Issue Paper

CHILDREN AND JUVENILE JUSTICE :

PROPOSALS FOR IMPROVEMENTS

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Introduction

Drawing an accurate picture about young offending in Europe is complex. A certain perception that children are becoming more violent appears to be on the increase. However, available statistics do not reflect an overall increase of the rate of youth crime. Furthermore, it should not be viewed in isolation, without taking account of the rising crime rates in the population as a whole.

Comparative study of juvenile justice is a difficult exercise, complicated by the use of different definitions, the lack of data and differences in the way in which data are collected. Nonetheless, a number of European countries are responding in a more punitive manner, making increasing use of detention for children and continuing to imprison children alongside adults. In several European countries, the age of criminal responsibility is very low, incarceration rates a cause of concern and the number of children from minority groups in prison disproportionate. While alternative measures are being put in place for some cases, the overall trend appears to be towards more punitive responses, especially in the case of older children and those involved in serious crime.

However, in some countries the number of children being sent to prison is falling as more use is made of diversion programmes, both before and as an alternative to court proceedings, and of alternatives to custody. The growth of practices underpinned by restorative justice values and the principle of family conferencing is noticeable here. Many of these approaches have yet to be tested rigorously for effectiveness in responding positively to offending behaviour. We can therefore only call for an in-depth evaluation of these approaches to ensure that they are fully consistent with the principles set out in international and European standards concerning children.

When addressing this issue, we should remember that a child is defined internationally as anyone under the age of 18 unless the law provides that majority is attained earlier. Several definitions of a juvenile and juvenile offender exist. The most recent one, set out in a European recommendation[1] is a person below the age of 18 who is alleged to have or has committed an offence.

States use different approaches to respond to young offending and youth justice systems vary from one country to the next. Children's rights standards, based on international and European instruments, take on added importance amid this diversity. They reflect a common approach that emphasises diversion, the use of non-custodial measures and a focus on children's needs and interests. For this reason, the standards are useful and important as a benchmark that is common to all states in the Council of Europe.

The objective of this paper is to identify the relevant international and European standards on juvenile justice and to outline examples of how these standards are being implemented. The issue of child-friendly justice and contact between children and courts is deliberately not addressed as the Council of Europe will soon be publishing guidelines on this very topic.[2] The paper therefore begins with an outline of international and European youth justice standards before considering four practical issues: prevention, diversion, sentencing and detention.

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1. Recommendation CM/Rec (2008) 11 of the Committee of Ministers to member States on the European rules for juvenile offenders subject to sanctions or measures, 5 November 2008.

2. As a follow-up to Resolution No. 2 on child friendly justice adopted at the 28th Council of Europe Conference of the Ministers of Justice (Lanzarote, October 2007), the Council of Europe is currently preparing European Guidelines on child-friendly justice, meant to assist in a concrete manner the governments in making their legal systems more adapted to children's needs, thereby enhancing their access to justice.

International standards

Over the last twenty-five years, international juvenile justice standards have been developed by the United Nations at international level and the Council of Europe at regional level. Child-specific instruments, such as the UN Convention on the Rights of the Child, and general human rights treaties, such as the European Convention on Human Rights, have played a crucial role in setting out states' obligations towards young offenders. These treaties along with their enforcement and monitoring bodies (the Committee on the Rights of the Child and the European Court of Human Rights, respectively) have developed and set international standards for the treatment of children in conflict with the law. Other instruments, for example the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, have a more specialised role in monitoring the treatment of those in detention, including children. In addition, a range of non-binding declarations and recommendations from both the UN and the Council of Europe have produced specific codes concerning the rights of young offenders and other specific areas of juvenile justice, including diversion, prevention of delinquency, community sanctions and measures, as well as detention.

Convention on the Rights of the Child (CRC)

The CRC, which has been ratified by all Council of Europe states, has four general principles – the right to life, survival and development, the right not to be discriminated against, the requirement that the best interests of the child be a primary consideration in all actions concerning children and the right of the child to be heard in all decisions that affect him/her. These provisions must be part of the state's approach to the treatment of children in conflict with the law. In particular, states must ensure that law, policy and practice in the area of

juvenile justice protect the rights of all children, promote their favourable development, ensure that the child's best interests are a primary concern in all such decisions and take the views of the child into account in the light of his/her age and maturity. The CRC requires the establishment of specialist laws, procedures and institutions for children in conflict with the law, in other words a dedicated juvenile justice system, a minimum age of criminal responsibility and the adoption of measures to deal with children without resorting to judicial proceedings, provided that human rights and legal safeguards are fully respected (Article 40). The state's approach to juvenile crime must involve the prevention of delinquency and must stress the importance of diverting children altogether from the criminal justice system. Trial and sentencing processes should be adapted to take into account the child's age and lack of maturity.[3]

Under Article 40 of the CRC, children accused of infringing criminal law have the right to be treated in a manner that is consistent with the promotion of their sense of dignity and worth and which reinforces their respect for the rights and freedoms of others. The children's age and the desirability of promoting their reintegration and encouraging them to assume a constructive role in society must be taken into account. In addition, the Convention prohibits the imposition of the death penalty and life imprisonment on children, and requires that imprisonment (pre- and post-trial) be imposed only as a last resort and for the shortest appropriate period of time. It also prohibits arbitrary deprivation of liberty and provides for the right to prompt legal assistance and the right to challenge the legality of the detention. To this end, a range of measures should be used as alternatives to institutional care, to ensure that children are dealt with in a manner appropriate to their

3. Committee on the Rights of the Child, General Comment No 10 on Children's Rights in Juvenile Justice, CRC/C/GC/10, 2 February 2007.

well-being and proportionate both to their circumstances and to the offence. Where detention is used, children have the right to be treated with humanity and respect, must be protected from harm and are entitled to health care and education.

UN Guiding Instruments on Juvenile Justice

Detailed guidance on juvenile justice is available from three key international instruments passed as resolutions of the United Nations General Assembly. They are:

- The UN Guidelines on the Prevention of Juvenile Delinquency ('the Riyadh Guidelines') 1990;[4]
- The UN Standard Minimum Rules on the Administration of Juvenile Justice ('the Beijing Rules') 1985,[5] and
- The UN Rules for the Protection of Juveniles deprived of their Liberty ('the Havana Rules') 1990.[6]

There are also the 2005 Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime,[7] which do not focus specifically on juvenile justice but still apply to proceedings involving accused juveniles when the victim is also under 18. These guidelines and rules usefully flesh out the provisions of the CRC and other instruments across a wide range of juvenile justice issues and should be read together with the CRC.

