



Speech by Maud de Boer-Buquicchio
Deputy Secretary General of the Council of Europe
“Janusz Korczak Lecture” on
“Children *versus* prisons: what can we do better ?”
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Justice

Excellencies, Ladies and Gentlemen, dear friends,

When my friend Thomas, asked me to give a Korczak lecture, I accepted with honour and humility. With honour, because the life and work of Janusz Korczak, a man who has done so much “for and with” children, calls for deep respect. With humility, because I cannot compare my, our, normative work with that of a man who, through the ultimate sacrifice, that of his life, proved that he meant what he said.

In my presentation today I should like to discuss how the best interest of the child, a notion used in many of our legal texts, both nationally and internationally, can be upheld in a prison environment, and be given it the meaning that Janusz Korczak wanted to give to it: the child’s right to respect .

In choosing the topic for this lecture, “Children vs. prisons” I was inspired by a true story, which I hope may inspire you and it did inspire me. Obviously, I will not mention real names, nor a specific prison.

I don’t know what your vision of a prison is. For my part, a prison is not a place where we detain people rejected by society, for the sole purpose of retribution or retaliation. For me it should be a place where people, who have broken the law, are assisted in a process of re-socialisation and of prevention of recidivism. If this is true for adults, it is even more so for children. If children are our future, they are first and foremost entitled to have a future.

So, let me tell you the story of Benjamin, an adolescent, who was imprisoned at the age of 14 after a series of convictions for minor criminal offences. Because of his turbulent behaviour, he was transferred on numerous occasions, by way of a disciplinary measure, from one place of detention to another, back and forth.

When Benjamin arrived at the detention facility where I met him, he was clearly stigmatised, by prison staff and fellow detainees alike, as being a “hot potato”. He was detained in a cell with another young offender, the difference between them was that his

cellmate was in contact with his family, which was not the case for Benjamin. He was wearing a bandage around his arm and I was told that he had tried to slit his wrists the day before – according to the authorities simply as an advance signal. I asked him whether he received visits. His answer was “no” and he looked down. It was clear to me that he felt desperately alone and abandoned, even by his family. I tried to encourage him. I talked about the need to get training, to continue his education and to prepare for an active role in society. But , when I left I felt uneasy and uncomfortable, in the face of such overwhelming distress. A few months later, I read in the media about the suicide of a young man in that very prison. I enquired: it was Benjamin.

Young men like Benjamin are called in legal terms “juvenile offenders”.

Despite the obligations contained in UN and Council of Europe texts, children in Europe continue to be imprisoned.

It is my strong conviction that children have no place in prison. Children simply do not have the maturity to face the harshness of detention or to grasp the sense of it. Their adolescence and vulnerability prevent them from understanding why they are in prison and what they are supposed to learn from it.

When they breach the law, they should be helped, not punished; we should show them forgiveness, not revenge; we should educate, not park them; we should help them to think about what they have done, to avoid it happening again; we should not stigmatise, but take time to explain what they have done wrong. Links with the child’s family should not be severed, and we should help both the child and his or her family to grow up together. In short, we should provide a life project for and with them.

Like Janusz Korcak I strongly believe that children must be able to know and learn about their rights and obligations, they must be corrected when they err, but in an atmosphere of understanding and forgiveness, based on the individual child’s rights to respect.

Such respect will lead to self-respect and self-confidence, and that is what many of these children totally lack.

I would have liked Benjamin to have read a passage the poem “Desiderata” which reads: “You are a child of the universe no less than the trees and the stars, you have a right to be here”.

Ladies and Gentlemen:

We also need to consider the impact of a prison-like environment on children whose parents are detained.

The first question which arises is whether women should give birth to a child in prison at all and, if so, for how long should the mother and her child be allowed to stay together?

The Council of Europe’s European Prison Rules provide useful guidelines in this respect. They provide that women shall be allowed to give birth outside prison, but where a child is born in prison the authorities shall provide all necessary support and facilities. Infants

may stay in prison with a parent only when this is in their best interest, and they shall not be treated as prisoners. We must never forget that these children are innocent!

The second question which arises is what arrangements need to be made for children to visit their parents in prison to maintain family ties?

If a father is incarcerated, the child in many cases visits him together with his or her mother or another family member or writes letters, and some, albeit limited, contact is preserved.

Very often though, if a mother is incarcerated, the reality is that her husband or partner abandons her, she receives virtually no visits and her child is taken away. This is very destructive for a child's life, as it is for the mother.

Mothers need to be able to maintain their role as parent; this must include full parental control and full access to information about the welfare of their children.

The impact of parental imprisonment on children can stretch far beyond the time of imprisonment. Research has repeatedly highlighted the fact that the imprisonment of a parent is a strong predictor of future criminal behaviour in the children, regardless of the length of sentence imposed.

The case of Benjamin was no different – Benjamin too visited his parents in prison before becoming an offender himself.

All this brings me to the issue of a child-friendly justice system.

Children still face a number of specific disadvantages in their contact with the justice system, be it as victims, witnesses or perpetrators of crime. Although some progress has been made, there is a clear need to develop justice systems in our member States which better reflect children's needs, but above all their rights.

The issue of the age of the criminal responsibility of children is still an open and difficult question within and between our member States, with figures which vary considerably from one country to another.

First and foremost however, it is necessary to examine the role children have before, during and after judicial proceedings, including in the context of a mediation process.

The European Guidelines on child-friendly justice, which our Ministers requested us to draft, are amongst the key activities of the Council of Europe's strategy "Building a Europe for and with children" for 2009-2011.

Ladies and Gentlemen,

I would like justice to be administered for children, and not only on them. I have witnessed too often in my career both at the European Commission and the Court of Human Rights, and as Deputy Secretary General of the Council of Europe, adults talking about children's rights, but really meaning their own rights over children.

This is the wrong approach. Children have their own rights; these are the rights of children, not of adults over them. It all boils down to a matter of respect for children's rights and to the rights of children to respect.

Our children's future is in our hands and without them there is no future.

Thank you very much for your attention.