

## **FINAL EUROPEAN CONFERENCE: CHILDREN'S RIGHTS BEHIND BARS**

### **Human rights of children deprived of liberty: improving monitoring mechanisms**

**Brussels, 15 February 2016**

### **Children's Rights in the Policy of the Council of Europe**

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Minister,

Ladies and Gentlemen,

Dear colleagues,

It is a great honour and a real pleasure for me to take part in this Final European Conference, organised in the framework of the Children's Rights Behind Bars project. The Council of Europe has supported this project through the Council of Europe Programme "Building a Europe for and with Children" and by bringing in the expertise of the European Committee for the Prevention of Torture.

One of the primary reasons of our support to this project is motivated by the fact that ensuring that children's fundamental human rights are respected, promoted and protected has always been part of the Council of Europe's mandate and priorities.

It is often said that our Organisation acts on the basis of a *virtuous triangle*:

- first, we set common standards for all member States;
- second, we monitor their effective implementation and
- third, we offer co-operation whenever we can support the efforts of our member States to comply with these standards. In the field of children's rights. This is achieved through a comprehensive approach, including both legislative expertise and capacity development, through awareness raising, training and education.

With respect to **standards setting**, the Council of Europe's action is based on the standards of our primary human rights conventions - the European Convention on Human Rights, the European Social Charter, as well as the European Convention for the prevention of torture and inhuman treatment and several children-focused conventions.

Clearly the European Court of Human Rights is at the heart of the evolution of children's rights in Europe, through its evolving jurisprudence. Its case law on juvenile justice illustrates many situations where children's rights are at stake in the context of deprivation of liberty, clarifying States' obligations in situations of detention, setting out higher standards of protection when a minor is involved, having particular regard to the vulnerability of children when determining whether treatment amounted to cruel, inhuman or degrading treatment, and whether detention was unlawful under the European Convention.

I was pleased to see that a useful list of the relevant jurisprudence has been included by the drafters in the annex to the Practical Guide.

Our Conventions' standards in this area have been usefully complemented by several normative acts of the Committee of Ministers of the Council of Europe, which many of you know, notably the [European Prison rules \(2006\)](#), the [European Rules for juvenile offenders subject to sanctions and measures \(CM, 2008\)](#), and the [Guidelines on child friendly justice \(2010\)](#). I should also mention the updated standards of the European Committee for the Prevention of Torture and inhuman or degrading treatment of punishment, which are highly relevant in this context.

Naturally, all these instruments build upon the cardinal principles enshrined in Articles 3 and 37.b of the Convention on the Rights of the Child and in Rules 5 and 10 of the European Rules for juvenile offenders, namely that in all action concerning juveniles, their best interests shall be a primary consideration and that they should only be deprived of their liberty as a last resort and for the shortest possible period of time.

The **monitoring bodies** of the Council of Europe have made in recent years significant efforts in ensuring a more child-centered agenda in their work, several of them having developed specific reports on the protection of children's rights within their respective mandates.

Firstly, I would mention the important role played by the [European Committee for the Prevention of Torture](#) in monitoring the situation of children deprived of liberty, whether in detention, in residential care or in other closed institutions, as evidenced by its reports and findings. The CPT has also recently reviewed its standards in relation to children in detention, responding to an expert report on "[Children's Rights and the European Committee for the Prevention of Torture](#)" which was issued in 2012<sup>1</sup>.

An updated version of the CPT's standards on this issue was included in its [24th General Report](#) published in February 2015<sup>2</sup>, focusing on the deprivation of liberty of juveniles in the criminal law context.

Protecting and promoting the human rights of children continues to be one of the priorities of the [CoE's Commissioner for Human Rights](#). Commissioner Muiznieks has pointed out the specific vulnerabilities of children in both his country and thematic work, highlighting countries' best practices but also clear shortcomings affecting juvenile justice and worrying trends, such as children being locked up at an earlier age for an increasing number of petty crimes, instead of looking for appropriate solutions for under-aged offenders, or the persisting problem of detention of children in the context of migration.

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<sup>1</sup> Council of Europe (2012), [Children's Right and the European Committee for the Prevention of Torture](#).

<sup>2</sup> Council of Europe (2015), [24th General Report of European Committee for the Prevention of Torture](#).

A number of CoE institutions, bodies and expert committees have recently taken up initiatives focusing on juvenile justice aspects. I would briefly highlight in this context the recent work of **the Parliamentary Assembly of the Council of Europe** analyzing the [state of juvenile justice in Europe](#), as well as their ongoing [campaign to end immigration detention of children](#).

The **CEPEJ** - [the Council of Europe Commission for the Efficiency of Justice Systems](#) - has widened its questionnaire to include a question on child friendly justice. Its reports will hopefully lead to a further development of the evaluation carried out by the CEPEJ on child friendly justice aspects.

