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## **Child-Friendly Justice in Europe - Participation and Restorative Justice: Online event – 12 May 2020**

### **Statement by Mr Stefan Schennach, Member of the Parliamentary Assembly Committee on Social Affairs, Health and Sustainable Development**

#### **The role of Parliaments for restorative justice**

Dear Participants,

It is a great pleasure for me to address you on behalf of the Parliamentary Assembly on the important topic of restorative justice for children.

I would like to thank warmly the Georgian Presidency of the Committee of Ministers for the initiative to hold this timely and topical high-level round table. I would also like to use this opportunity to congratulate the Georgian authorities on the successful development of a solid modern child-friendly law system over the past decades.

Today, there is a lot of very interesting experience in many of the Council of Europe member States, and I hope that there will be many other occasions for us to share lessons learned and to work together on promoting restorative justice for children in our countries.

#### **From a punitive to a restorative approach**

Children's lives must not be put on hold or irreparably damaged by their experience of our justice systems. Whether as victims, witnesses or offenders, special attention must be paid to preserve children's dignity, develop their resilience and allow them to develop into responsible members of our society, who respect the dignity of other people.

Restorative justice can play an important role in this respect, by providing a safe space for a dialogue about the damage done and the reparation that needs to be made. Such reparation should always take into account the best interest of the child.

## Post COVID-19: threats and opportunities

Today, our justice systems are being tested by an unprecedented public health crisis. While some types of crimes are on decline, others are on the rise. Domestic violence and cyber criminality, including sexual abuse on-line, are spiralling across the world. As countries are reviewing their justice systems to meet current challenges, they do not always pay due regard to important elements of child-friendly justice.

Moreover, as we are facing the COVID-19 pandemic, the world is bracing for the social and economic crisis that will undoubtedly follow. According to a recent study by Oxfam, half a billion people could be pushed into poverty by the Coronavirus.<sup>1</sup> With many people out of jobs and others struggling with in-work poverty following salary cuts, crime rates will grow, and criminal gangs will prey on people's hardship. In this context, the issue of restorative justice is even more pertinent than before. Be it in connection to theft, forgery, sexual abuse or exploitation, or public order disturbances – more children are likely to come in contact with the justice system. The way in which we will deal with these situations will have a profound impact on the future of our societies. Our responsibility is to prevent such offences, not just to deal with them. Prevention is therefore paramount.

As we have seen in the past, an increase in criminality rates often provides fertile ground for a “tough-on-crime” discourse. Shockingly, a minimum of between 1.3 and 1.5 million children are deprived of their liberty every year across the world.<sup>2</sup> Some media outlets and politicians are likely to funnel the misconception that such measures as lowering the age of criminal responsibility and longer sentences are effective policies for addressing juvenile offences. It is hard to believe that in some parts of Europe today, the age of criminal responsibility of children is still as low as 10 years old.

Whilst appearing tough and decisive may help some politicians to get more votes, applying punitive approaches, without addressing the root causes of juvenile crime, will not help to resolve the problems, but will rather sweep them under the carpet and let them fester into a potentially explosive situation.

It is my profound belief that children under 14 should never be detained, even in pre-trial facilities. These children, when in conflict with the law, should not just be locked away but helped - through education and training - with rehabilitation and finding a profession later in life. I am also convinced that every child should have the right to legal and other appropriate assistance, free of charge, in court or law enforcement proceedings. These principles have been endorsed in the Council of Europe child-friendly justice guidelines, as well as in the 2019 General Comment of the UN Committee on the Rights of the Child on children's rights in the child justice system.<sup>3</sup>

Restorative justice for children can be a viable alternative or a useful supplement to the criminal justice system. Bringing together the victim, the offender, their parents or guardians,

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<sup>1</sup> Oxfam (2020), “Dignity Not Destitution” Report, available at: <https://www.oxfam.org/en/press-releases/half-billion-people-could-be-pushed-poverty-coronavirus-warns-oxfam>

<sup>2</sup> United Nations Global study on children deprived of liberty (2019), available at: <file:///C:/Users/werne/Documents/PACE/UN%20study%20on%20children%20in%20detention.pdf>

<sup>3</sup> [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=en)

child protection and justice actors, and the community, for a facilitated dialogue in a safe and structured environment with the purpose of building reconciliation and for the development of agreements, can often produce more sustainable results and prevent re-offending. Restorative justice can help reduce the risk of labelling and stigmatisation, as well as difficulties for reintegration. As it does not lead to a criminal record, the risk of recidivism is in general quite low. Restorative justice can also be applied to convicted children and children deprived of liberty, and in this case it has a strong potential to reduce recidivism. In the long-term perspective, restorative justice can also shine a light on broader societal issues and lead to social change.