UN Guidance on Detention

UN guidance on the rights of children in detention includes the CRC and the Havana Rules. In addition, the UN Commission on Human Rights has adopted a number of resolutions on

4. Adopted by UN General Assembly Resolution 45/112, 14 December 1990.
5. Adopted by UN General Assembly Resolution 40/33, 29 November 1985.
6. Adopted by UN General Assembly Resolution 45/113, 14 December 1990.
7. Adopted by UN Economic and Social Council Resolution 2005/20, 22 July 2005.

the subject[8] calling attention to the numerous international standards in the field of juvenile justice and reaffirming that the best interests of the child must be a primary consideration in all decisions concerning deprivation of liberty. In 2006, the UN Secretary-General's Study on Violence against Children noted the high level of physical violence and punishment experienced by children in detention and recommended that particular attention be paid to putting a stop to this.[9]

Council of Europe Rules on Sanctions and Measures

In 2008, the Council of Europe adopted the European Rules for Juvenile Offenders subject to Sanctions or Measures[10] ('the European Rules') setting out important principles to be followed by states in their treatment of juveniles. These include a requirement that the imposition and implementation of sanctions or measures be based on the best interests of the juvenile, be subject to the principle of proportionality, i.e. depend on the gravity of the offence committed, and take account of the child's age, physical and mental well-being, development, capacities and personal circumstances. The principles require that measures be tailored to individual young people, implemented without undue delay and follow the principle of minimum intervention. Juveniles must be able to participate effectively in proceedings whereby measures are imposed and implemented and be entitled to enjoy all their rights, including privacy, throughout the proceedings. A multi-disciplinary and multi-agency approach is necessary to ensure an holistic approach and the continuity of care of juveniles; the staff concerned must be trained and sufficient

8. Human Rights in the administration of justice, in particular of children and juveniles in detention. United Nations Economic and Social Council in 1996 (E/CN.4/RES/1996/32), 1998 (E/CN.4/RES/1998/39) and 2000 (E/CN.4/RES/2000/39).

9. Report of the Independent Expert for the United Nations Study on Violence against Children, A/6199, 26 August 2006.

10. Recommendation CM/Rec (2008) 11 of the Committee of Ministers to member states on the European rules for juvenile offenders subject to sanctions or measures, 5 November 2008.

resources must be provided to ensure that intervention in juveniles' lives is meaningful. All sanctions imposed should be subject to regular inspection and monitoring. The document also provides extensive guidance on the conditions of detention which must be provided for by law, set out in policy and observed in practice in all member states.

> *"State Prosecutor foresees employing not just lawyers but also psychologists and pedagogues in her offices, to ensure a multidisciplinary team of experts are available for comprehensive case evaluation for cases involving children."*
>
> Report by the Commissioner on his visit to Montenegro, 8 October 2008

Council of Europe Guidance on the Prevention of Delinquency

Additionally, the Council of Europe has adopted a number of recommendations related to juvenile delinquency and juvenile justice. These include:

- Recommendation No R (87) 20 on social reactions to juvenile delinquency;
- Recommendation No R (88) 6 on social reactions to juvenile delinquency among young people from migrant families;
- Recommendation Rec(2000) 20 on the role of early psychosocial intervention in the prevention of criminality;
- Recommendation Rec(2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice;
- Recommendation Rec(2004)10 concerning the protection of the human rights and dignity of persons with mental disorder;
- Recommendation Rec(2005)5 on the rights of children living in residential institutions;
- Recommendation Rec(2006)2 on the European Prison Rules.

Prevention

Prevention is often considered the weakest link in the chain of actions intended to promote progressive approaches to juvenile justice. Yet preventing delinquency is an essential part of crime prevention. A juvenile justice policy that does not include measures aimed at preventing offending is considered deficient.

Juvenile offending has a number of underlying characteristics, such as poverty, educational disadvantage, child abuse, lack of family support and drug/alcohol problems. Those who offend tend to be marginalised with regard to their families, their community and/or society in general. Efforts to prevent offending must involve engaging with young people on all these levels. Furthermore, strategies to prevent offending must address the underlying problems by targeting measures at those families and children most in need, adapting the school curriculum to prevent early school-leaving and providing intensive family support and assistance for families under pressure. In this context, the Scottish Children's Hearings system is noteworthy. Based on the welfare model, it works on the basis of avoiding the criminalisation of children (under 16s involved in low-level offending), treating them in the light of what is in their best interests, rather than with a punitive response, and using an administrative body known as a 'lay panel' to identify and tackle their unmet needs in an holistic manner. Similarly notable is the family conference, originating in New Zealand but now also being used in a range of European countries by health and social services to empower families to identify their needs and take constructive measures to meet them, and ultimately divert them from offending. These mechanisms can provide an alternative means of addressing offending by young people, not least by diverting them both from offending and from the criminal justice system.

More generally, international instruments recommend that states take measures to address the particular health problems faced by young people today by supporting those with mental health problems and providing addiction and counselling programmes for those with alcohol or drug problems. Mentoring, family therapy and liaison programmes linking families with appropriate support have been found to be effective in many countries in helping families under pressure to cope and respond effectively to children's risky behaviour. Family support programmes, including family therapy programmes, can promote the favourable development of the child, secure his/her best interests and ensure that his/her views are taken into account. They have proved to be an effective preventive mechanism in this regard.

Measures to prevent offending by young people must be guided by evidence-based approaches. They should also be child-focused, undertaken in partnership with the child, rather than be an attempt to control the child, and be focused on ensuring the child's full and harmonious holistic development. They should also include providing children with opportunities, including educational opportunities, that meet their needs, offer them support, especially in the case of young people in need of special care and protection, and safeguard their well-being and interests. Official intervention should be pursued primarily in the overall interests of the young person and guided by fairness and equity.

Family and community-based support should be strengthened. Measures should be taken to provide families with the opportunity to learn about child development and child care, promote positive parent-child relationships, make parents aware of the problems of children and young people and encourage their involvement in family and community-based activities. Home- and family-based prevention programmes,

such as parent education and home visitation programmes, may be seen as appropriate possibilities. Quality early childhood education also has an important role to play in this context and states should put in place quality early childhood care and education, affordable for all children, in order, among other things, to prevent delinquency and offending later on.

