. Within the FGC conference model, the client's cultural component is not negated by the norms of Dutch social services' (Joanknecht, 1998).

## 4 Practical Implementation

### 4.1 Indication-for-treatment proposal

Entitlement to youth care services requires an indication-for-treatment decision from the Youth Care Agency. Although the form in which this decision should take is not established, it must satisfy certain conditions (see Section C, Chapter 2). Moreover, although the law gives no detailed rules about the content of the decision or how it should be arrived at, it explicitly says that the client has to request such a decision. The plan that a family makes during a FGC conference can be seen as a request for such a decision. This raises the question how the Youth Care Agency deals with the family's plan. Will the plan arrived at during a FGD conference be adopted as an indication-for-treatment proposal and then accepted in the form of an indication-for-treatment decision? Or will the Youth Care Agency, in its role as an official authority, have its own opinion and thus take up its own position in regard to the issue as a whole?

During the second half of 2002 and the first half of 2003, the meaning of the indication-for-treatment decision was discussed in the *Tijdschrift voor Jeudgzorg*, a professional journal on youth care (Kok, 2002; Mehlkopf, 2002; Van Yperen, 2003; Joanknecht, 2003). Kok belled the cat by suggesting that the introduction of the indication-for-treatment decision would be thwarting the important innovations in youth care services. Opting for a demand-driven procedure as a basic principle would be no match for the traditional method of describing problems, causes and approach. 'Based on current knowledge in the field of youth care services, the indication-for-treatment decision, as indicated in the bill, is impossible.' In his experience, there would be little chance for arriving at a reliable and valid judgement: it would amount to no more than the opinion of a care provider. In his opinion, the indication-for-treatment decision would particularly frustrate the chance to approach parents as 'experts and partners in care.'

According to the final advisory report submitted by the Project Group for Access to Care (founded in 1995 to work out the government's position statement 'Control in Child and Youth Care' of 1994), 'the opportunities for and freedom of choice offered to youths and their carers remain the criteria for assessing the quality of this innovation. The Youth Care Agency is a means to regulate this' (Van den Berg, Vlaardingerbroek, 2005).

Mehlkopf acknowledges the limited capability of agencies providing youth care services to arrive at a good indication-for-treatment decision. He calls the law 'a law that will have to undergo development,' a law that will have to become more cohesive over time. But he also sees the introduction of an indication-for-treatment decision as a very deliberate choice, not for the sake of the decision's meaning in regard to its professional content, but because of its importance as an administrative instrument. Such a decision would make it possible to implement the care to which youths, parents or carers are entitled. The purpose of the decision would be to handle the volume of demand and

the conditions for implementing care. In essence, a client would determine the request for care to which a care provider would respond.

Both Kok and Mehlkopf indicate their opinion that FGC conferences could be introduced into the process of indication-for-treatment decisions. Kok emphasises the facilitating role of the Youth Care Agency in establishing the agreements in a contract that form the basis for financing. Mehlkopf implies the same idea when he writes, 'What is still needed, however, is to record the outcome of this conference – when this indicates a need for care as based on an indication-for-treatment proposal – in the indication-for-treatment decision itself. Not to contribute to bureaucracy, but to support the client, since the indication for-treatment decision expresses his or her rights.'

Huibregtsen and Joanknecht<sup>c</sup> state their belief that the outcome of a plan devised by a family could apply as an assignment for the Youth Care Agency. The part in the plan that implies an indication-for-treatment decision is usually limited and should be accepted automatically on the condition that it is made within the previously indicated preliminary conditions of youth protection. Joanknecht says that when families request care as based on an indication-for-treatment proposal, it is also provided in Amsterdam.

This has also been the case with the FGC in Overijssel Project. In every case in which the family requested assistance, an indication-for-treatment decision was made in favour of the youth care requested by the family. According to Dirksen, the director of the Overijssel Youth Care Agency, the relationship between the help requested by the family and the resulting indication-for-treatment proposal was discussed at the time the project was established. At the beginning, agencies working together within the project arrived at agreements about accepting plans. The letter of intent that these parties signed (see Appendix 1) expresses their intention to accept the family's plans unless it can be shown that the plan does not sufficiently guarantee the child's safety. This document also expresses the parties' intention to maximise their efforts to implement the plan created by the family.