The CoE's **Council for Penological Co-operation (PC-CP)** focused on the important theme of violence in juvenile detention institutions. A [report on violence in institutions for juvenile offenders](#)<sup>3</sup> was released in 2014. It concluded that the placement of juvenile offenders in institutions constitutes a form of deprivation of liberty with a significant impact on their lives and development, including the risk of being subjected to violence or of becoming involved in the perpetration of violence.

Last but not least, a number of Council of Europe **co-operation activities** support the efforts of our member States to comply with the standards, through technical expertise, capacity building activities, online training ([HELP programme](#)) and education.

## **Deprivation of liberty and children: progress and challenges**

The recent developments of child focused standards, at international and European level has been impressive. But their impact depends on how they are applied.

Throughout Council of Europe Member States, children are deprived of their liberty in different institutions and for different reasons. The circumstances in which they are detained vary dramatically.

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<sup>3</sup> European Committee on Crime Problems, PCCP (2014), [Report on Violence in Institutions for Juvenile Offenders](#).

It is a fact that progress has taken place in recent years in most of our Member States.

Our countries have increasingly recognised the need for a comprehensive approach to the development of juvenile justice, which appreciates the importance of linkages between juvenile justice, child protection and access to justice.

Changes have been introduced aimed at bringing legislation in line with relevant international and evolving European standards.

Justice systems have been reformed to better address children's needs while striving to integrate the principle of use of deprivation of liberty as a last resort.

National strategies for children have been designed in several member states and specific institutions have been set up to monitor respect for children's rights.

Worryingly, developments in Europe and more recently at its borders show that human rights, democracy and the rule of law in Europe face an unprecedented crisis.

Monitoring reports have brought to light a number of human rights and rule of law problems in several of our member countries. Many of them are serious problems of implementation of children's rights, often aggravated by austerity measures, which have arisen in situations where children have been deprived of liberty.

### **Protecting children deprived of liberty: a collective responsibility**

The situation of children is often an indicator of the general state of respect for human rights in a country, particularly as they constitute one of the most vulnerable groups in society.

As rightly pointed out by Mr Gnatovskyy in the Practical Guide, protecting children deprived of liberty in Europe is a collective and complementary effort of national and international preventive mechanisms, of human rights institutions, of parliamentarians, of members of the judiciary and civil society actors.

Their role is important, not just to see whether a child deprived of liberty has the right to do something, but also whether he or she has effectively been able to take advantage of that right, and that the day to day practice complies with relevant standards.

We trust that the Guide prepared through this project will greatly assist all relevant professionals in their important mission. It is not only a very practical tool for monitoring establishments where children are deprived of liberty. It is also a very useful and timely one.

Monitoring of these issues cannot be effective and professional without being based:

- on a proper visiting methodology,
- on clear and known standards, and
- with a proper understanding of the issues at stake,
- with the necessary skills and awareness when conducting interviews, and
- with clear child specific indicators and benchmarks for effectiveness.

### **Upcoming Council of Europe Strategy for the Rights of the Child (2016 - 2021)**

Minister, ladies and gentlemen, dear colleagues,

The Council of Europe remains committed, through policy making, standard setting, monitoring to ensure the respect and the effective implementation of the rights of children deprived of liberty, and through capacity building to support improving children's access to and treatment in civil, criminal and administrative justice.

For the Council of Europe, the next important step will be the adoption by the Committee of Ministers of the new Council of Europe Strategy for the Rights of the Child covering the period 2016-2021.

The new Strategy will have as one of its five key priorities the need to continue to promote child friendly justice in Council of Europe

Member States. Protecting children in the context of deprivation of liberty is an important part of it. The draft strategy envisages that:

*“Council of Europe member States will be supported in avoiding and preventing deprivation of liberty and criminalization of children through measures such as extension of diversion and preparation for reintegration.*

*Material conditions and detention regimes should be improved in line with Council of Europe standards. Support will be provided to member States in implementing the European Rules for juvenile offenders subject to sanctions or measures.*

*The Council of Europe will promote the implementation of the Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) regarding the protection of children deprived of liberty from ill-treatment and violence, follow-up to the recommendations of the report on violence in institutions for juvenile offenders, and develop further practical guidance for monitoring places of deprivation of liberty for children. It will consider addressing the situation of children whose parents are detained.*

*Also, the Council of Europe is ready to support, as appropriate and within its mandate, the UN Global Study on Children Deprived of Liberty, notably as far as the European region is concerned.”*

Following its adoption, the Strategy will be launched at a [High Level Conference in Sofia](#) on 5 and 6 April 2016, during the Bulgarian Chairmanship of the Committee of Ministers.

I would like to conclude by expressing, on behalf of the Council of Europe, our warm gratitude to all experts, key stakeholders and partners for their valuable contributions and active involvement, which have directly contributed to the success of this project, and in particular to DCI Belgium who has been instrumental in this process.

I thank you for your kind attention and look forward to today's conference, outcomes and discussions, which we will integrate into the Council of Europe's on-going work on ensuring child-friendly justice in our member States.