In the community, youth organisations that aim to help young people should be supported, and a wide range of recreational facilities and services of particular interest to young people should be made easily accessible. It is also the state's role to ensure that all children have access to and are encouraged to engage in a range of leisure activities. This includes access to sports facilities, youth cafes and other social space where they can spend time safely with their peers. Young people should be involved in the design, and where possible the running, of these facilities. Particular efforts must be made to ensure that the facilities are accessible to marginalised young people. Support and resources should be put in place to protect homeless young people, and community-based facilities designed to provide information, guidance and support for young people and their families should be properly resourced.

Preventive measures also include ensuring that education is directed at developing the potential and talents of young people, providing them with emotional support and ensuring that the necessary services and support are available. Specialised prevention programmes and educational materials, approaches and tools geared to young people at particular risk should be developed and fully utilised. Those at risk of leaving school early should be provided with additional academic and financial support. Alternative curricula should be developed to engage their interest in education. Dedicated liaison officers should be appointed to work with families with

a view to making them understand the value of education and ensuring that they have the capacity to support their children's education. The education system should also be used to promote good health, including mental health, highlight the importance of sport and leisure and raise awareness of the harm caused by drugs and alcohol.

> *"The primary emphasis appears to be on preventing reoffending, to the detriment of preventing first offences"*
>
> Memorandum by the Commissioner on his visit to France, 20 November 2008

As a matter of social policy, institutionalisation should be a measure of last resort and limited to strictly defined circumstances. States must make every effort to minimise the number of children removed from their families by providing adequate family support, therapy and assistance. Where alternative care is unavoidable, measures should be taken to ensure that young people in care enjoy all the necessary services. Specific attention should be paid to children leaving care who should receive the support needed to ease their transition towards independent living.

Programmes to prevent offending behaviour should be developed with a view to bringing national law and policy into line with international and European standards. They should be periodically monitored, evaluated and adjusted in the light of reliable scientific research findings. The design of these strategic instruments should be an inclusive process designed to incorporate child and juvenile justice expertise. Responsibility for implementing these programmes should be vested in the appropriate government department, i.e. the children's, youth affairs or justice department. Participation in programmes to support young people should be voluntary and young people themselves should be involved in devising, developing and implementing them. The roles of

those involved in providing specialised services must be clearly defined, and 'care' and 'justice' systems effectively distinguished.

Diversion - Alternatives to court proceedings

According to Article 40(3) of the CRC, states must, whenever appropriate and desirable, promote measures for dealing with children alleged to have infringed, accused of infringing or recognised as having infringed penal law without resorting to judicial proceedings. Diversion, whether it involves directing the child to health/social services or to informal procedures aimed at preventing further offending, should thus be a core objective of every juvenile justice system, and this should be explicitly stated in legislation.

Diversion to the health/social services

The Committee on the Rights of the Child has recommended that measures to divert children from the juvenile justice process to social services should be a 'well established practice that can and should be used in most cases'.[11] Such approaches should not be limited to first-time offenders or to those who have committed minor offences, given the prospect of good outcomes for children and the public alike, and their cost-effective nature. For instance, in the Scottish model of 'Children's Hearings', the potential exists for diverting children away from the criminal process to the welfare system. This 'welfare' approach aims to focus on children's needs rather than their criminal behaviour. It is an important means of ensuring that children who are below the age of criminal responsibility are diverted to the appropriate health/social services.

11. General Comment No 10, para 24.

Police diversion

A police caution or police diversion offers an appropriate way of dealing with children without resorting to judicial proceedings. While approaches to police diversion vary, notably in terms of the level of intervention employed, in all cases special care must be taken not to allow children to be drawn into the criminal justice system (of which the police are formally a part) unless such a response is considered appropriate and desirable. The kinds of arrangements that may form part of a police diversion programme include family conferencing (which involves the young person and his/her family in finding a solution to the problems underlying the offending behaviour), restorative justice (where the victim may be present and some form of reparation arranged) and supervision by a specially trained police officer. The Irish Garda (Police) Diversion Programme involves all three types of intervention. Bosnia and Herzegovina has also recently introduced laws which provide for an educational recommendation (without judicial proceedings) aimed at avoiding bringing criminal proceedings against the child and encouraging juveniles not to re-offend. In Finland, victim-offender mediation is offered informally and, where used, can constitute grounds for waiving prosecution.

In other countries, such diversionary measures may be administered by other agencies - e.g. the probation authorities - as an effective pre-trial alternative. Pre-trial probation is used (for all types of offences) in Italy, where compliance with a court-approved programme results in a pardon by the court. Regardless of the nature of the alternative used - and, clearly, the more opportunities for diversion, the better chance there is of effective early intervention -, children's cases dealt with without resorting to judicial proceedings must fully respect human rights and legal safeguards. Human rights must thus underpin all responses to offending, including diversion.

Limits of diversion

In this connection, and with reference to Article 40 of the CRC, the Committee on the Rights of the Child has emphasised that:

• diversion should be used only where there is convincing evidence that the child has committed the alleged offence, that he/she freely and voluntarily acknowledges responsibility, and that this acknowledgement will not be used against him/her in any subsequent legal proceedings;

• the child must freely and voluntarily consent to the diversion; such consent must be based on adequate information on the nature and duration of the measures and on the consequences of a failure to co-operate and complete the measure;

• the law must contain specific provisions indicating in which cases diversion is possible, and the powers of the police, prosecutors and other agencies to make decisions should be regulated and kept under review;

• the completion of the diversionary measure by the child should result in definite and final closure of the case; any information should be retained for a finite period only, and should not be viewed as a 'criminal record' or equivalent.

In addition to setting formal limits to the use of diversion, this guidance states that it is important that those administering such schemes and programmes are appropriately qualified, and receive ongoing training, for example, in international standards, juvenile justice and child development to safeguard the quality of such intervention. It is also important that diversion programmes are monitored by means of up-to-date and transparent record-keeping. Their effectiveness and ongoing compliance with the youth justice principles set out in the CRC and other international standards should be monitored thoroughly and objectively.

Resourcing and co-ordination of diversion

Although a recognised part of the juvenile justice system in some countries, diversion programmes are new to others and take time to become entrenched. Attention should be paid to ensuring that these programmes are adequately supported, through the provision of dedicated resources. They should also be governed by a coherent legal framework and integrated into the legal system. Structures need to be put in place to ensure effective co-ordination between diversion programmes, and the responsibilities of the relevant agencies need to be clearly defined. All staff should be properly trained and supported in their work to ensure that they can meet the needs of juveniles. It is necessary to make decision-makers more aware of the merits and effectiveness of diversion in order to encourage support for its use. All these measures are needed to allow confidence in diversion to develop, especially among adjudicating bodies.