Dirksen sees the possible discrepancy between the indication-for-treatment proposal that has to be approved by a behavioural scientist and the plan devised by the family as being purely theoretical: 'This is not about a behavioural scientist's personal opinion,' says Dirksen, 'but about the legal responsibility of the organisation. You have to secure this with effective constructions.' Dirksen believes that in Overijssel it is possible to properly do so, because attention is being devoted to the introduction of FGC at all the necessary levels. People working at the provincial administrative level, the policy-related level (in organisations collaborating in the steering committee), the management level (supervisors) together with those actually providing and receiving care are all working on implementing FGC within the framework of the Youth Care Act. Working within this framework is quite possible according to Dirksen: 'If you want, you can think of all kinds of reasons for not initiating FGC. But what is it about? It is a process of decision-making – a process that is entirely unlike what people in youth care services are used to. The professional is being allocated a different role, and many more people from the family and its network are being involved in the decision-making. But an

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<sup>c</sup> See the report of the meeting of experts: Appendix 4

analysis is being made and a solution devised. The difference in outcome is that the family does a lot and the plan is broader and involves not just providing care to youths, but also giving their parents the help they need. So it is already a kind of indication-for-treatment decision.' Van Yperen also considers the FGC conferences not so much an alternative to the indication-for-treatment proposal as 'an alternative...to the traditional method of arriving at an indication-for-treatment proposal.'

The registration data collected for the FGC conferences that are described in this and other reports, show that in all cases the families' plans have been accepted by the professional as being safe, in compliance with the law, and adequate (Van Beek, 2002, 2003, 2004, 2005). This not only applies to matters within the framework of a youth protection measure, but also to matters in which this is not the case. In relation to this Dirksen says: 'It will probably happen at some time or other that, for instance, a psychopath will pull the wool over the eyes of everyone in the family so that the family supervisor will not be able to accept the plan. But this doesn't mean there is something wrong with the system.' In his opinion, the indication-for-treatment decision should not be turned into an impediment but into an instrument; he sees it as a way of heading in the right direction during an early phase. The indication-for-treatment decision is not something that can be written in stone, but it is one step within a dynamic process.

For that matter, both Dirksen and the participants in the meeting of experts make reference to the limited scope of the indication-for-treatment decision. After all, it applies only to youth care services, and then only to the existing forms of youth care services. Plans made by families also express the need for help and support from other sectors, such as debt repayment and housing accommodation. The agencies participating in the Overijssel project have expressed that they are maximising their efforts to implement plans made by families, but they can have only a limited effect on providing services outside of the framework of youth care services.

## 4.2 Professional dominance

The dominance of professionals in youth care services is addressed at some point in practically all the interviews, debates, discussions in professional literature, and also in the meeting of experts (see Appendices 3 and 4 and the list of references). The management of youth care services is not in the hands of the client, or the client and his or her family, but in the hands of professionals. Within this framework, FGC is seen as an innovative practice. The FGC conference is a way of promoting a demand-driven system and reinforcing the position of the client.

FGC is consistent with the objectives of the Youth Care Act. This model gives citizens who are becoming aware (or made aware by others) of problems associated with the development and parenting of their children, the opportunity to formulate a claim for care that satisfies the demands for subsidiarity and proportionality, without endangering the charge of protecting the children. This means that the FGC conference itself has no need of a separate legal basis.

