

Child-Friendly Justice: the legal & judicial system as regards children and youth (στα αγγλικά)

"Child-Friendly Justice: the legal and judicial systems as regards children and youth" European Economic and Social Committee Hearing on "Children First"	Brussels, 06/25/2002
Speech by Anna Karamanou, Member of European Parliament, Chairperson of the Committee on Women's Rights and Equal Opportunities of the European Parliament	

In the 21st century in a European Union, which claims to be a champion and defender of the social and economic prosperity of its peoples, initiatives must be directed primarily to ensuring respect for the physical and psychological integrity of persons and particularly of children who are the thread linking the present and the future of mankind.

The EU Charter of Fundamental Rights, following the adoption of the United Nations Convention on the Rights of the Child in 1989, was proclaimed at the European Council at Nice on 7 December 2000 and in particular Article 24 thereof was a breakthrough for children's rights in the EU, since it dictates that in all actions relating to children, the child's best interests must be the primary consideration.

Moreover, the existence of phenomena which crush the most innocent and susceptible members of society namely children, such as

sexual exploitation and child pornography led the European Union to take measures, given the inability of Member States to combat these phenomena effectively.

In my capacity as a Member of the Citizens Freedoms and Rights Committee of the European Parliament, I drafted the report on combating sexual exploitation of children and child pornography, which was a proposal for a framework decision from the European Commission. The content of this report constitutes a fair example of Child Friendly (or Unfriendly) Justice and its practical implications.

In most Member States, child victims do not have to appear in person at the trial and victim is treated sensitively with due regards for his age and education. Nevertheless, it is absolutely essential that the evidence can be taken by video-link or by their statements taken (if necessary) in the presence of the prosecuting authorities and the legal representatives of the accused person. Thus, children are protected from media attention and aggressive practices during proceedings such as multiple statements.

Another issue is the law enforcement authorities that are not staffed by specialised personnel, who are able to treat traumatised children in an appropriate manner. It has been shown that very often, where judicial investigations are conducted by specialised officials, the psychological pressure on the victim is reduced.

Members of diplomatic missions must also receive clear instructions on how to deal with such incidents and about the legal provisions which must be implemented. Previous cases show that many embassies give appropriate support to victims both by counselling and by assistance through interpretation and transport to the victim's land of origin. However, there have also been cases in which embassy staff

have helped the offender escape from extraterritorial jurisdiction.

There was also this question of definition of the word "child", where there were raised many objections. Article 1 of the UN Convention on the Rights of the Child states that the word "child" must be used in the broader sense of the term and include any person below eighteen years of age. Many people have argued that we have to take account the age of consent to engage in sexual relations which in many Member states is lower than the eighteen. However, what this particular Commission's proposal is dealing with is combating sexual exploitation of children and child pornography which has nothing to do with sexual activity.

As regards to the protection of the victim, legal provisions in the Member States do not include an obligation for a compensation award to the victim or they do not provide clear criteria concerning the means of awarding compensation (for example, how compensation is awarded to minors, by what means, up to what amount and to what end), and frequently mechanisms to monitor the implementation of decisions in this area are lacking. In many cases detailed information about the rights of children is lacking and it is up to the child's counsel to submit an application for compensation. Another important issue is protection for the child-victim after the trial which is a matter left to the discretion of the Member States. Effective procedures should be created and social programmes set up to provide the necessary psychological and counselling assistance to children and their parents or guardians in line with the UN Convention on the Rights of the Child.

Moreover, in a number of Member States (Sweden, the Netherlands, France and Germany) extraterritorial jurisdiction applies only to a

certain number of forms of the crime of sexual exploitation of children. Most Member States require the crime to be penalised both in the country in which extraterritoriality will apply and in the country in which the crime is committed (criterion of double criminality). Finally, the majority of Member States (Belgium, France, Germany, the Netherlands and Sweden) ban the extradition of their nationals or impose substantial restrictions on such a measure. The legal traditions of the Member States must not constitute an obstacle to addressing this kind of phenomena which must be dealt with due sensitivity.

The report has been adopted by the European Parliament on 14 June 2001 and since then, its final adoption is still pending in the Council.

Let me now broaden the discussion and address the issue of Children Friendly Justice from a different perspective, involving this time juvenile offenders and not victims.