Sentencing

When prevention and diversion are unsuccessful in preventing further offending, or where they are not deemed appropriate, the young person ends up before an adjudicating body competent to pass sentence. Such a body's approach to sentencing is crucial in ensuring that the juvenile's rights are respected as well as in preventing reoffending.

International standards provide clear guidance on the manner in which cases involving children should be adjudicated. Article 3 of the CRC states that the best interests of the child must be a primary consideration in all decisions concerning him/her. According to the Committee on the Rights of the Child, this means that the traditional objectives of criminal justice (repression/retribution) must give way to rehabilitation and restorative justice objectives in dealing with child offenders. The juvenile justice system must emphasise the

child's well-being and ensure that 'any reaction to juvenile offenders [is] always… in proportion to the circumstances of both the offenders and the offence'.[12] The response to young offenders should take into consideration not only the gravity of the offence but also the offender's circumstances. Factors such as the child's social status, the family situation, the harm caused by the offence and other factors affecting personal circumstances should influence the reactions. The Courts shall further not impose sanctions or measures of indeterminate duration on juvenile offenders.[13]

> *"The Commissioner also noted with regret the lack of a system of specialised juvenile justice, including specialised courts"*
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> Report by the Commissioner on his visit to Armenia, 30 April 2008

Discretion in Sentencing

In addition to the significant impact of broader sentencing principles, the sentencing process can be a subjective one. It is important to ensure that appropriate scope for discretion is allowed at all stages of juvenile justice proceedings, as the varying needs of juveniles should be taken into account. Such discretion should not be unlimited, however, and efforts must be made to ensure sufficient accountability at all stages and levels in the exercise of such discretion. The provision of systematic ongoing training and the collection of detailed up-to-date data on the sentencing process are important ways of ensuring that it is transparent and adequately scrutinised. This is vital if sentencing practice is to develop in line with the principles of non-discrimination and the best interests of the child.

12. Rule 5.1 of the Beijing Rules.
13. Recommendation CM/Rec(2008)11, rule 3.

Sentencing principles

In order to comply with international standards, the law on sentencing must be clearly drafted and coherent, and legislative provision must be made for sentencing guidelines through the establishment of the criteria to be taken into account by the adjudicating body. According to the Beijing Rules (Rule 17), the following principles should govern the sentencing process in juvenile cases:

(a) the reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence, but also to the circumstances and the needs of the juvenile as well as to the needs of the society;
(b) restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;
(c) deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;
(d) the well-being of the juvenile shall be the guiding factor in the consideration of her or his case.

In addition, the Convention on the Rights of the Child and the European Convention on Human Rights prohibit the imposition of capital punishment on juveniles, corporal punishment and life imprisonment without the possibility of parole. The UN Study on Violence against Children also recommended that all such forms of violence against children should be prohibited.

With the increasing politicisation of youth crime, it is apparent that more punitive responses, including longer and harsher sentences, may be introduced to satisfy the public appetite for

'tougher' sanctions, especially for those convicted of serious crime. In such cases, it is often argued that the seriousness of the crime and the need to protect public safety are overriding considerations. These are legitimate concerns. However, if progress is to be made with this approach, it is also vital to make the general public and politicians more aware of the problems often experienced by young offenders. Efforts should be made to broaden support for responses to youth crime that are based on evidence and respect young people's rights. The media have an important role and responsibility here and they should, in particular, be encouraged to communicate the positive contribution young people make to society. The media play a pivotal role in underpinning public perceptions of youth crime. Efforts must be made to depoliticise the juvenile justice process, in order to ensure that it is the result of impartial, evidence-based decision-making and not subject to the changeable influence of the media or political opinion.

Supporting the sentencing process

Sentencing is a challenging and onerous task and judges should be provided with training in child development, psychology and children's rights to ensure that they are equipped to undertake their task in this area. The law should set out clearly what sanctions are available in juvenile cases, and the courts should be provided with a range of expertise and guidance to assist them in their decisions. In particular, specialists should inform the courts about the sentencing process generally – what types of intervention are effective and why. The requirement that the best interests of the child be taken into account in the sentencing process should be expressly provided for by law and assistance provided to the judiciary with implementing this principle. Decision-makers should be supported in their work by the health and probation services. Among others, these services should assist them in choosing the most appropriate sanction for the individual offender and

advise them as to what sanctions both meet the child's needs and are compatible with the principle of proportionality and minimal interference. Social service reports should be used to ensure the individualisation of decision-making processes involving children and to facilitate judicious adjudication of the cases concerned by the competent authority.

It is the responsibility of adjudicating and sentencing bodies to ensure that children's rights and fair trial guarantees are respected. The sentencing process should itself respect their rights. It should not therefore discriminate between children – the same sentence should be available regardless of the child's location or background/origin for example - and should comply with the best-interests principle. The views of the young person concerned should also be taken into account. Accordingly, measures, including legislative measures, should be taken to ensure that adjudicating bodies secure the participation of the young person in the court process and make sure that the sentence is communicated to the young person by the judge or magistrate in language that he/she can understand. The value of specialist tribunals of this kind and children's effective participation in the process has been underlined by the European Court.[14] A specialist legal tribunal including specialist legal counsel is also essential to ensure that children's rights are adequately protected during trial and sentencing processes.

Non-custodial measures

Article 40 of the CRC requires that children found to have infringed criminal law must be treated in a manner that is consistent with the promotion of the child's sense of dignity and worth, reinforces the child's respect for the human

14. S.C. v the UK, 15 June 2004, §§ 28-37. See also T. v the U.K and V. v the UK, 16 December 1999.

rights and fundamental freedoms of others and takes into account the child's age and the desirability of promoting his/her reintegration and encouraging him/her to assume a constructive role in society. Together with Article 37 of the CRC, which requires that detention be used only as a last resort, this provision clearly requires priority to be given to the use of non-custodial or community-based measures as an alternative to detention. In addition, Article 40(4) of the CRC provides that:

'A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.'

