

# “The human rights dimension of juvenile justice”

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There is a popular perception that a large proportion of crimes in society are committed by teenagers and that juvenile delinquency on the whole is getting worse and worse. Indeed, some media promote this impression with vigour. The truth, however, is different.

In most European countries, teenagers are *not* dominant in the overall crime statistics. Also, juvenile crime rates remain more or less stable from year to year across our continent.

This does not mean that the problem is insignificant. A worrying trend reported from several countries is that some crimes committed by young offenders have become more violent or otherwise more serious. This is a warning signal in itself.

Moreover, the presence of even a relatively few young lawbreakers is a bad omen. Individuals who start a criminal career early on are usually not easy to reintegrate into normal life. That is one reason why it is necessary to discuss the problem of juvenile justice in depth. General prosecutors – as a corner stone in any system of justice – could give a significant contribution to this discussion.

There are two different trends for the moment in Europe. One is to reduce the age of criminal responsibility and to lock up more children at younger ages. The other trend is – in the spirit of the UN Convention on the Rights of the Child – to avoid criminalisation and to seek family-based or other social alternatives to imprisonment.

I am going to argue for the second approach. In that I am supported not only by the UN Convention but also by the European Network of Children’s Ombudspersons. In a statement 2003 no less than 21 national ombudspersons stressed that children in conflict with the law are first and foremost children who still have human rights.

They proposed that the age of criminal responsibility should not be lowered but raised - with the aim of progressively reaching 18 and that innovative systems of responding to juvenile offenders below that age should be tried with a genuine focus on their education, reintegration and rehabilitation.

The Convention of the Rights of the Child – ratified by all European states - asks governments to establish a minimum age below which children shall be presumed not to

have the capacity to infringe the penal law. The treaty does not spell out at which precise age the line should be drawn. However, the Committee monitoring the implementation of the Convention has expressed concern about the low age in several countries. In most European states, children are held criminally responsible between 12 and 15 or 16, but there are also examples of age limits as low as seven, eight and 10.

Though the message of the Convention on the Rights of the Child is that criminalisation of children should be avoided, this does not mean that young offenders should be treated as if they have no *responsibility*. On the contrary, it is important that young offenders are held responsible for their actions and, for instance, take part in repairing the damage that they have caused.

The question is what kind of mechanism should replace the ordinary criminal justice system in such cases. The procedures should recognise the damage to the victims and it should make the young offender understand that the deed was not acceptable. Such a separate juvenile mechanism should aim at recognition of guilt and sanctions which rehabilitate.

It is in the sanction process that we find the difference to an ordinary criminal procedure. In juvenile justice there should be *no retribution*. The intention is to establish responsibility and, at the same time, to promote re-integration. The young offender should learn the lesson and never repeat the wrongdoing.

This is not easy in reality. It requires innovative and effective community sanctions. In principle, the offender's parents or other legal guardian should be involved, unless this is deemed counter-productive for the rehabilitation of the child. Whatever the process, there should be a possibility for the child to challenge the accusations and even appeal.

An interesting procedure for "settlements" has been introduced in Slovenia. There, a case of an accused juvenile can be referred to a mediator if this is agreed by the prosecutor, the victim and the accused. The mediator then seeks to reach a settlement which would be satisfactory to both the victim and the accused and a trial can thereby be avoided.

One aspect should be further stressed: the importance of a *prompt response* to the wrongdoing. Delayed procedures – which is a problem in several European countries today - are particularly unfortunate when it comes to young offenders whose bad actions should be seen as a cry for immediate help. Prosecutors may have a role in securing that court procedures in these cases are as short as possible.

The UN Convention asks for separate procedures also for juveniles brought to court. These should be child-friendly and, again, the purpose is rehabilitation and re-integration rather than to punish for the sake of retribution. For this to work, there is a need for everyone involved, including judges and prosecutors, to be educated not only about the law but also about the special needs of children.

In two cases brought against the United Kingdom in 1999, the European Court of Human Rights considered it essential that a child charged with an offence should be dealt with in a manner which "took full account of his age, level of maturity and intellectual and emotional capacities, and that steps were taken to promote his ability to understand and participate in the proceedings."

"In respect of a young child charged with a grave offence attracting high levels of media and public interest, this could mean that it would be necessary to conduct the hearing in private, so as to reduce as far as possible the child's feelings of intimidation and inhibition, or, to provide for only selected attendance rights and judicious reporting."

A child in that situation is sometimes as much a victim as an offender. The social background is often tragic. This points at the immense importance of *early detection* and *preventive measures*. The judicial body is the last link of the chain, we should try to do everything we can to prevent cases coming that far.

Support to families at risk, decisive reaction on signs of domestic violence, social workers with outreach capacity, neighbourhood networks and a school which not only teaches but also cares for every individual child – these are key components of a preventive strategy.

The young persons themselves should of course be involved in these efforts and not be considered as mere objects of socialization and control. Their well-being, in the immediate future and far ahead, should be the focus. All this will require some investment, but serious crimes at a later stage are much more expensive for society.

Arrest, detention and imprisonment of children should be used "*only as a measure of last resort and for the shortest appropriate period of time*", as the UN Convention says. This is in the spirit of child rights, but we also know that depriving children of their liberty tends to increase the rate of re-offending. The only reason for locking up children is that there is no other alternative to handle a serious and immediate risk to others.

Such detentions should take place in specific and children-friendly establishments and be separated from adult prisoners and, in particular, from hard-core criminals. Contact with the family should be encouraged and facilitated, if that is in the best interests of the child.

In general, the conditions should be humane and take into account the special needs of an individual of that age. Full-time *education* is particularly essential. For each young offender there should be an individual programme of rehabilitation, a plan that should continue after the detention period with the support of guardians, teachers and social workers. If relations with the parents are impossible, foster parenting might be an alternative. In all this, the child him- or herself should have a say – this is not only a right but also more effective.

These are the principles developed within different parts of the Council of Europe, in cooperation with experts from different countries. The European Committee on Social Rights has argued for a higher age of criminal responsibility and the European Committee for the Prevention of Torture - which pays visits to places of detention - has expressed its concern about the imprisonment of children and their conditions.

The European and international standards are indeed clear nowadays. However, they are not widely known and have not impressed on some of the discussions in member states where the cry for “tougher methods” has been heard. Prosecutors – as the legal defender of the society - could play a valuable role in raising awareness and educating the public on what measures actually work for everyone’s best interests.

The Council of Europe is now promoting a campaign with the motto: “*Building a Europe for and with Children*”. Those children who have had a bad start in life should also be included in this effort.

The time has come to review our policies on juvenile justice all over Europe. Are they producing the results we want? Are they respecting the rights of the child? Are they building our future Europe?