



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



CommDH/Speech(2014)7
English only

Children and Justice

Address by Nils Muižnieks
Council of Europe Commissioner for Human Rights

“Child-Friendly Justice: What it Means and How It Is Realized” Conference on the occasion of the 25th anniversary of the adoption of the Convention on the Rights of the Child

Stockholm, 16 May 2014

I am very pleased to take part in this conference among such distinguished participants. Children's rights are high on my agenda as Council of Europe's Commissioner for Human Rights. Since the beginning of my mandate (April 2012), the main angles from which I have looked at children's rights are: the impact of the economic crisis on children's rights and the situation of children whose human rights are particularly threatened: migrant children, stateless children, Roma children and children with disabilities. I have so far dealt with issues pertaining to children's rights in nine country visits, and subsequent reports (Portugal, Czech Republic, Greece, Estonia, Spain, “the former Yugoslav Republic of Macedonia”, Denmark, Montenegro and Romania).

While tackling the human rights problems to which these children are confronted, I have come across various shortcomings affecting juvenile justice generally including: lack of access to justice; lack of child-friendly judicial procedures; lack of programmes of crime prevention; and the weakening of non-judicial remedies (such as Ombudsmen). Moreover, in a number of countries I have dealt with the topic of administration of justice as a whole, paying particular attention to the issues independence, impartiality and effectiveness. It is clear that gaps affecting justice systems as a whole also have a substantial impact on juvenile justice.

I have gladly agreed to writing a paper for this Conference, where I will provide a slightly more detailed analysis, based on my experience so far, of barriers in achieving truly effective and human-rights compliant juvenile justice systems. I will also reiterate some key recommendations on how member states can overcome such barriers.

But today, I would like to insist on two points: 1) the need to develop/strengthen human-rights based juvenile justice systems, that are firmly anchored to the rights protected under the UN Convention on the Rights of the Child (UN CRC); 2) the connections between the economic crisis and juvenile justice.

1. The need for a more human-rights based approach to juvenile justice

Over the last 35-40 years, a wide range of international standards have been developed regarding juvenile justice (by the UN and the Council of Europe notably). The adoption in 1989 of the UN CRC constituted a milestone as it anchored some of the key principles of juvenile justice into international human rights law.

However, in stark contrast to this solid international legal basis, there are still a few countries in Europe in which there is no juvenile justice system in place. In many others, existing systems do not fully protect the rights of children, due to ill-conceived or incomplete policies, to the lack of means allocated to juvenile justice but also to a prevailing punitive approach to real or perceived “youth crime”.

Why is there still such a resistance to the idea of a dedicated juvenile justice? I believe that it is rooted in a still widespread lack of awareness of children's rights, as protected under the UN CRC and Council of Europe instruments. That children, just like adults, are full bearers of rights is a fact that is not yet genuinely acknowledged, even though all Council of Europe member states are parties to the UN CRC. In some countries, this results in a stark reluctance of society to accept the very idea that justice should be adapted to take into account children's rights and needs. Juvenile justice is widely perceived as undue state interference with parents' rights to educate their children. In other countries, it is seen as an unduly weak response to youth crime instead of a means of providing justice without violating the rights of children at the same time.

Consequently, the protection of children's rights in several areas of life remains sometimes conceived as a matter of goodwill, or positive practice, rather than as the implementation of a state obligation. Many systems lack a rights-based approach, firmly anchored around the key CRC rights, and first and foremost, the right of children to have their best interests treated as a primary consideration in all measures and decisions affecting them.

Against this background, monitoring by international human rights institutions takes on an additional dimension: not only is it crucial to improve the protection of children's rights, but, as a precondition to that, it is also an essential tool to remind states that protecting children's rights is an international obligation and to raise their awareness about what those obligations actually mean in practice. I see this as part and parcel of my work.

Indeed, in the framework of both my country and thematic work, the lack of adequate safeguards of children's rights is unfortunately a regular finding. This is particularly the case in certain areas, such as migration and asylum proceedings, in which children are all too often considered as "luggage of their parents" rather than holders of rights, including the right to seek asylum on grounds of child-specific persecutions. Unaccompanied minor migrants are also often left unprotected in asylum and migration proceedings, due to ineffective guardianship systems, but also to a general lack of consideration for their extreme vulnerability and the high risks of violation of their rights that they face.