Thus, states must make available a range of sanctions and measures to ensure that the response to offending behaviour takes into account the well-being of the child. A large variety of measures is necessary to allow for flexibility and a tailored response to each individual case and to ensure that detention is a last resort. The types of orders can include care, guidance and supervision orders, probation orders, community service orders, financial penalties and compensation, treatment orders, orders to participate in group counselling or similar activities and orders concerning foster care, residential care or care in other educational settings. The schemes in question might include providing adult or peer mentors for young people and their families, making therapy and counselling courses available, including residential programmes designed to address alcohol or drug addiction or mental health problems. Further measures can be taken to place children under the supervision of the probation or health services in order to

address the underlying causes of their offending, to establish education programmes targeting practical learning skills, such as literacy and numeracy courses, and to provide formal education and vocational training courses of specific interest to young people, designed to equip them with the skills and expertise needed to earn a living. Such sanctions and measures must be designed to ensure that the young person is equipped to play a more constructive role in society through education, training and employment and enhance his/her sense of responsibility towards his/her family and community.

The imprisonment of children is not only ineffective in addressing offending behaviour: it can also be harmful to children's development and health. For this reason, too, it is crucial that states take steps to ensure that non-custodial measures are the norm in cases involving juveniles and to reduce the number of children who receive a custodial sentence. International juvenile justice standards reflect this by requiring that detention be used only as a last resort. Implementation of this rule requires states to put in place a range of alternatives to imprisonment. These include non-custodial measures imposed following, or as an alternative to, conviction, which allow young people to remain in their families, and community-based sanctions, which, among other things, are a form of community payback. They enable young people to make good some of the damage they have caused. According to the European Rules, a wide range of community sanctions and measures, adjusted to the different stages of development of juveniles, must be available at all stages of the juvenile justice process. Priority should be given to sanctions and measures that can have an educational impact – provided they are proportionate and subject to appeal – as well as constituting a restorative response to the offences committed by juveniles.[15]

15. CM/Rec (2008) 11, paras 23, 44.

Many states now provide a range of community sanctions for young offenders. For example, in Germany alternative sanctions, including mediation between victims and offenders, exist in all Länder. In Belgium the courts can order children to be placed under the supervision of the social services (with educational conditions attached), or children can be placed with a reliable person in a foster home or put under supervision for observation and educational purposes. Greater use is also being made of mediation and family conferencing in Belgium. Bosnia and Herzegovina has introduced a new restorative justice option which uses a mediation procedure incorporating a personal apology, compensation and community volunteering. Against a backdrop of increasing rates of juvenile imprisonment, welfare approaches involving the social services and restorative justice/family conferencing approaches are also part of the response in the Netherlands. Irish law likewise provides for a range of responses (including parental supervision orders, mentoring orders and residential, intensive supervision and education and training orders) that aim to keep children out of prison.

National law must make provision for ordering and implementing community sanctions and measures. The choice of measure should be determined by an individual assessment of what is in the child's best interests, and special attention should be paid to appropriate measures for ethnic minorities and juveniles who are foreign nationals.

Children must be involved in a meaningful way in the decision to impose a sanction and be informed, in a language and manner they understand, how the measure imposed is to be implemented and about their rights and duties with regard to its implementation. Implementation must be based on individualised assessments and best practice in social work and youth care.

A decision to impose or revoke a sanction must be made by a judicial authority and the law must make provision for the relaxation or termination of the measure where the juvenile has made sufficient progress. If juveniles do not comply with the conditions of the sanction imposed on them, this should not lead automatically to deprivation of liberty. Minor transgressions need not be reported to the authority deciding whether the measure has been complied with, and failure to comply should not automatically constitute an offence.

Detention as a measure of last resort

Too many children are detained throughout Europe and although numbers are decreasing in some countries they continue to increase in many others. There are complex reasons why this is the case but what is clear is that the numbers will not fall until this becomes a political objective. It is apparent that imprisonment will not be a last resort where there are few alternatives. If other sanctions are not available, imprisonment can be resorted to far too quickly, especially when this has been the traditional response. It can be difficult to change practices, and training in the importance of keeping children out of detention is vital in this respect. In particular, Finland's experience indicates the important role that judicial education and training can have in reducing recourse to imprisonment. Political support for the use of detention only as a last resort is crucial to the achievement of this goal. States should give careful consideration to enshrining the principle that imprisonment should be used only as a last resort in the Constitution or in legislation. Irish legislation even provides that a prison sentence should not be imposed unless there is no reasonable alternative. However, it is also vital to make the connection between the availability of a range of community-based measures and fulfilment of the objective of ensuring that imprisonment is a last resort. In this connection, it is not possible to implement Articles 37 and 40(4) of the CRC

separately from each other. Policy-makers need to understand the relationship between putting in place a wide and varied range of community-based measures for children found to have broken the law, and working to minimise the use of detention. Making a clear commitment to the last-resort principle in legislation and policy will not in itself reduce the numbers of children in detention unless alternative community-based responses are also provided for by law. For example, in England and Wales, the Youth Rehabilitation Order enables the courts to select from a full range of community measures when sentencing young people. The law should also provide for the possibility of placing young people in an open facility and for night-time detention and early release.

> *"Ministers […] as well as the staff of child custody centres admit that there is an overuse of child detention in the UK"*
>
> Memorandum by the Commissioner on his visit to the United Kingdom, 9 October 2008

Detention of non-offenders

According to Article 37 of the CRC, the arrest, detention or imprisonment of a child must be in conformity with the law and used only as a measure of last resort and for the shortest appropriate period of time. In addition, no child may be deprived of his/her liberty arbitrarily. As stated in the European Rules, detention must be implemented only for the purpose for which it is imposed and in a manner that does not aggravate the suffering inherent in it.

Pre-trial detention

Particular concern has been expressed about the placement of children in pre-trial detention for long periods while they await trial. According to the Committee on the Rights of the Child, this constitutes a 'grave violation of the Convention'.[16]

16. General Comment No 10, para 28.

Pre-trial detention must be confined to 'exceptional circumstances'. To meet their commitments in this area, states must take specific action to reduce the number of children in pre-trial detention and make a range of alternatives available to reduce the overall use of pre-trial detention. Pre-trial detention as a punishment should be strictly forbidden. The law should state clearly the conditions that must be met in order to place or keep a child in pre-trial detention. In certain cases, pre-trial detention may be necessary to ensure the child's appearance at court proceedings or when the child is an immediate danger to himself/herself or others or is likely to receive a lengthy custodial sentence on conviction. Structured bail support should be made available and every effort made to ensure that the child remains in his/her family while awaiting trial, while also receiving help with staying out of further trouble. Alternative measures, for example bail fostering, mentoring programmes and residential alternatives should be made available to minimise the use of pre-trial detention.