At the same time, however, the potential for professionals to dominate the decision-making process is still a lurking danger. Although FGC is not a form of assistance requiring an indication for treatment, but a decision-making process, clients (or 'citizens' in the terms used by the Eigen Kracht National Centre for Restorative Action) do not have open access to this resource. In clinical practice, it appears that care providers who are used to assessing whether a certain kind of help can offer a solution to a family's problems also tend to assess whether a family is suited for a FGC conference (also see Section B, Chapter 7.4). Considering the practical implementation of FGC conferences as described in 4.1, it would seem that the question is not so much whether the client gets the requested indication for treatment, but whether the client gets the opportunity to be involved in this decision-making himself. In this regard, Kleingeld, the former director of Vediovo, a national umbrella organisation for youth protection, says: 'Before we get to work as professionals, the family and its social networks have to have an opportunity to come up with a solution to the problems first. I think this is more client-oriented than setting up client councils' (Dullens, 2003).

The question that arises is how families can receive such an opportunity in the earliest possible phase.

Huibregtsen<sup>d</sup> refers to the fact that municipalities are charged with the responsibility of keeping families out of youth care services. She considers the FGC conferences to be the ideal primary strategy. In actual practice, care providers usually employ FGC conferences after a family has already been receiving assistance for years, and much less often for providing a possible access to the Youth Care Agency. Just as happens in other parts of the country, half of the cases reported in Overijssel involve a youth protection measure and most of the families have already been receiving assistance for more than two years (see Section B, Chapters 1.3 and 1.6).

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<sup>d</sup> See the report of the meeting of experts: Appendix 4

Van Pagée<sup>e</sup> advocates introducing a legal basis for the 'principle of first us, then them, so that citizens receive the right to arrive at a plan in their own circle (us) before outsiders (them) do so. In this way, no indication-for-treatment or offer of care is made before the family gets a chance to make its own plan. In New Zealand, this right of citizens is provided by law. Van Yperen and Mehlkopf<sup>f</sup> suggest that the same right is already provided in the Youth Care Act. Until now, however, it has been adapted in a reverse form in the working model used by agencies. According to Yperen, the current law provides enough options to operate according to the New Zealand model.

In effect, however, Youth Care Agencies are not adopting this attitude toward citizens. All activity first proceeds in the direction of the care provider. In the social services plans that are then made, the coping capacity of the client's network is not automatically involved as a factor; this is more an exception than the rule. Energy flows in only one direction: that of the agencies and at this time, organisations feel little if any pressure from the side of their clients. By calling attention to a procedural law intended to introduce the family's own coping capacity, this attitude held by care providers could change. But this is not occurring frequently enough as yet.

Van Yperen suggests that changes essentially provided by the Youth Care Act should take place within the profession and its training programmes.

Both Goorhuis and Huibregtsen<sup>g</sup> agree that in clinical practice, professional care providers scarcely if ever focus on the responsibility of citizens who appeal for their professional services. Professionals say, 'We don't let our agenda be determined by parents.' People have no opportunity to arrive at their own plan in advance. Although the wording of the Youth Care Act provides every opportunity to do so, care providers offer people no occasion to assess and utilise their own coping capacity first. Missing here is a fundamental trust in parents and the rest of their family and network with regard to protecting their children. As much as the law prescribes the use of a family supervision order as a tool for parental development, it continues to be seen as a certificate of incompetence. Both professionals and parents perpetuate this idea in their dialogue. Professional care providers are thus displaying little trust in their effectiveness of restoring parenthood.

This attitude is also being strengthened within organisations of care providers. As Mehlkopf<sup>h</sup> sees it, politics continues to nourish it as well. In his experience, organisations grow by the continuous extension of waiting lists.

Van Pagée thinks that the automatism of launching the procedure of screening, diagnosing, determining indications and treating has shifted everyone's attention from starting with the citizen, while in a very early stage of providing care, e.g. in the work carried out by the Child Care and Protection Board, the use of conferences is in fact very appropriate. He affirms the provisions of the current Youth Care Act but finds them insufficient. After all, a family that wants to arrive at a decision by means of a FGC conference cannot insist on this and is thus dependent on the cooperation of professionals.

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<sup>e</sup> Idem

<sup>f</sup> Idem

<sup>g</sup> See the report of the meeting of experts: Appendix 4

<sup>h</sup> Idem