



Doc. 13547

24 June 2014

Child-friendly juvenile justice: from rhetoric to reality

Committee Opinion¹

Committee on Legal Affairs and Human Rights

Rapporteur: Ms Kristien Van VAERENBERGH, Belgium, Representatives not belonging to a Political Group

A. Conclusions of the committee

The Committee on Social Affairs, Health and Sustainable Development chose to focus its report entirely on the issue of the treatment of juvenile delinquency, thus regrettably excluding from its scope key issues raised in the underlying motions.

The approach of the lead committee, which consists in promoting a minimalistic approach – advocating “diversion” away from any reaction of the law-enforcement authorities at all, to the largest extent possible, and if that is not possible, to minimise any unavoidable sanctions, is too one-sided. It fails to differentiate sufficiently between non-violent crime and violent crime and between different age groups, and neglects the rights of the victims.

When children are irresponsible, they must be acquitted, and when their responsibility is reduced, their sentences must be reduced accordingly, by comparison with a sentence handed down to an adult having committed the same offence. The difficulty lies in determining the degree of responsibility of a given juvenile offender. This is a matter for the judge, who must be assisted by competent experts and properly trained to come to his or her own assessment, in the light of all the circumstances of the individual case. This is not a subject-matter that avails itself to political generalisations.

In the view of the Committee on Legal Affairs and Human Rights, the draft resolution thus requires some amendments aimed at somewhat redressing the balance between the interests of the juvenile delinquents and their victims and to provide some clarifications from a legal point of view.

B. Proposed amendments

Amendment A (to the draft resolution)

In paragraph 6.4, after the words “the shortest possible period of time”, insert the words “and that it is still in keeping with the seriousness of the crime and its consequences for the victim and with the degree of culpability of the young offender”.

1. Reference to committee: [Doc 12672](#), Reference 3795 of 3 October 2011 and [Doc. 12907](#), Reference 3866 of 25 May 2012. Reporting committee: Committee on Social Affairs, Health and Sustainable Development. See [Doc. 13511](#). Opinion approved by the committee on 23 June 2014.



Amendment B (to the draft resolution)

Replace paragraph 6.4.1 with the following paragraph:

“ensuring that the execution of any custodial sentence is adapted to the young offender’s age. In particular, juveniles in detention must be kept separate from older offenders at all times and, even within special detention facilities for juveniles, younger inmates must be effectively protected from all forms of abuse by older inmates;”

Amendment C (to the draft resolution)

Replace paragraph 6.4.3 with the following paragraph:

“abolishing life imprisonment for any crimes committed by persons under the age of 18 at the time of the crime;”

Amendment D (to the draft resolution)

In paragraph 6.5, at the end of the sentence, add the words “in appropriate cases”.

Amendment E (to the draft resolution)

Replace paragraph 6.6 with the following paragraph:

“refrain from penalising children for their participation in offences designed to protect them, such as running away from home;”

C. Explanatory memorandum by Ms Van Vaerenbergh, rapporteur for opinion

1. The Committee on Social Affairs, Health and Sustainable Development has submitted a report on “Child-friendly juvenile justice: from rhetoric to reality”. It is based on two motions: one on “Child friendly justice”² and one on “Children in detention”.³ Whilst the original motion covered a wide array of child protection issues in different kinds of judicial proceedings (civil and family courts, administrative courts, and criminal courts, with children as victims, witnesses and possible perpetrators of crimes). These issues include the protection of personal data of children and procedural safeguards to ensure that children’s rights to information, representation, participation and protection are respected. The main focus of this motion was on vetting the effective implementation by member States of the Council of Europe’s “Guidelines on child-friendly justice” adopted on 17 November 2010. In addition, the motion also mentions the need to ensure that the age for criminal responsibility is not set too low and that diminished responsibility of juvenile offenders is duly taken into account in sentencing. The second motion focuses on protection of children in different types of detention, such as unaccompanied minors in migration detention.

2. The lead committee chose to focus its report entirely on the issue of the treatment of juvenile delinquency, thus excluding from its scope key issues raised in the motion. Whilst I regret this choice, it is not for me as rapporteur for opinion to fill these lacunae by presenting a second report.