Where pre-trial detention is unavoidable, it is vital to keep its length to a minimum. To this end, those in detention awaiting trial should have their proceedings expedited. Moreover, strict limits must be placed on the duration of any pre-trial detention in the case of children, and the need for such detention must be subject to regular review. These standards are borne out by the case-law of the European Court of Human Rights in respect of Article 5 of the ECHR, which requires that children be legally represented during proceedings to challenge the lawfulness of their placement in detention.

The particular vulnerability of children detained on remand must be taken into account to ensure that they are treated with full respect for their dignity and personal integrity. Efforts must be made to improve the quality of pre-trial detention,

ensure separation from convicted juveniles and make sure that a range of measures and activities are available to children detained on remand, given that they remain innocent until proven guilty.

Detention for the purposes of care and protection

Detention must be used only as a last resort, regardless of whether its purpose is to rehabilitate or to provide care or protection for children. However, increasing concern exists about the practice of depriving children of their liberty in order to provide them with care or treatment in a secure setting. The use of so-called 'protective custody', i.e. deprivation of liberty for the purposes of protecting children from harm, can mask inadequately developed systems of social welfare and care provision. However, it can also play a positive role, in certain circumstances, as it is sometimes necessary to place a child in a setting that will ensure his/her safety. An important and first safeguard could be to seek the consent of the child when possible, in order to prevent arbitrary placement. Regular review of the placement should also be ensured. It is important that a range of other options are put in place – for example, family support services, foster care and temporary shelters – to reduce the demand for detention for protective purposes.

According to the European Court of Human Rights, protective custody is compatible with the ECHR only where it serves the purpose of 'educational supervision' as provided for in Article 5(1)(d). As for the meaning of this concept, the Court has held that it is not to be equated rigidly with notions of classroom teaching .[17]

17. Koniaraska .v. the UK (decision as to the admissibility), 12 October 2000.

In the context of a young person in the care of the social services, it must 'embrace many aspects of the exercise by local authorities of parental rights for the benefit and protection of the person concerned'. However, children in need of care and protection who have not been charged with or convicted of a criminal offence cannot be placed in a penal institution unless effective provision is made for their educational supervision.[18] Moreover, as with children in pre-trial detention, those in secure care for therapeutic reasons must have the lawfulness of their placement regularly reviewed.

Conditions in detention

There is now extensive international law dealing with the rights of children in detention. International law makes it clear that children in detention must be accommodated separately from adults,[19] a standard breached both by states that detain large numbers of children and by those that detain only small numbers. Like adults, apart from being deprived of their liberty, children in detention are entitled to all the rights enjoyed by their peers in the community. Indeed, certain rights take on added importance for children in detention. Of particular significance here are the right to protection from harm, the right to health and health care, the right to maintain contact with their family, the right to education and training but also the right to play and leisure.

Juveniles deprived of their liberty must be guaranteed a range of meaningful activities,[20] and benefit from an individual plan designed to enable them to progress through less restrictive regimes and prepare them for release and reintegration into

18. D.G. v Ireland , 16 May 2002.
19. Inter alia Article 37(c) of the CRC; Rule 29 of the Havana Rules, CM/Rec (2008) 11, para 59 or Conclusions XV-2 of the European Committee of Social Rights, Statement of Interpretation on Article 17§1 of the Revised European Social Charter, p. 32.
20. CM/Rec (2008) 11, paras 76-82.

society. The activities and measures in question must promote the child's physical and mental health, foster self-respect and a sense of responsibility and develop attitudes and skills that will prevent re-offending. As a consequence, children should enjoy appropriate physical conditions and have access to care and facilities which facilitate their continuing education and personal development.

The right to be safe

The most basic rights of children in detention include the right to life, survival and development and the right to be protected from harm. Places of detention are not free from violence and research has noted worrying levels of violence suffered by children in some detention centres both from staff and from other young people.[21] Small facilities are likely to provide safe(r) environments for children, and a number of additional measures are required to ensure that the rights of children in all facilities are protected. These measures, which must be set out in national law, include:

• prohibiting physical punishment;

• placing strict limits on the use of physical restraint and the methods that can be used (including the requirement that the practice be monitored and regularly reviewed) and prohibiting all forms of restraint designed to inflict deliberate pain on children;

• prohibiting solitary confinement as a means of punishment and restricting its use to exceptional circumstances;

• effective anti-bullying policies and transparent, clear codes of conduct/behaviour.

21. Report of the Independent Expert for the United Nations Study on Violence against Children, A/6199, 26 August 2006.

Given that children are highly vulnerable, authorities must protect their physical and mental integrity and foster their well-being. This may entail providing separate accommodation for those fearing assault or harassment by other detainees. Particular care must be taken of those who have experienced abuse.

Regular, rigorous inspection of detention facilities by independent qualified staff, and the availability of an independent complaints mechanism to both hear confidential complaints and address the concerns of young people in detention are central to enhancing their safety.[22] An orderly and safe environment helps to protect the integrity of the young person, and staff should develop a proactive approach to safety and security which builds on positive relationships with the children. Regular staff training is therefore crucial. Additional measures that are vital for creating a safe environment for young people in detention are the availability of a meaningful regime (to prevent boredom), effective anti-drugs strategies and the availability of psychological support, counselling, therapy and other mental health services. In many European countries, there is increasing recognition that more and more children in conflict with the law suffer from significant mental health problems or severe behavioural problems. The increase in such problems is partly the consequence of better diagnosis in detention but it also reflects a certain punitive approach to children who ought not to be detained. These children should receive appropriate treatment and care in special centres. Ordinary detention centres are not equipped to respond to their needs.

22. CM/Rec (2008) 11, paras 121-126.

Individually tailored placements

The Havana Rules as well as the European Rules provide important practical guidance for states in the organisation and management of their detention facilities. They highlight the significance of ensuring good governance of such facilities, including confidential and modern systems of record-keeping and firm policies on admission, transfer and release. Moreover, they stress the importance of gathering all relevant background information on the young person (e.g. education, family and health) on admission. Such an assessment is vital for determining the type of placement best suited to the young person's needs and developing an individually tailored placement programme designed to maximise the potential of the placement. Non-custodial measures, as well as open or semi-open regimes, must also be made available.

