Senior Citizen Crime
An exploratory study (summary)

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Summary

Introduction

On behalf of the Board of Procurators-General, the Bureau for Criminal Law Studies of the Public Prosecution Service (WBOM) and the General Office of the Public Prosecution Service, in collaboration with Bureau Beke, have carried out an exploratory study of senior citizen crime. The reason for this study lies in a marked increase in the number of criminal cases against senior citizens (age 65+). In its annual report on 2006 the Public Prosecution Service (Openbaar Ministerie) reported an increase of more than 44 per cent compared to 2001 in the number of elderly defendants in court cases. The report of 2007 again recorded an increase of 6.5 per cent.

If there are structural changes in the criminal behaviour of the elderly, this may have possible consequences for the way in which the Public Prosecution Service is to carry out its duties. Both in investigating and prosecuting criminal offences, the Public Prosecution Service has to take account of the relevant personal circumstances of an offender. Sometimes these relevant circumstances may include the physical, mental and social consequences of reaching an advanced age. This research aims to anticipate in time the demands that any increase in crime among the elderly could impose on the prosecution service. The object of this research is to record the nature and extent of criminality among the elderly, the development of elderly criminality in the long term, and the factors that influence it. The results of the research can serve as a basis for answering the question whether in the Netherlands there is a need for a special prosecution policy for the elderly and if so, what this policy should look like.

The study consists of three parts. The first part describes both the extent and nature of senior citizen crime and the way in which the Public Prosecution Service deals with elderly defendants during the investigation and prosecution stages of law enforcement. The second part covers comparative criminal law. The third part is a survey of cognitive neuro-scientific evidence on the consequences of the ageing of the brain.
Section 1: A grey area. The nature and extent of senior citizen crime and the approach of Public Prosecutors

In this study the phenomenon of senior citizen crime is explored. The reason for this is that for crime perpetrated by people aged 65+, there is a ‘grey area’ when it concerns the extent, development, nature and the way in which it is being dealt with by the Public Prosecution Service. Research methods consisted of data analysis, consultation of Central Bureau of Statistics figures, interviews with defence lawyers, police officials and members of the Public Prosecution Service, a country-wide Internet survey among public prosecutors, and the submission of a hypothetic case to a number of public prosecutors.

Despite the increase of elderly suspects, crime among the elderly is still a minor problem

In 2007 about 5,500 persons aged 65 or over were recorded by the police in the HKS (Registration System) as suspects of an offence (misdrijf). In a period of 12 years the number has almost doubled: there is an apparent increase of 85 per cent between 1996 and 2007. This growth can be compared with the increase of 46 per cent which affects the whole population of offenders.

The figures must be put in perspective and some discretion is appropriate here. Of all those aged over 65, 0.2 per cent were classified as suspects by the police in 2007. In addition, it appears that the share of elderly crime within total crime may have increased, but that in 2007 only 2.3 per cent of all suspects were older than 65.

Further analyses show that the ‘younger group’ of 65-69 years old is over-represented, but that, in relative terms, the small group aged over 80 showed the greatest growth. Their share quadrupled between 1996 and 2007.

Looking at all age groups from age 12 onwards, the various elderly groups turned out to show the strongest increase of the number of offenders. However, between 1996 and 2007 the number of offenders younger than 65 also increased from 1.46 per cent to 2.04 per cent of the section of the population involved.

When we consider the number of offenders per 1,000 of population in all age categories, then it appears that most offenders are younger than 65. Compared with the categories younger than 65, only a fraction of the number of offenders come from the 65+ categories per 1,000 of the population. Even when the increase in elderly suspects over the past years is taken into account, the conclusion is still that - expressed in absolute numbers - those over 65 are far behind the group of suspects who are younger than 65 years.
Although the share of male offenders, as in all categories of offenders, is much larger than that of female offenders, it is still noticeable that the percentage of female offenders aged 65 and older is slightly higher than the percentage of female offenders in the total population.

Senior citizens nowadays primarily commit traffic offences, followed, some way behind, by crimes of violence and crimes against property. Among other offenders the accent is on crimes against property, followed by crimes of violence. Compared with the younger age groups, elderly men commit more traffic offences and violent crimes, and elderly women mainly traffic and property offences.

From the police to the Public Prosecution Service
Just as with police registration, an increase of older defendants also shows in Compas (the registration system of the Public Prosecution Service) data. The rise of 67 per cent between 1996 and 2007 is slightly more modest and in 2007 the Public Prosecution Service had to deal with 4,466 offenders in all. But these data too must be related to the generally growing percentages of all offenders combined.

More elderly people within the criminal justice system in 2020
Predictions have been made of the number of elderly offenders with which the police and the prosecution service will have to deal. Two types of predictions have been formulated. The first is based on the upwards trend of the number of elderly suspects and defendants between 1996 and 2006. The second is made on the basis of estimations of population growth up to 2020. For the police (HKS, Identification Service System) the predictions lie between 7,700 and 8,300 offenders, and for the Public Prosecution Service (COMPAS) between 6,200 and 6,600. The predictions take no account of other factors (e.g. demographic, economic, institutional or social developments) which could also affect senior citizen crime. For instance, specific circumstances peculiar to the elderly, such as the percentage of people living alone, could be of influence.

