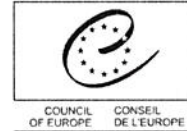




COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



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The Rt Hon Kenneth CLARKE QC MP
Lord Chancellor, Secretary of State for Justice

Strasbourg, 29 February 2012

Dear Lord Chancellor,

I would like to express my gratitude for the open and constructive exchange we had during my visit to the United Kingdom in December 2011.

The purpose of this letter is to follow up on some aspects of my Memorandum of 2008 on the rights of the child with a focus on juvenile justice in the United Kingdom. During my visit in December, I also had the opportunity to obtain information specific to Northern Ireland, which had not been covered in detail in 2008. I therefore include some observations on the situation in Northern Ireland in this letter and would highly appreciate if you could ensure an appropriate follow-up with the competent authorities there.

The very low age of criminal responsibility throughout the country remains a serious concern. It is very important that it be put in line with the rest of Europe, where the average age of criminal responsibility is 14 or 15.

It is encouraging that youth crime rates are dropping. Also encouraging, in the field of sentencing, are the efforts made to increase diversions, which favour a more rehabilitative and preventive approach. This includes the placement of children, and in particular the very young, in secure children's homes.

However, the high number of young offenders on remand is an issue that requires further attention. In particular, Article 37 of the United Nations Convention on the Rights of the Child (UNCRC), which establishes that detention shall only be used as a measure of last resort and for the shortest appropriate period of time, needs to be kept in mind. The relative ease with which children are placed on remand in the United Kingdom raises questions as to the compatibility of this approach with the European Convention on Human Rights (ECHR) and the UNCRC.

Another aspect that I have been following pertains to the conditions in child custody settings, including the use of restraints. In 2008, I was particularly concerned about certain restraint methods that inflict deliberate pain on children and urged the United Kingdom's government to immediately discontinue their use. I was satisfied to learn from the response of the government to my Memorandum that the use of at least some of these methods had been put on halt and that for the government it was clear 'in law and guidance that restraint is not to be used as punishment'. Whilst the revision of the 'Physical Control in Care Manual' is a step in the right direction, it is important to evaluate whether the new rules are applied consistently. A January 2012 High Court judgment which found 'widespread unlawful use of restraint' in certain child prisons should encourage the authorities to take more proactive investigative steps when

evidence of past patterns of grave violations comes to light. These steps should take into account the particular vulnerability of children in custodial settings and provide effective remedies.

I have been informed that the separation of juveniles from adult offenders is not always ensured in Northern Ireland. The Criminal Justice Inspection for Northern Ireland has recommended that all children be removed from Hydebank Wood Young Offenders Centre by April 2012. I hope that it will be possible to implement this recommendation within the foreseen timeframe, also in the light of reports indicating that mental health and educational needs of children are not met in that institution.

In Northern Ireland I have had the opportunity to have direct exchanges with children and youth, including some who had been in conflict with the law. I was provided with worrisome information on the generally negative public perception of children and young people. Research conducted on this issue shows that these negative attitudes are notably perpetuated by the media and statements of some public figures. As in other cases where entire groups in society become the victim of stereotyping, verbal abuse and discrimination, in order to combat such attitudes, it is important to encourage the creation of self-regulatory mechanisms and to adequately implement or if needed reinforce the relevant legal framework. This can include, for instance, the creation of codes of ethics for journalists and political parties, or adding child-specific clauses to the existing legal instruments.

It seems that these prevailing negative attitude towards youth have provided the backdrop for a series of policy and legislative measures that tend to discriminate young people and to infringe their rights. It is encouraging to hear that some points of concern raised by international actors and civil society are being taken into consideration in the framework of the Community Safety Strategy, which is currently being developed in Northern Ireland. I have been informed, for instance, that the continued use of 'mosquito devices' to disperse groups of young people might be reconsidered. It is important to ensure that right of young people to freedom of movement and assembly is not unduly restricted.

Children I talked to in Northern Ireland told me that they experienced discrimination in the context of stop and search operations conducted by police, which they felt targeted them in a disproportionate manner. The latest available data indicates that 2 500 stop and search operations were conducted on minors in the second half of 2011 alone. In all societies, and especially those that have to deal with the consequences of conflict, a positive relationship between law enforcement bodies and the citizens, including the youngest generation, is very important. To achieve this, adequate measures to maintain or restore confidence in the police should be devised in a participatory manner and with full respect of the right of children to have their views taken into account.

My 2008 Memorandum also covered the situation of children accused of breaching an Anti-Social Behaviour Order (ASBO), who are dealt with in criminal courts. I noted the wide scope for interpretation that the definition of anti-social behaviour leaves and the fact that general standards of criminal justice and due process do not apply, because ASBO proceedings are of a civil nature. I welcome Home Secretary Theresa May's announcement in July 2010 of a review of the use of ASBOs and in particular the recent discussions taking place in Scotland, which seem to favour alternative approaches. Regretfully, the ongoing debate in England and Wales does not seem to go in the same direction, and there are indications that ASBOs will be replaced with other behaviour orders. As I underlined in my 2008 Memorandum, children should not be imprisoned as a result of breaching a civil order.

Despite the decrease in youth crime, re-offending rates remain above 70% in the United Kingdom. This raises fundamental questions about the purpose and effectiveness of the juvenile justice system and calls for reflection. In 2008, I emphasised the need for improving resettlement

services, by keeping welfare and care as the two main priorities for children who leave a custodial setting, an approach which I understand is shared by the United Kingdom authorities. For children in custody, resettlement-related challenges have to be tackled well before they are released, to give them a real opportunity for a successful reintegration into society.

In this context, the importance of addressing the educational and mental health needs of children in custody cannot be overemphasised. Statistics from Northern Ireland indicate that more than two thirds of the children in custody have serious mental health problems, which are at times not met adequately, in part owing to a lack of resources. I took note of the June 2011 report of the Children's Commissioner for England on mental health of children in the youth justice system and the important recommendations it contains. I welcome the very constructive response of the authorities to this document and hope that it will constitute a basis for future work to improve the situation in this field.

I had previously addressed the importance of providing high-quality education and vocational training to children in custody in view of their reintegration into society. I have also been informed that accommodation needs for young offenders released from custody are not always met, which may constitute an important factor when it comes to re-offending. Whilst resources clearly play an important role in preparing child offenders for their life after release, improved cooperation between the different services involved also appears to be crucial.

Lastly, it is important to stress the need to protect the privacy of young suspects. As mentioned above, cases of vilification of children in the press continue to occur and may have a major impact on a child's future. Also, when it comes to fingerprinting and holding of DNA samples, Article 8 of the ECHR should be respected in line with the judgment of the European Court of Human Rights in the case of *S. and Marper v. United Kingdom*. The disclosure of criminal records is also known to have potentially grave consequences on a young person's opportunities in life, an issue that deserves further analysis.

I would like to draw your attention to the 2008 Recommendation of the Council of Europe Committee of Ministers on the European Rules for juvenile offenders subject to sanctions or measures, and to the 2010 Guidelines on child-friendly justice. These are two important instruments aimed at helping member states to ensure that their juvenile justice systems are fully in line with the existing international standards on children's rights. This is a complex and resource-intensive task. However, even in times of economic crisis and related budget cuts, this task needs to be fulfilled, because the young generation constitutes the essence of the future of our societies.

I look forward to continuing a constructive dialogue with you and your Government.

Yours sincerely,



Thomas Hammarberg