3. I will therefore limit myself to addressing the issues raised in the draft resolution as it stands and to proposing some amendments, from a legal point of view. These are designed, as I see it, to provide some clarifications and to somewhat redress the balance between the interests of the juvenile delinquents and their victims. We should not forget that a large proportion of the victims of violent juvenile delinquents are also young people, or even “children” in the usual sense of the word. They include victims of gang rapes, brutal beatings or torture, who are sometimes maimed for life or even killed by young thugs against whom they are helpless unless protected by law-enforcement bodies upholding the rule of law.

4. Let me be clear from the outset: I am adamantly opposed to American-style policies of treating children, adolescents and even young adults the same as grown-ups, especially when they have committed a serious offence. It is a scientifically established fact that up to a certain age and state of maturity, young people are not at all responsible or only partially responsible for their deeds: either they cannot understand the implications and consequences of their actions or they are unable, or less able, to control their behaviour to

2. [Doc. 12672](#).
3. [Doc. 12907](#).

stop themselves from committing deeds they have understood to be wrong – or both. This “degree of responsibility” must be taken into account in sentencing: when children are irresponsible, they must be acquitted, and when their responsibility is reduced, their sentences must be reduced accordingly, by comparison with a sentence handed down to an adult having committed the same offence. The difficulty lies in determining the degree of responsibility of a given juvenile offender. This is a matter for the judge, who must be assisted by competent experts and properly trained to come to his or her own assessment, in the light of all the circumstances of the individual case. This is not a matter that lends itself to political generalisations.

5. Also, to the extent that a juvenile delinquent presenting a real danger to society must be acquitted or given a lenient sentence for lack of criminal responsibility, he or she should be placed in an appropriate educational institution. Such institutions should be well-resourced and equipped both to fill the educational lacunae which have caused the lack of criminal responsibility, and to protect society until the delinquent has made sufficient progress.

6. The approach of the lead committee, which consists in promoting a minimalistic approach – advocating “diversion” away from any reaction of the law-enforcement authorities at all, to the largest extent possible, and if that is not possible, to minimise any unavoidable sanctions, is too one-sided. It fails to differentiate sufficiently between non-violent crime and violent crime and between different age groups, and neglects the rights of the victims. I will therefore endeavour to promote a more differentiated approach by proposing some amendments to the draft resolution.

1. Amendment A (to the draft resolution)

Explanatory note:

The proposed addition is a clarification and a reminder of the fact that “children” under 21 (or even 25) sometimes commit very serious crimes with harsh consequences for the victims where it would be unacceptable to focus exclusively on the best interests of the juvenile offender.

2. Amendment B (to the draft resolution)

Explanatory note:

I agree that a minimum age for any criminal responsibility of at least 14 years must be set (as indicated in paragraph 6.2). But when a juvenile has passed this threshold, all types of criminal sanctions, including custodial ones, must be available to judges. In their sentencing decision, judges must take into account all elements of the individual case, including the seriousness of the crime, its consequences for the victim, and the degree of culpability of the young offender. Also, paragraph 6.4.1 as it stands would even exclude any educational measures involving some degree of deprivation of a juvenile’s liberty, such as assigning him or her to a reformatory or a children’s home, when the family cannot cope with his or her education.

This said, the execution of any necessary custodial sentence – which I agree must be a last resort – must be adapted to the young offender’s age, as it is spelt out in the new formulation I propose. I am somewhat surprised that this requirement is missing in the draft resolution as it stands.

3. Amendment C (to the draft resolution)

Explanatory note:

The term used in the original text (“children”) is legally imprecise. It is not clear whether this shall also include young offenders at or near the age of 21 or even 25 years, who can still be covered by juvenile criminal law. In my view, for young offenders over 18, it would be inappropriate to categorically exclude the possibility of any type of life sentence.

The question whether a life sentence must be reviewed in light of the development of the delinquent’s personality in prison, and if so, after how many years, is not specific to young offenders. But chances are that for younger offenders, the likelihood is greater that their personality develops earlier in such a way that parole can be considered.

4. Amendment D (to the draft resolution)

Explanatory note:

Diversion programmes, designed to avoid any criminal sanction and even any criminal court proceedings, are only appropriate for less serious crimes. Violent crimes, especially those having caused death or serious or permanent bodily harm, or rapes, should not be dealt with by diversion programmes, but by appropriate penal sanctions taking into account all aspects of the case, including of course the young offender's degree of culpability.

5. Amendment E (to the draft resolution)

Explanatory note:

The term used in the original text ("status offences") is too wide as it includes not only offences linked to the offender being "under age", but also others, such as laws existing in some States in the United States of America which prohibit convicted criminals from owning firearms.