Senior citizens in the court room
25 Percent of all the public prosecutors in the country took part in a survey carried out via the Internet. The results show that, in the last eighteen months, less than half of them had to deal with one or more cases against people aged over 65. It is estimated that less than 5 per cent of the total number of court cases involve elderly defendants.
Do public prosecutors take account of characteristics typical of the elderly offender?
In cases involving the elderly, just as in other cases, the public prosecutor calls on experts – if necessary – such as a physician, psychologist or psychiatrist. An examination of personality traits, the psychological condition and physical condition is requested and carried out in a quarter to a third of cases against the elderly. It appears that in their last case involving the elderly 45 per cent of public prosecutors took account of the physical or mental condition of the accused. The way in which a prosecutor takes account of these personal characteristics is in most cases to demand a lighter or less stringent sentence. When presented with a hypothetic case, public prosecutors took no account of the age of the accused in their treatment, although under circumstances a milder sentence was being demanded.

Separate criminal law for the elderly?
Neither defence lawyers, police officers, or the public prosecutors find it necessary that specialists are assigned to deal with cases against senior citizens. In fact there is general agreement that current law offers adequate instruments to deal with this specific category of defendants. Moreover, it was held that the limited extent of the problem does not justify any specific approach. However some experts stressed the importance of a more stringent policy as regards driving qualifications for the elderly, and members of the prosecution service pointed out the importance of education and expertise on the problems of the elderly in relation to crime.

Conclusion
On the basis of the research results it can be concluded that the increase observed in the number of elderly offenders can largely be explained by general factors. In particular, the increase in effective detection by the police and the ageing of the population play an important role. It is likely that in the near future the police and the courts will have to deal with a still larger influx of senior citizens. Up to now the increase of elderly defendants has not led to a need for extensive measures. It may well be sensible to look more closely at particular aspects to see whether extra measures are called for.

Section 2: Elderly offenders in the criminal justice system of nineteen countries and states
In the second part of the study it was surveyed to which extent the criminal law of nineteen countries and federal states has provisions which devote explicit attention to offenders of an advanced age. Criminal Codes and Codes of Criminal Procedure were examined of the Netherlands, Sweden, Finland, Norway, Germany, Austria, Italy France, Belgium, Spain, England and Wales, the United States and Canada (both at the federal level), Japan, the Australian federal state of Western Australia and the American states of Florida, Vermont, California and Virginia.
Several of the legal systems examined have provisions by which the judge, the public prosecutor or a police official is asked to take into account, among other factors, the advanced age of the accused. Examples are the Swedish section which lays down that the judge in determining the penalty should also consider the advanced age of the offender as an alleviating factor, or the section in Canadian legislation which names age as a factor that can lead the judge to impose a suspended sentence.

In some cases provisions were found from which elderly offenders could derive rights directly. Examples of this are the exclusion (except in exceptional cases) of the application of provisional custody to those aged 70 or over in Italy, and the wider possibility to be released prematurely for prisoners in the same age category in Spain.

Nonetheless the conclusion is that the penal systems examined only rarely devote explicit attention to the elderly as defendants. Apart from the Dutch penal system, those of Germany and Norway do not address the elderly as suspects or defendants. In the United States (federal penal system) and England, the elderly are mentioned only occasionally, via ‘guidelines’ linked to statute law. In Florida and Virginia the age of an offender only plays an explicit role when the death penalty is being considered; in Vermont, when answering the question what minimum penalty should be considered for murder or manslaughter.

In a number of other countries those provisions in which (advanced) age is quoted as a relevant factor can hardly be called important. In California this applies to such matters as urinating in public transport; in Belgium age can be an obstacle to extradition in terrorist cases, in Japan those over seventy will be provided with a public defender, and in Austria co-defendants may be exempted from giving evidence in court because of their advanced age.

The most specific regulations are concerned with temporary custody (Italy), substitute custody and exclusion from an area (France), early release (Spain) and the provision of an advocate (Japan). For the rest the advanced age of an offender, insofar as this is referred to in legislation, mainly plays a role as just one of the factors to be taken into account when taking a decision.

**The Netherlands**

In the description of Dutch criminal law in chapter 4 emerges how reluctant the legislator has been in listing factors or criteria which judges and public prosecutors should take into account when taking decisions. To introduce into the Criminal Code the explicit rule that judges should take the advanced age of the accused into account, would necessarily mean that other relevant factors need to be listed as well. The question is whether the nature and extent of ‘senior citizen crime’ would justify such a fundamental alteration of Dutch criminal law.
Conclusion
The most important conclusion of the study is that in none of the jurisdictions investigated separate criminal law exists for elderly aged suspects, as there is everywhere in some form or other for suspects who are minors. Nor has any regulation been encountered anywhere which excludes offenders of a particular age group or older from prosecution, as is the case in the Netherlands on the basis of Section 486 Code of Criminal Procedure for those suspects who are younger than twelve years old.