> *"Compared to adults the rate of juveniles in open prison facilities is decisively lower"*
>
> Report by the Commissioner on his visit to Germany, 11 July 2007

Facilities suited to children

Children must be separated from adults in detention. They should be kept out of the sight and hearing of adult detainees as much as possible and there should be no opportunity for contact and communication between children and adult detainees. Detention facilities must provide a range of services to meet the individual needs of the juveniles held there and the specific purpose of their committal. They should ensure conditions with the least restrictive security and supervision arrangements needed to prevent juveniles from harming themselves, staff, others and the wider community. Facilities should be small, make it possible to provide individualised care, be organised into small living units, be located in places that are easy to access and facilitate contact between children

and their families. Adequate arrangements must be in place to ensure that children in detention are provided with appropriate education, health care and leisure activities. The physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard for the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities.

The choice of placement for each individual child must be guided by the best-interests principle, including the provision of the type of care best suited to the child's particular needs and the protection of his/her mental and physical integrity and well-being. Maintaining family and social ties should also be considered a priority. Juveniles and their families should be consulted about the initial placement and any subsequent transfer. Children have a right to have their views heard and taken into account in this process.

Small and localised facilities with minimal security

A range of facilities is required to ensure that the needs and rights of young people in detention are met. In particular, states must operate both secure facilities for juveniles and facilities with minimal or no security measures. It has been shown in practice that small facilities make it easier to provide individualised treatment while diminishing the risk of tension. Children must be sent to institutions with the least restrictive level of security required to hold them safely, a measure which clearly necessitates facilities with varying levels of security. Detention facilities for juveniles should be decentralised and small-scale detention facilities should be set up and integrated into the social, economic and cultural environment of the community. Easy access for the family is of particular importance.

Health and education

All intervention must be designed to promote the development of the children, who should be actively encouraged to participate in it. It must meet the individual needs of children in the light of their age, gender, background, stage of development and the type of offence committed. An individual assessment must be undertaken as soon as possible after admission to determine health, education and other needs. An individual plan for activities in detention and other aspects of care must be drawn up, and the rules of the facility must be explained to the child in language that he/she understands. The regime must include activities in the areas of education, personal and social development, vocational training, rehabilitation and preparation for release. It may also include schooling, other types of training, the development of social skills, anger management, addiction counselling, individual and group therapy, physical education and sport, creative leisure time, activities outside the centre, various forms of leave and care after release. Consideration should be given to ensuring that community-based health and social services, rather than the prison authorities, retain legal and financial responsibility for guaranteeing that children receive these services while in detention.

Special arrangements must be made for children who belong to ethnic or religious minorities or who are foreign nationals. Those who are foreign nationals should be allowed extended visits or other forms of contact with the outside world where this is necessary to compensate for their social isolation and should be entitled to information about the possibility of transfer to their country of origin. Those belonging to minorities should be entitled to special arrangements especially as regards the continuation their specific cultural practices.

Reintegration services

It has been observed that high re-offending rates among children raise serious questions about the efficacy and purpose of the entire youth justice system and, indeed, much of the difficulty associated with the use of detention is its failure to address offending behaviour. Accordingly, states need to focus on the reintegration of children following placement in detention and should consider imposing on local authorities a statutory duty to resettle children. Reintegration should also be an important part of custodial sentences, with welfare and care being the two main priorities. Co-operation between the prison administration and specialist services in the community, following the example of certain institutions in France, should be established. Also relevant is the approach used in the Netherlands, where night-time detention facilities allow young people to attend school as usual during the day. This is one way in which young people can obtain access to services in the community while also serving a detention sentence.

Measures should be taken to ensure that removing children from their families, friends and community does not have a lasting impact. For example, arrangements for visits should allow juveniles to maintain and develop family relationships in as normal a way as possible. Opportunities for social integration, including leave, and communication with the outside world via the media, visits and information exchange should also be encouraged.

Families and other members of the community should be involved as much as possible in the detention centre, working with the young people detained there to maintain links between them and their community. As far as possible, arrangements should be made for juveniles to attend local

schools and training centres and take part in other activities in the community. All juveniles should be helped to make the transition to life in the community and prepared for release as a part of the individual care plan. This entails measures that include additional leave, release on parole combined with effective social support, and step-down facilities which ease young people's return home. Semi-open units can be particularly suitable for this purpose. Buddy systems, whereby those who have made the transition successfully provide others with support, can be effective here. The provision of follow-up support and services helps young people to make the transition back to their community, and these needs must be addressed as part of the overall planning process.

Monitoring, inspection and complaints

Institutions, services and facilities responsible for the care and protection of children must conform to standards established by the competent authorities, particularly in the areas of safety, health, the number and suitability of staff and supervision. The need for regular, independent inspection and monitoring is particularly acute in the case of detention facilities (whether used for punitive or protective purposes), and various international standards stress the importance of ensuring that staff working with children in all areas of the juvenile justice system are suitably qualified and receive regular training. Children have the right of access to independent complaints procedures, which should be prompt, simple and effective and must include a right of appeal. Independent advocates, such as those introduced in England and Wales, should be made available to children in custody so that they feel able to raise concerns and make complaints without fear and without suffering reprisals. Mediation and restorative conflict resolution should be given priority as a means of resolving complaints and meeting requests.

Conclusions

There is no shortage of international standards, legal principles and detailed guidance to assist states seeking to reform their approach to juvenile justice. States should put in place systems which are effective and rights-based, and secure the well-being of children and young people in conflict with the law. The standards provide a comprehensive and objective set of benchmarks against which states can measure themselves, and be measured, with regard to their juvenile justice system. The monitoring process makes it possible to raise awareness of good practices that exist across Council of Europe countries, and provides the opportunity for information on these practices to be shared.

The basic principles are well-established, and indicate the way forward:

- tailor-made prevention programmes to promote the prevention of offending should be developed, guided by evidence-based approaches, and regularly adapted to the changing needs of children;

- diversion from judicial proceedings should be a core objective of every juvenile justice system. Trained staff and sufficient resources should be provided to allow confidence in the process and the exercise of power should be subjected to strict limits, regularly reviewed;

- diversion should focus on children's needs and be offered to first-time and repeat offenders. It should be clearly provided by the law and the child must consent to it;

- sentencing process should be based on the best interest of the child and the gravity but also the circumstances of the offence must be taken into account. Judges should be trained and supported by relevant experts to assist them in their decisions;

- non-custodial and community-based measures are to be prioritised as an alternative to detention with an educational and restorative objective;

- pre-trial detention and detention for the purposes of care and protection must only be used in exceptional circumstances and alternative measures should be made available to minimise their use;

- detention must be a measure of last resort. Children must always be detained separately from adult detainees;

- in detention children are entitled to all their rights and particular attention should be put on their security and health, their education as well as the preservation of their ties with friends and relatives. Independent and effective mechanisms should be available to address their complaints;

- small facilities with sufficient and trained staff offering both educational and reinsertion programmes are fundamental to prepare the child's reintegration in the society.

