

Ref: CommHR/DM/sf 001-2019

Ms Ruth MAGUIRE MSP

Convener
Equalities and Human Rights Committee
The Scottish Parliament

Strasbourg, 10 January 2019

Dear Convener,

Thank you for your invitation to submit my views on the Age of Criminal Responsibility (Scotland) Bill. On 6 December 2018, I wrote a letter to Ms Maree Todd MSP, Minister for Children and Young People. In light of the important role that an appropriately high age of criminal responsibility plays in ensuring child-friendly justice, I expressed my appreciation for the intention of the Government to increase the age of criminal responsibility. However, I also called on the Government to set this age at 14 at least, and preferably higher, in line with international standards. A copy of the letter was shared with you.

I would appreciate if you could accept my letter to the Minister as evidence to the Committee. However, I would like to complement my previous letter with the comments below.

These comments follow from the reply of the Minister of 19 December 2018, which I was pleased to receive. This reply has been published in full on my website. In her reply, the Minister provided me with further details about the Scottish approach to children who come into conflict with the law. The Minister also kindly invited me to learn more about the Scottish system during a future visit. I have informed the Minister that I would be pleased to do so the next time the opportunity to visit Scotland arises. However, as your Committee is currently in the process of discussing possible amendments to this important Bill, I feel it is appropriate to clarify some aspects of my call to increase the age of criminal responsibility to 14 at least, and preferably higher.

I wish to assure the Committee that my call was made in full awareness of the fact, quoted by the Minister, that the approach by Scotland towards children who come into conflict with the law "is not only quite distinct from that in England and Wales but also materially different from many other member States." I appreciate the Minister's comprehensive explanation of those differences, and the positive elements of the Scottish approach. Many of these are considered good examples in Europe. However, I also note that many different approaches are applied across the 47 member states of the Council of Europe, making each national system unique, with specific advantages and challenges. It is important to underscore that international human rights standards, such as those referred to in my letter to the Minister, are developed precisely to provide minimum safeguards regardless of the diversity of states' laws, policies and practices. The upcoming guidance of the UN Committee on the Rights of the Child and the resolution of the Parliamentary Assembly of the Council of Europe should thus be seen as an objective safeguard to ensure no child under 14 is faced with the negative consequences that criminal responsibility entails in any member state, regardless of the specificities of each jurisdiction.

With regard to such consequences, I would also like to highlight that I am aware, as the Minister rightly points out, that "setting the age of criminal responsibility at a particular age does not imply that children above that age who are alleged to have committed an offence will be dealt with through the criminal justice system." I am encouraged by the Minister's comments about the exceptional nature of criminal prosecution of children between the ages of 12 and 15, and the efforts to prevent handling their cases through the criminal justice system as much as possible. However, this does not mean that increasing the age of criminal responsibility beyond what is currently foreseen in the Bill would not have an important impact on protecting children from the negative consequences of being held criminally responsible.

Firstly, although criminal prosecution of children between the ages of 12 and 15 may be rare, the Bill still maintains exceptions, which would allow some children above the age of 12 to be criminally prosecuted before an adult court. Increasing the age of criminal responsibility would reduce the number of children who could be subject to such possible court proceedings, since it would automatically mean an increase in the age at which children can be prosecuted.

Secondly, regardless of all efforts to prevent the handling of children's cases through the criminal justice system, criminal prosecution is not the only adverse consequence of holding a child criminally responsible. This is also true for Scotland, as confirmed by the Policy Memorandum and Explanatory Notes attached to the Bill, as well as the reference documents to which the Minister has kindly drawn my attention. It is my understanding that children above the age of criminal responsibility in Scotland can be treated as an offender by the police, and can be referred to a Children's Hearing on offence grounds. If an offence ground is accepted or established during a Children's Hearing, this is classified as a conviction. This may lead to the child accruing a criminal record, which can stay with him or her far into adulthood. As I noted in my letter to the Minister, such outcomes can have a significant impact on the future of a child.

As such, setting an appropriately high age of criminal responsibility has important implications for the protection of the rights of children who come into conflict with the law in Scotland, which are certainly not limited only to the question of criminal prosecution. In light of this, I strongly encourage the Committee to support setting an age of criminal responsibility in line with the above mentioned standards, with 14 as an absolute minimum, but a higher age being more preferable still. Compared to the current proposal, this would exclude a larger group of children from being dealt with as offenders in the Scottish system. This would, in my view, help further strengthen the system's focus on protecting vulnerable children who engage in harmful behaviour.

I hope these comments are useful in your further scrutiny of the Bill.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Dunja Mijatović', with a large, stylized initial 'D'.

Dunja Mijatović

Cc: Ms Maree Todd MSP, Minister for Children and Young People