The world will never be the same after the COVID-19 pandemic. Re-thinking of our societies in the aftermath of this public health crisis will need to include the revision of our approaches to dealing with juvenile offences. Restorative justice, which aims to ensure complete reintegration of children in the society, should be an important part of this process.

## Child-friendly justice: a priority area for the Parliamentary Assembly

Over the past years, the Parliamentary Assembly has shown its strong commitment to promoting child-friendly justice.

In 2014, in my Report <sup>4</sup> on "Child-friendly juvenile justice: from rhetoric to reality", I pointed out that: "The State's approach to juvenile crime must involve the prevention of delinquency and must stress the importance of diverting children from the criminal justice system altogether. The current financial crisis provides a positive incentive to reduce incarceration and allocate resources to invest in diversion, reintegration and restorative justice. Furthermore, for those young offenders who slip through the prevention and diversion nets, successful reintegration and rehabilitation should be the key objective." Based on this report, the Assembly adopted Resolution 2010 (2014), which called on the Council of Europe member States, *inter alia*, to "develop a broad range of diversion programmes, respecting human rights standards and based, *inter alia*, on principles of restorative justice, with a view to dealing with juvenile offenders without resorting to judicial proceedings".

The Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice<sup>5</sup> and Recommendation CM/Rec(2018)8 concerning restorative justice in criminal matters<sup>6</sup> are important steps forward in this respect.

The Assembly and its Sub-Committee on Children follow closely the development of innovative approaches at European and global levels, in order to respond to new challenges in the Council of Europe member States, by providing a forum for debate, and a platform for developing common standards and monitoring their implementation.

## The role of parliaments

Parliamentarians are elected to represent the will of the people, and their active involvement is crucial at all stages of the development of restorative justice.

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<sup>4</sup> <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-en.asp?FileId=20914>

<sup>5</sup> <https://rm.coe.int/16804b2cf3>

<sup>6</sup> [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016808e35f3](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808e35f3)

Parliaments should hold governments accountable for the effectiveness and fairness of their justice systems with respect to children. They can raise concerns, organise public hearings or enquiries, prepare analytical reports and organise on-site visits.

As restorative justice implies a paradigm shift away from retributive models of justice, it requires a change of culture and attitude. To promote such change, there is a need for a broad and inclusive public debate. While raising awareness and building public consensus, the views and perspectives of diverse groups of population need to be duly taken into account, with particular attention to be given to the vulnerable groups.

Parliaments should develop holistic, comprehensive and sustainable policy frameworks or action plans for restorative justice, either as an alternative to detention and custodial sentences or as a supplement, which work in close co-ordination with the justice system. Restorative justice can also be used for conflict resolution outside of the justice system and needs to be promoted through relevant education policies. Civil society organisations can contribute their grass-roots experience and sensitivity to the development of restorative justice. Enabling policies are essential for making full use of their work.

Parliaments need to ensure that policy frameworks are not discriminatory. By representing diverse groups of population, they should prevent social and cultural biases from influencing unduly such policies. The dialogue between the parties that lies at the heart of restorative justice is not possible, unless due attention is given to social and cultural diversity, and unless the under-privileged get the support that they need to make their voices truly heard.

The effectiveness of policy frameworks needs to be monitored and evaluated, and parliaments play an important role here as well. Policies should be reviewed in order to take into account lessons learned from experience, and to ensure that they address emerging challenges.

Root causes and pathways to crime need to be duly analysed and acted upon. For example, when theft is linked to economic deprivation, broader societal change is needed in addition to individual measures. Parliamentary oversight for policy implementation is essential for identifying such issues, and for taking them into account when developing relevant policies.

Finally, the development of restorative justice requires substantial financial and human resources, and parliaments need to include sufficient funding in national budgets.

## Let's do our best for our children

If used well, restorative justice can profoundly change our societies. It has an immense potential for making justice systems more humane, more caring and truly transformative. Let's do our best to ensure that every child who comes into contact with the justice system leaves it better prepared for dealing with stumbling blocks, hardship or controversy, and that our society is better prepared for resolving problems and conflicts before they become a crime.

To conclude, the Parliamentary Assembly will continue to support this work, as part of its contribution towards the United Nations Sustainable Development Goal 16: Promote just, peaceful and inclusive societies. We look forward to working closely with other international organisations, legal professionals and civil society representatives, and I wish every success to all partners, who are promoting restorative justice for children.

Thank you.

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