



Ref: CommHR/DM/sf 091-2018

Maree Todd MSP

Minister for Children and Young People

Strasbourg, 6 December 2018

Dear Minister,

As Commissioner for Human Rights, my mandate is to foster effective observance of human rights in all 47 member states of the Council of Europe. This includes, as one of my priority issues, the protection of children's rights. From this perspective, I wish to share with you a number of observations on the Age of Criminal Responsibility (Scotland) Bill currently before Parliament, which has important implications for the rights of children who come into conflict with the law.

It has been the long-standing position of my Office that children who come into conflict with the law should be treated as children first and foremost, with a focus on rehabilitation and restorative justice, rather than on repression and retribution. This is in line with the UN Convention on the Rights of the Child and relevant guidance by the UN Committee on the Rights of the Child, as well as the standards developed by different bodies of the Council of Europe, in particular the *Guidelines on child-friendly justice*, which were adopted by the Committee of Ministers in November 2010.

Age of Criminal Responsibility

Setting an appropriate age of criminal responsibility is one way of ensuring that children will be treated in a child-friendly way. As early as 2008, my Office raised concerns about the very low age of criminal responsibility in all parts of the United Kingdom, and in Scotland in particular. The crucial importance of bringing this age into line with the rest of Europe was reiterated in 2012. I therefore warmly welcome that the Scottish Government has now put forward proposals to increase the age of criminal responsibility.

At the same time, I am concerned that the current proposal to raise the minimum age from 8 to 12 still provides insufficient guarantees for a child-friendly and forward-looking system of dealing with children who come into conflict with the law. As many others who have commented on the Bill have already noted, increasing the age of criminal responsibility to 12 would still leave Scotland behind the majority of Council of Europe member states, where the minimum age is often 14 or 15, and in some cases 16. In 2014, the Parliamentary Assembly of the Council of Europe (PACE) adopted *Resolution 2010(2014) on child-friendly juvenile justice: from rhetoric to reality*. It called on member states to set it at "at least 14 years of age". Similarly, the UN Committee on the Rights of the Child is currently revising its General Comment on children's rights in juvenile justice, with a view to issuing a clear recommendation to states to increase the age of criminal responsibility to at least 14, whilst commending states that have higher ages, such as 15 or 16.

On this basis, I call on you to consider ensuring that the minimum age of criminal responsibility is fixed at 14 at least, but preferably higher, in line with the standards set out above and the clear trend towards increasingly high minimum ages.

Other Relevant Information (ORI)

In addition to the question of the age of criminal responsibility, certain other elements of the Bill could benefit from more robust safeguards. I have particularly taken note of the concerns in relation to the possibility of recording and disclosing of 'other relevant information' (ORI) about certain behaviours of

children under the age of criminal responsibility by the police. The above-mentioned *Guidelines on child-friendly justice* (paragraphs 6-10) require member states to protect the privacy and personal data of children who come into conflict with the law, including by ensuring that their personal data is not obtained by the media, and by limiting access to all records or documents containing personal and sensitive data.

I understand that the provisions relating to ORI are mainly intended to enhance the rights of victims, including by enabling them to obtain information about the perpetrator. However, this may have serious implications for the future life of the child who has come into conflict with the law. Should provisions on recording and disclosure of information be maintained, I urge you to ensure that these are accompanied by very clear safeguards regarding the circumstances in which such information can be recorded, the length of time such records are kept, the situations in which disclosure is possible, and the possibility for the child in question to seek review of any decision to disclose.

Police powers

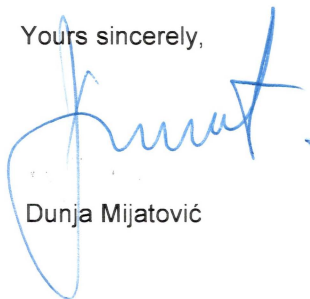
Moreover, I note that the Bill contains provisions on police powers concerning children under the age of criminal responsibility. It is important to ensure that prevention, education and diversion from any procedure that could look like a criminal investigation remain the main goals of police work in connection with very young children who come into conflict with the law. These should prevail over adopting a more repressive approach targeting these children. In this context, I note that children can be taken to an emergency place of safety to allow enquiries to be made, and that this can be a police station if no reasonable alternatives are available. In my view, it is essential that there are sufficient guarantees that such reasonable alternatives are available in practice, and that they provide for a non-custodial and child-friendly environment.

Scotland has often shown itself to be a forerunner in building an effective human rights infrastructure, as well as in putting human rights at the centre of its decision-making. Taking an approach to the question of the age of criminal responsibility as outlined above, and ensuring strong safeguards in the treatment of children who come into conflict with the law would be another expression of Scotland's commitment to human rights in general, and the rights of children in particular.

In this respect, I will follow with keen interest the government's announced proposals to incorporate the UN Convention on the Rights of the Child into Scottish law.

Since the Age of Criminal Responsibility (Scotland) Bill is currently before Parliament, I am sharing a copy of this letter with the Convener of the Equality and Human Rights Committee.

Yours sincerely,



Dunja Mijatović

Cc: Convener of the Equality and Human Rights Committee