



28th CONFERENCE OF EUROPEAN MINISTERS OF JUSTICE

Lanzarote (25-26 October 2007)

**“Emerging issues of access to justice for vulnerable
groups, in particular:**

- migrants and asylum seekers;**
- children, including children perpetrators of crime”**

Address by

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Children

www.coe.int/minjust

Thank you Minister and Deputy Secretary General and for the invitation to speak here today on behalf of the European Network of Children's Ombudspersons.

We sincerely welcome the focus of this conference on children.

ENOC consists of 33 Ombudspersons in 25 states of the Council of Europe. We are independent children's rights institutions and aim to:

- Promote and safeguard children's rights
- Promote the implementation on the UN Convention on the Rights of the Child and
- To be a collective voice for the children of Europe

Details of Members States and joint statements can be found on the ENOC website.

I am the Acting Children's Commissioner for Wales and the co-ordinator of the ENOC working group on access to international justice. In my own country I also chair the Child Sexual Exploitation Group.

Access to Justice

As a young lawyer one of the first lessons I was taught was wherever possible to keep clients away from justice **mechanisms** because of anxiety, the stress, the cost, the timescales and the uncertainty of the result. This is particularly true with a child where often the justice mechanism can become a form of secondary abuse.

Children need access to justice which is child friendly and speedy.

Ombudsperson for children are fundamental in helping children to access justice. The best models in Europe give ombudsperson independence and statutory powers to assist individual children in every part of their lives, hold the government and statutory agencies to account and influence changes in law practice and guidance..... nationally and internationally through research, reviews and investigations.

In my own country I try to resolve injustices by listening to children, negotiating, mediating and persuading the relevant authorities to act. We do this in a non bureaucratic way and within a child's time frame. We advocate for all children including the most vulnerable and in the most complex circumstances including children seeking asylum and in penal institutions. We have a 97% resolution rate. I am sure the success is because we have the statutory powers even though we rarely use them. We reach children in a number of ways including access to a free phone and SMS.

Another informal and effective way for children to access justice is the availability of local independent advocates who they trust, who will listen and champion their rights. By advocates I do not mean lawyers but youth workers, social workers, refugee workers, adults experienced in working with children and who are independent of the statutory agencies.

In my own country, Wales, we have recommended, and the government has accepted, a counselling service accessible to all children which may empower children to speak out about abuse earlier and to be assisted to recover.

Fundamental to accessing justice, formal and informal, is knowledge. Effective education campaigns can reach all children in a non stigmatising way.

In the minority of cases where children need to use national or international justice mechanisms there are improvements that can be made and it is encouraging to hear today that some States are implementing measures.

When reviewing our national and international justice systems we should consider:

- Taking into account the views of the children especially those who have experienced justice mechanism - they know best
- Giving better information to children
- Enabling children to make their own applications at any age
- Fast tracking applications that involve children so decisions are reached in their childhood
- Being flexible and sensitive with timescales - in my own experience it can take until early adulthood before a person may even realise or can talk about the abuse they suffered as a child
- Training the judiciary and support staff
- Enabling direct access for children without parental consent
- Making hearings more child sensitive, but listen to the child. Child victims and witnesses have told me how they felt denied of their right to attend court even though we adults felt it was in their best interests to give evidence by video link.

We are currently examining how to improve our role in informing and supporting children to access international justice

Juvenile Offenders

We in ENOC are very concerned at the tone of the political and media debate and the direction of public policy and legal changes concerning children who seek asylum and juvenile offenders.

Children in conflict with the law are still **Children First** and do not lose their human rights, including their rights to special treatment and protection, education and health.

The Convention on the Rights of the Child proposes a separate distinct system of juvenile justice. It requires that this must be focussed on respect for all the rights of the child and on the aims of rehabilitation and reintegration. This is **not** compatible with criminalising child offenders.

We **do** believe that children should be held responsible for their actions and that it is essential to establish responsibility for crimes. Where responsibility is disputed there has to be a formal process to determine responsibility in a manner which respects the rights of the alleged offender. But this process does not have to **criminalise children**.