Appendix

Mandate of the Commissioner for Human Rights

The Commissioner for Human Rights is an independent institution within the Council of Europe, mandated to promote the respect for human rights in 47 Council of Europe member states.

The first Commissioner, Mr Alvaro Gil-Robles, held the post between 15 October 1999 and 31 March 2006, while the current Commissioner, Mr Thomas Hammarberg, assumed the position on 1 April 2006.

The fundamental objectives of the Commissioner for Human Rights are to:

• foster the effective observance of human rights, and assist member States in the implementation of Council of Europe human rights standards
• promote education in and awareness of human rights in Council of Europe member States
• identify possible shortcomings in the law and practice concerning human rights
• facilitate the activities of national ombudsperson institutions and other human rights structures, and
• provide advice and information regarding the protection of human rights across the region.

The Commissioner's work, thus, focuses on encouraging reform measures to achieve tangible improvement in the area of human rights promotion and protection. Being a non-judicial institution, the Commissioner's Office cannot act upon individual complaints, but the Commissioner can draw conclusions and take wider initiatives on the basis of reliable information regarding human rights violations suffered by individuals.

The Commissioner co-operates with a broad range of international and national institutions as well as human rights monitoring mechanisms. The office's most important intergovernmental partners include the United Nations and its specialised offices, the European Union, and the OSCE. The office also co-operates closely with leading human rights NGOs, universities and think tanks.

RESOLUTION (99) 50 on the Council of Europe Commissioner for Human Rights (adopted by the Committee of Ministers on 7 May 1999 at its 104th session)

The Committee of Ministers,

Considering that the aim of the Council of Europe is the achievement of greater unity between its Members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms

Having regard to the decisions taken by the Heads of State and Government of the member States of the Council of Europe at their Second Summit (Strasbourg, 10-11 October 1997)

Considering also that the 50th Anniversary of the Council of Europe provides an occasion to enhance further the work undertaken since its creation,

Decides to institute the Office of Council of Europe Commissioner for Human Rights ("the Commissioner") with the following terms of reference:

Article 1

1. The Commissioner shall be a non-judicial institution to promote education in, awareness of and respect for human rights, as embodied in the human rights instruments of the Council of Europe.

2. The Commissioner shall respect the competence of, and perform functions other than those fulfilled by, the supervisory bodies set up under the European Convention of Human Rights or under other human rights instruments of the Council of Europe. The Commissioner shall not take up individual complaints.

Article 2

The Commissioner shall function independently and impartially.

Article 3

The Commissioner shall:

a. promote education in and awareness of human rights in the member states

b. contribute to the promotion of the effective observance and full enjoyment of human rights in the member states

c. provide advice and information on the protection of human rights and prevention of human rights violations. When dealing with the public, the Commissioner shall, wherever possible, make use of and co-operate with human rights structures in the member States. Where such structures do not exist, the Commissioner will encourage their establishment

d. facilitate the activities of national ombudsmen or similar institutions in the field of human rights

e. identify possible shortcomings in the law and practice of member States concerning the compliance with human rights as embodied in the instruments of the Council of Europe, promote the effective implementation of these standards by member States and assist them, with their agreement, in their efforts to remedy such shortcomings

f. address, whenever the Commissioner deems it appropriate, a report concerning a specific matter to the Committee of Ministers or to the Parliamentary Assembly and the Committee of Ministers

g. respond, in the manner the Commissioner deems appropriate, to requests made by the Committee of Ministers or the Parliamentary Assembly, in the context of their task of ensuring compliance with the human rights standards of the Council of Europe

h. submit an annual report to the Committee of Ministers and the Parliamentary Assembly

i. co-operate with other international institutions for the promotion and protection of human rights while avoiding unnecessary duplication of activities.

Article 4

The Commissioner shall take into account views expressed by the Committee of Ministers and the Parliamentary Assembly of the Council of Europe concerning the Commissioner's activities.

Article 5

1. The Commissioner may act on any information relevant to the Commissioner's functions. This will notably include information addressed to the Commissioner by governments, national parliaments, national ombudsmen or similar institutions in the field of human rights, individuals and organisations.

2. The gathering of information relevant to the Commissioner's functions shall not give rise to any general reporting system for member States.

Article 6

1. Member States shall facilitate the independent and effective performance by the Commissioner of his or her functions. In particular, they shall facilitate the Commissioner's contacts, including travel, in the context of the mission of the Commissioner and provide in good time information requested by the Commissioner.

2. The Commissioner shall be entitled, during the exercise of his or her functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder.

Article 7

The Commissioner may directly contact governments of member States of the Council of Europe.

Article 8

1. The Commissioner may issue recommendations, opinions and reports.

2. The Committee of Ministers may authorise the publication of any recommendation, opinion or report addressed to it.

Article 9

1. The Commissioner shall be elected by the Parliamentary Assembly by a majority of votes cast from a list of three candidates drawn up by the Committee of Ministers.

2. Member States may submit candidatures by letter addressed to the Secretary General. Candidates must be nationals of a member State of the Council of Europe.

Article 10

The candidates shall be eminent personalities of a high moral character having recognised expertise in the field of human rights, a public record of attachment to the values of the Council of Europe and the personal authority necessary to discharge the mission of the Commissioner effectively. During his or her term of office, the Commissioner shall not engage in any activity which is incompatible with the demands of a full-time office.

Article 11

The Commissioner shall be elected for a non-renewable term of office of six years.

Article 12

1. An Office of the Commissioner for Human Rights shall be established within the General Secretariat of the Council of Europe.

2. The expenditure on the Commissioner and the Office of the Commissioner shall be borne by the Council of Europe.

Issue papers are commissioned and published by the Commissioner for Human Rights for the purpose of contributing to debate or further reflection on a current and important human rights matter. All opinions in these expert papers do not necessarily reflect the position of the Commissioner. The Issue Papers are available on the Commissioner's web-site: www.commissioner.coe.int

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