I have also witnessed that children belonging to socially-excluded groups, such as the Roma, and their families often completely lack information and awareness about their rights and existing remedies. Yet, such children are highly vulnerable to a wide range of human rights violations, which are left unattended. Roma children living in large slums are for instance particularly exposed to the risk of violence, sexual and labour exploitation and trafficking in human beings. They would require easy access to and protection from the justice system. However, justice is for most of them out-of-reach. Moreover, they often suffer from the rights violations committed against their parents, without any consideration being given to their best interests. The lack of identity and civil registration documents affecting entire Roma communities, which results in many Roma children being automatically stateless or at risk of statelessness, is one such example.

Children with intellectual and psycho-social disabilities, particularly those living in institutions, also frequently face obstacles in accessing justice. They often lack adequate information and advice. Ineffective guardianship systems and, in general, restrictive legal capacity legislations, constitute additional serious barriers. In September 2013, I intervened as a third party before the European Court of Human Rights in a case concerning the treatment of a young man of Roma origin, Mr Valentin Campeanu, who suffered from a severe mental disability and was HIV positive. He was an orphan and had no legal representative. He died in a Romanian psychiatric institution. Although Mr Campeanu was 18 at the time of his death, this case raises important questions for the access to justice of children detained in psychiatric institutions. The fact that these children are often abandoned by their families and relatives and the absence of effective guardianship systems deprives them of access to any remedy, even though they are highly vulnerable to a wide range of abuses, including violations of their right to life and not to be subjected to inhuman and degrading treatment.

If a right cannot be enforced, it is little more than rhetoric. Awareness-raising about children's rights must therefore go hand-in-hand with proactive information on existing remedies, first and foremost at national level, but also at international level. I warmly welcome the entry into force of the Additional Protocol to the CRC on individual communications. Similarly, it is of key importance to continue to raise awareness about the possibility of using remedies at European level, such as the ECtHR and

the collective complaints procedure established under the European Social Charter, in order to uphold children's rights.

2. Connections between the economic crisis and juvenile justice

Austerity measures taken as a result of the global economic and financial crisis provide further illustrations of how children's rights continue to be denied due consideration and protection. I have found that the best interests of children have frequently been neglected by decision-makers in charge of designing and implementing budget cuts. In fact, in several countries, such cuts have disproportionately hit social, educational, health and other policies and programmes targeting children, resulting in children becoming one of the groups most harshly affected by the impact of austerity.

Juvenile justice as such has also been hit by budgetary restrictions. Prevention and reintegration programmes, involving social work, mental health and substance abuse programmes, community policing work, and inter-agency work, have been cut. NGOs which are playing an important role in implementing such programmes have had their capacity significantly diminished. Budgetary restrictions have also resulted in limited services offered in institutions in which children are detained. In countries like Romania, which I recently visited, lack of resources result in unequal geographical distribution of specialised juvenile justice services.

Additionally, it is worrying that some non-judicial remedies, such as children's ombudsmen and other national human rights institutions, have had their budgets tightened while at the same time they have witnessed a steep increase in complaints connected with the impact of austerity measures. Some institutions have even been closed down. However, these institutions constitute valuable alternatives to judicial proceedings. They often prove more accessible to children than courts and can provide adequate responses to certain categories of rights violations, notably social and economic rights. They also act as early-warning mechanisms. The member states should empower them by strengthening further their independence and capacity.

Since the beginning of my mandate I have worked towards promoting a human-rights compliant response to the economic crisis. At the end of last year, I published an Issue Paper on how to safeguard human rights in times of economic crisis. Governments often tend to argue that the economic crisis is a major factor preventing action in favour of human rights protection. However, the very same policies that are left unaddressed because of lack of resources to change them have often proven to be costly and, in many cases, also ineffective. Governments may be spending huge amounts of money to preserve systems that violate human rights without achieving tangible long-term results.

Against this background, the economic crisis should be used as a catalyst to review policies in place with a view to making them both more cost-effective and more respectful of human rights. Juvenile justice might be one of these areas. The authorities of the member states should therefore firmly anchor their juvenile justice policies on evidence-based approaches. Objective evaluation of past policies, both in terms of enjoyment of rights and cost-effectiveness, is crucial. Measures that have not brought about the expected results, including as regards crime prevention, should be abandoned. The widespread policy of detention of children is one such policy. The member states should make use of the good practices regarding juvenile justice which have been identified throughout Europe, including prevention, reintegration and diversion policies, in order to build more effective and human-rights compliant policies.

In conclusion, it is my intention to continue to pay particular attention in my monitoring work to children's rights violations, including in the sphere of justice. In addition to evaluating the implementation of human rights standards in the member states, my mandate includes a duty to raise awareness about these standards and their practical implications. They are all too often ignored when it comes to their implementation with regard to the voiceless and powerless groups of society, such as children.