Across Europe the age of criminal responsibility varies from as young as 7, 8, and 10, up to 16 and 18. The definition also varies. We believe all states should aim progressively to raise the age to 18, at the same time developing innovative systems for **preventing** and **responding** to juvenile offenders below 18 which genuinely focuses on education, reintegration and rehabilitation. It was encouraging to hear this morning innovative examples of this being implemented in some states.

We believe the current trends to reduce the age of criminal responsibility and lock up more children at younger ages must be reversed and that the treatment of young people placed in penal institutions in many of our countries is a scandal.

The only legitimate reason for detaining children, before or after trial is that they pose a serious and imminent risk to others. Even then this should be kept under review and children separated from adults and have access to education and health, including mental health services. The stark reality is that children are at risk in prisons, even of death.

Children seeking Asylum

Children seeking asylum in Europe are amongst our poorest and most vulnerable.

The collective view of ENOC is that these are **Children First**. To me, a mother, this simply means treating all children with the same love, care and protection as I would with my own children.

At the heart of the failure to secure fair treatment for children seeking asylum is not implementing the Convention on the Rights of the Child which enables immigration law and policy to override domestic and international children's legislation where the welfare and the best interests of the child are paramount.

ENOC issued a joint statement last year in relation to unaccompanied children. The full statement can be found on our website.

To summarise we called for the following:

- Children should not be prosecuted for illegal entry or detained solely because of their immigration status.
- Immediately after arrival every unaccompanied child should be referred to the relevant authority and a skilled guardian appointed without delay
- Children should be informed of their rights in their own mother tongue
- Free interpreters and specialised legal advisors should be made available
- Children should have the right to express their views freely in all relevant proceedings
- There should be credible procedures for appeal
- Staff should be fully trained and instructed to respect international children's rights standards
- Interviews should be conducted in the language a child understands and sensitive to possible traumatic experience.
- Age assessment should take place only in cases of extreme doubt and using independent experts to include a combination of physical, social and physiological maturity assessments
- Unaccompanied children should never be deported or expelled, only returned through assisted repatriation and only if it is in their best interests. International co-operation should assist quick and efficient family tracing and social investigation of the background of unaccompanied children to examine whether safe repatriation is appropriate and in the best interests of the child. When not repatriated special long term residence permits should be provided and assistance to integrate.

I personally advocate for all the children and asylum seeking children who contact my office. I am shocked by the inhumane treatment and breach of their fundamental human rights. I welcome the moves to allow children who have integrated to stay.

The two main causes of abuse which put children at risk are poverty and violence. We continue our campaign to abolish corporal punishment and I have up to date information with me here

today listing which member states have abolished corporal punishment. We look forward to it being abolished throughout Europe.

I'd like to finish with the words of one vulnerable child who wrote to me about his experience a few weeks ago. I will call him 'A'. Like most boys of 12 he finds it hard to express himself in words and chose to talk with me through his computer. He gave me permission to read you his story.

'A' came to my country four years ago after being forced by police to watch his grandfather being hung in the garden where they had been playing together. 'A' was receiving mental health services for the trauma. His 4 year old sister was born in my country and they were integrated into school, the local church and community.

The Frightening Day of My Family

This is my story when they came in the morning at my house.

On Sunday after my football match I came home had a wash done everything ready for my school clothes packed my bags ready. Then the next morning when my mother woke my up for school I heard a knock on our door. Then my mum saw throw the window and she saw nine people from the Immigration. So then my mum opened the door but my mum was scared and when she opened the door she fainted and she fell on the ground and then nurse had done something to wake her up. Then the Immigration said to me and my sister to pack up some cloths for us. Then the polices took us away to the police station and put us in van with cages all around the van. On the journey my sister was sick five times because she did not eat any breakfast (his sister is four years old) Then my sister and me needed a toilet because we were driving nearly for four hours and a half but they will not let us because they think we will run away....

This happened on the day of Monday 5th of March.

We intervened. 'A' and his sister have been released from the detention centre and are back in Wales and at school. He is continuing to receive treatment for trauma and it is possible the family may be able to remain. This does not however excuse the inhumane treatment suffered by 'A' and his little sister.

We must end the inhumane transportation and detention of children and young people.

We must treat these children with the same care, compassion, love and protection as we do our own children

Thank you.

Maria Battle
26 October 2007