The 1980s marked a transitional period for the juvenile system. Although rehabilitation of juvenile offenders was still an important goal, juvenile justice policy began to emphasize punishment and public safety. A number of events contributed to this shift, demographic, economic, technological, social and cultural changes led to more migration, a more dual society, increasing urbanisation, including less social control, other forms of socialisation, a lower degree of tolerance for deviancy and a sort of "moral panic" on crime and delinquency. Juvenile delinquency changed in type and volume. As a result of this shift, in the 1980s and 1990s, public opinion and governments were inclined towards an increased punishment-orientation to delinquency.

From the late eighties, these evolutions are reflected in several changes in the formal

regulations of juvenile justice. We do not know where this evolution is going to bring us. Some fear that on the longer term the juvenile justice system will be abolished, as it is proposed in the USA by several people. I am convinced that this will not be the case, but, nevertheless, we have to look for a totally new way of dealing with juvenile offenders.

Struggling with the Justice and Welfare Balance

All European countries have tried to construct a kind of synthesis or compromise between two basic principles:

1. Penal law has the function to restore the juridic-moral order that was disturbed by the offence, to keep possible offenders from committing a crime by deterrence, and if possible, to reform the offenders.
2. A minor is not yet an adult. This implies that he is not yet capable of full responsibility. The public reaction to an offence committed by a minor should, therefore, above all have an educative aim.

The question is whether an ideal system can be found to combine the advantages of the welfare-approach with the legal rules that are necessary in a democratic constitutional state.

Nowadays, a new model of reacting against offences seems to be emerging, based on experiments with so called "alternative sanctions", especially victim-offender mediation and community service.

The growing confidence in such practices is leading to a scientific and social tendency that is typified as "restorative justice". We expect the coming years to be characterised by a growing body of experiments and research in the field of restorative justice, in order to test the limits of

this approach. It is probably the only way to avoid a return to a simplistic punitive model.

A specific development: offences committed by ethnic minorities

Many countries (Germany, The Netherlands, Belgium, Italy, Denmark) refer to the fact that young people from ethnic minorities are overrepresented in registered crime. The fact that not all types of ethnic minorities are equally overrepresented indicates that there is more at hand than just being ethnically different. It seems that juveniles of certain ethnic minorities really commit more crimes than their counterparts from other ethnic groups. The question is how to interpret the observation.

There is no doubt that the rates of juvenile crime in sub-populations have to do with poverty and social exclusion (but this is not the only factor). There is no doubt either that some ethnic minorities are poorer and more socially excluded. Besides the socio-economic basis for social exclusion, belonging to an ethnic minority may be a reinforcing factor in the exclusionary process. The awareness of lower opportunities for social integration may enhance a disengagement with regard to the dominant society and a withdrawal into a sub-cultural that in turn decreases the chances for integration.

For this reason solutions are becoming urgent. European societies will have to find a way for mutually respectful coexistence and integration of several ethnic groups into one society, in order to avoid the massive racial problems that the United States are confronted with.

Children Policy Consideration

The special status of children is based primarily on three policy considerations, namely:

The special needs of children who, by reason of their age and level of maturity, need the care and guidance of others in order to develop into healthy, responsible adults; the substantial vulnerabilities of children to persons older and in many ways more powerful; and the actual or presumed incapacity of children to perform certain legal acts in daily life.

Considering that the penal system should have as a primary consideration the protection and promotion of children's rights, Member States should:

- undertake or continue particular efforts for the prevention of juvenile maladjustment and delinquency,
- provide of child-sensitive facilities such as telephone helplines, shelters and administrative procedures to prevent violations of the rights of the child,
- create further child-specific offences in the penal law, such as child homicide, child pornography, trafficking of children,
- improve protection for children from those who might re-offend,
- facilitate children's testimony and providing for assistance for child witnesses, as well as issues relating to age, including age of consent,
- implement measures in respect of minors preferably in their natural environment,
- encourage arrangements for all the persons concerned at various stages of the proceedings (police, counsel, prosecutors, judges, social workers) to receive specialised training on the law relating to minors,
- promote and encourage comparative research in the field of juvenile justice between Member

States, so as to provide a basis for policy in this area.

All these efforts can be helpful, but one must not forget that it is essential that we continually re-examine the situation, to search for ways to improve the justice system to give our children and young people the protection they need and deserve.