

31st COUNCIL OF EUROPE CONFERENCE OF MINISTERS OF JUSTICE

(Vienna, Austria, 19-21 September 2012)

**ELEMENTS for
DRAFT RESOLUTION
on juveniles as perpetrators and victims**

THE MINISTERS participating in the 31st Council of Europe Conference of Ministers of Justice (Vienna, Austria, 19-21 September 2012),

1. Welcoming the report of the Minister of Justice of Austria "XXXXX" and the contributions made by the delegations attending the Conference;
2. Recalling the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) and its Protocols and the case law of the European Court of Human Rights related to the response of the justice system to juvenile offenders and the treatment of juveniles in prisons;
3. Recalling moreover the European Convention on the Exercise of Children's Rights (ETS No. 160), the Committee of Ministers' Recommendations Rec(2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions and measures and the Committee of Ministers Guidelines on Child-Friendly Justice (2010);
4. Having discussed the responses of justice to urban violence, including the responses of justice to juveniles as perpetrators and victims;
5. Noting that European society is currently facing a deepening economic and social crisis which exacerbates unemployment and poverty and favours the deterioration of living conditions and the social climate in certain urban areas;
6. Aware of the fact that these factors contribute to increased social tensions and to the feeling of social exclusion and neglect, especially among young people who find it more and more difficult to enter the labour market and to construct their future;
7. Concerned about the rise of riots and other forms of urban violence in Europe in which the majority of those involved are young people, including children;
8. Underlining that acts of urban violence may range from minor offences to very serious crimes and that therefore the response of the justice system should take into consideration the circumstances of each case and should be based on the principle of proportionality;

9. Noting that, according to available data, perpetrators of serious forms of urban violence often have criminal records and that therefore the existing justice and law enforcement responses have failed to produce the expected results on all occasions;
10. Mindful of the fact that victimised children may become perpetrators of crime and that therefore addressing the needs of child victims would not only prevent their future victimisation but would also contribute to reducing crime rates;
11. Underlining that a rapid, appropriate and effective response of the justice system to juvenile offenders and victims is required to protect public order, avoid the feeling of insecurity in society and prevent the deterioration of social peace;
12. Recalling that most juveniles commit petty, age-related offences and that therefore the Council of Europe has recommended that most efforts and the allocation of sufficient resources focus on the typically few "serious, violent, persistent and drug- and alcohol-related offending among young persons" for instance by developing a "broader spectrum of innovative and more effective (but still proportional) community sanctions and measures"¹.
13. Bearing in mind, that in order to be effective when helping young people lead law-abiding lives, especially those under the age of 18, this should be done in their best interests and taking due account of each individual case and each person's educational and social needs;
14. Considering that penal responses to the offending behaviour of juveniles should be adapted to their age and mental development and should aim at addressing primarily their educational needs and positive personal development and that deprivation of liberty has particularly harmful effects on the personal and social development of juveniles;
15. Conscious that a child's, and often a young person's, mentality and stage of development are different from those of an adult and that the justice systems are designed primarily to deal with the latter;
16. Considering also that any intervention should take a multi-disciplinary and a multi-agency approach in order to address effectively the variety of problems juveniles may face;
17. Underlining therefore the need to develop child-friendly justice and to aim, wherever possible, at diverting children and young people away from the formal justice system to more appropriate forms of response, which also take into consideration the interests of victims, including juveniles, such as mediation and restorative justice;
18. Aware also that the age of criminal responsibility should not be set too low, that in the majority of European states this age is 13 or above and that no truly European policy regarding juvenile offenders can be effectively implemented without reaching an agreement on this issue;

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¹ Committee of Ministers Recommendation Rec(2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice

19. INVITE the Committee of Ministers to CALL UPON Council of Europe member states to implement the relevant Council of Europe standards, and in particular: the European Convention on the Exercise of Children's Rights (ETS No. 160); the Committee of Ministers' Recommendations, Recommendation N° R (99) 19 on mediation in penal matters, Rec(2000)20 on the role of early psychosocial intervention in the prevention of criminality, Rec(2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice and Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions and measures; and the Committee of Ministers' Guidelines on Child-Friendly Justice (2010);
20. REITERATE the general principle that detention should only be used as a last resort due to its especially damaging effects on juveniles, in particular in cases of police custody and pre-trial detention, and RECALL the need for it to be avoided as far as possible;
21. INVITE the Committee of Ministers to CALL UPON Council of Europe member states to:
 - consider the possibility of adopting or further consolidating juvenile justice systems;
 - develop restorative justice measures adapted to the needs of children and young people at all stages of the criminal justice procedure;
 - develop specialised and appropriate training procedures for professionals dealing with juvenile offenders or victims, such as judges, prosecutors, police officers, social workers, mediators, probation and prison staff.
22. INVITE the Committee of Ministers to instruct the European Committee on Crime Problems (CDPC) to:
 - a) examine the existing laws and practices in Europe regarding the age of criminal responsibility, the minimum age for the possible deprivation of liberty as a penal sanction or measure and the way in which member states deal with offending children under the age of criminal responsibility in order to find a common European agreement on these issues;
 - b) take stock of good practices in Council of Europe member states and consider the development of specific procedures and guarantees to deal with child victims and witnesses of crime in order to protect their welfare and prevent them from repeat victimisation or other risk factors which may lead them to engage in offending behaviour;
 - c) examine the existing laws and practices in Europe regarding restorative justice and recommend specific restorative justice measures adapted to the needs of children and young people at all stages of the criminal justice procedure;
 - d) study ways of preventing and dealing with violence encountered by children in custody and of minimising its harmful consequences.
23. ASK the Secretary General of the Council of Europe to present a report on the steps taken to give effect to this Resolution on the occasion of their next Conference.