In any case, this stock-taking research into the laws elsewhere offers no indication that Dutch penal legislation, within an international context, falls out of line, just because the Dutch penal system has no specific statutory provisions aimed at the elderly defendant.

Section 3: Cognitive neuroscientific research into the ageing of the brain.

The main question that the third part of the study focuses on is: To what extent does evidence from cognitive neuroscience show that ageing-related changes in the brain lead to diminished criminal responsibility?
To this end a literature study was carried out involving a review of the most important international publications on the ageing of mental functions. The research report describes which mental functions decline with age, how great the decline is, what the effect of this process is on behaviour, and to what extent the developments described affect everyone to the same degree.

The size and structure of the brain
The volume of an adult brain declines slowly but steadily by about 2 per cent every ten years. However, changes in brain volume are not uniform, with some regions being more affected than others. The volume of the adult prefrontal cortex (important for a large number of higher mental processes such as attention, planning and decisions) declines linearly with age, about 5 per cent per ten years. The hippocampus (important for long-term memory) remains unaffected until the age of about 55-60 and then begins to decline slowly. There are also areas which are not affected by the ageing process. An example of this is the primary visual cortex.

Behavioural research
Far from all cognitive functions are subject to change to the same degree. On the basis of behavioural research a distinction can be made between functions which gradually decline during adult life (e.g. speed of information processing), functions which show no decline until late in life (e.g. numerical skills), and functions which seem to be preserved (e.g. verbal memory). From a large-scale American research it appears that even above the age of 80 there is only a selective decline in some cognitive functions. Nor are the same functions affected in everyone. There appears to be a possibility of the retention of individually determined mental functions, probably those functions which an individual uses (or has used) a lot.
**Neuroimaging research**

The development of advanced neuroimaging techniques has enabled researchers to observe the brain in action and to precisely investigate the neural basis of cognitive functions. Neuroimaging research on the neural basis of cognitive aging has shown that ageing is characterized by different patterns of brain activity rather than a mere decline in brain function. Recent results indicate that the ageing brain can recruit different brain regions from those recruited by younger adults when performing the same task. These results suggest the possibility of neural compensation in the older brain. The presumed decline of brain structures can be compensated for by activities of other brain regions, so that cognitive function remains intact. This neural compensation might have a hidden cost, and could lead to a decline of the ability to do several things at the same time.

**Emotional control**

Both behavioural and neuroimaging research show that ageing is not associated with a decline in emotional and social control.

**Differences between individuals**

An important outcome of the research on neural and cognitive ageing is that the differences between individuals of the same age among the elderly are much greater than among younger ones. These differences can partly be explained by genetic make-up. In addition, mental activity protects against cognitive decline. The elderly who are intellectually active show less decline in cognitive performance than the non-active elderly. Moreover, physical fitness, healthy diets, and minimizing chronic stressors help to lessen the extent to which ageing has negative consequences in cognitive performance.

**Neurobiology and antisocial behaviour**

From various publications it appears that the interaction between frontal brain regions and the amygdala is important for regulating emotional responses. Disruptions of this neural system contribute to the development of severe antisocial behaviour. Interesting in that respect is that ageing actually has no major effect on amygdala responses in older or younger individuals. Moreover, the interaction between the amygdala and frontal brain regions in the elderly is not weakened, but strengthened as compared with younger adults. At the same time it appears that a decline in activity in areas in and around the hippocampus is compensated for by an increase in activity in the prefrontal cortex. So it can certainly not be said that ageing of the brain results in neural activation patterns that are associated with persistent antisocial behaviour. On the contrary, results from cognitive neuroimaging actually suggest an increase in emotional control which could result in lessening the likelihood of antisocial behaviour.
Conclusion
In conclusion it can be stated that current neurocognitive research does not provide evidence for a link between normal ageing of the brain and a weakened mental faculty. Nor can, on the basis of the data available up to now, a link be demonstrated between normal ageing of the brain and criminal behaviour. However, one needs to take into consideration that research into the neurobiological factors of criminal behaviour is still in its infancy, and that within this area of research no attention has yet been devoted to ageing. At the same time the finding that there is great variability in the effects of ageing is an important one. This means that we should always be suspicious of downwards exceptions. In an individual case it may well be that ageing has led to heavy loss of mental powers or even to psychic disturbance. This possibility should therefore be taken into account in criminal proceedings.

Final conclusion
So far there is insufficient indication to justify introducing a special criminal law for elderly offenders. The reported strong increase in the number of elderly offenders in the last twelve years can largely be attributed to general factors. No empirical support has been found for the assumption that ageing of the brain leads to criminal behaviour. The Netherlands are not out of step internationally with their lack of criminal law provisions dealing specifically with elderly suspects. The current legal provisions offer police and the prosecution service sufficient opportunities to take into account any physical and mental limitations which could influence the committing of offences.