Content and objectives of presentation

Focus:
How to respond to youth committing criminal offences? A European Perspective

Outline:
I. How is Europe organized? – Council of Europe & European Union
   - Standard-setting (law), agenda-setting (policy) and implementation
II. Four themes
   - Prevention
   - Reintegration
     - Deprivation of liberty of children
     - Child-friendly justice
III. Some reflections & lessons (to be) learned
IV. Q&A

Overarching perspective: international children’s rights.
European Union (EU) - 28 member states
Europe – Council of Europe

Discover the world at Leiden University
Council of Europe

• 1949 – Human Rights, Rule of Law & Democracy – Strasbourg (France)

• Standard-setting in many ways – informed by CRC
  - European Court of Human Rights
  - Standard-setting by Committee of Ministers
  - Standards of the European Committee for the Prevention of Torture (CPT)

• Strategy on the rights of the child since 2006 (policy level)

• Focus on juvenile justice in many ways:
  - Position of children deprived of their liberty – case law ECtHR + European rules for juvenile offenders etc. + CPT standards
  - Child-friendly justice – case law ECtHR + Guidelines on child-friendly justice
  - Prevention of violence – case law ECtHR + standard-setting + research
European Union

- Economic and political unity – Brussels, Belgium

- EU Charter of Fundamental Rights – rights of the child

- EU Agenda for the Rights of the Child – European Commission
  - Violence
  - Child-friendly justice
  - Migration
  Funding and policy events – standard-setting

- Criminal justice: cooperation, mutual trust & recognition & minimum standards

- Informed by the CRC
EU Directive Procedural Safeguards Children

Applicable to national criminal justice systems (+ EAW proceedings)

- Content (inter alia):
  - Right to information about rights (also for parents etc.)
  - Right to a lawyer (incl. police interrogations), individual assessment, medical examination
  - AV recording of police interrogations (i.e. mandatory in case of deprivation of liberty)
  - Deprivation of liberty as a last resort + rights of children deprived of liberty
  - Cases treated urgently
  - Privacy protection
  - Child and parents present during proceedings
  - Appropriate training of all professionals

- Note:
  - Minimum safeguards necessary to foster mutual trust and cooperation
  - Issues left out: age of majority, juvenile courts, diversion, no harmonisation of procedural codes
II. Theme 1 – Prevention (I)

1978 – Resolution (78) 62 on juvenile delinquency and social change – ‘socialisation of juveniles’

1987 – Recommendation No. R (87) 20 on social reaction to juvenile delinquency

1988 – Recommendation No. R(88) 6 on social reactions to juvenile delinquency among young people from migrant families – ‘social integration & equal opportunities for self-fullfilment’


• Part of early standard-setting initiatives by Council of Europe
• Focus on primary and secondary prevention – moving from social factors to individuals factors
• JJ system should be seen as one component in a broader community based strategy for preventing juvenile delinquency – family, school, neighbourhood and peer group context
• More attention for evidence based approaches
II. Theme 1 – Prevention (II)

‘Weakest link’ – Thomas Hammarberg in 2009 – JJ actors are not focused on prevention

Prevention must be part of juvenile justice policy – see also General Comment No. 10.

- Family support programmes – positive parenting & prevention of violence – poverty
- Addressing mental health needs of youth, incl. substance abuse
- Evidence based – ‘what works’
- Include youth (key actor) & youth organisations (mentoring)
- Education – talent development, health, social and financial education
- Specific groups of children

Open questions:
- Whose responsibility? – national plan of action
- Prevention must be human rights based
- Risks of prediction – ‘tomorrow’s criminals’
- Under minimum age of criminal responsibility – ‘skirting the rule’
II. Theme 2 – Reintegration (I)

   - ‘reintegration is one of the principle aims of juvenile justice’
   - see also art. 40 (1) CRC – ‘constructive role in society’
   - youth in transition to adulthood

2008 – European rules for juvenile offenders subject to sanctions or measures
   - social reintegration + prevention of re-offending
   - individual plan
   - education + vocational training
   - age of majority – no need to transfer automatically (cf. GC No. 10)

2010 – Guidelines of child-friendly justice
   - importance of family ties – cf art. 37 (c) CRC
   - youth involvement – empowerment of youth
II. Theme 2 – Reintegration (II)

-Reintegration is state obligation as soon as young offender enters the JJ system – article 40 (1) CRC
-CRC Committee – reintegration is in the interest of both young offender and society
-Education: ‘respect for rights and freedom of others’ + ‘constructive role in society’

Parameters:
*Focus on the individual child – best interests; taking into account age & maturity; right to development
*Identify stakeholders, including community, family and young offender
*Prevention of negative impact of JJ intervention – e.g. police violence, stigmatization
*Diversion
*Non-custodial measures – see e.g. art. 40 (4) CRC
  - custodial measures as a last resort + for the shortest appropriate period of time
*If nevertheless custodial measures/sanction – reintegration should start at day 1
II. Theme 2 – Reintegration (III)

European Court of Human Rights Case Maslov v. Austria (2008):

‘The Court considers that, where expulsion measures against a juvenile offender are concerned, the obligation to take the best interests of the child into account includes an obligation to facilitate his or her reintegration.

In this connection the Court notes that Article 40 of the Convention on the Rights of the Child makes reintegration an aim to be pursued by the juvenile justice system (see paragraphs 36–38 above).

In the Court's view this aim will not be achieved by severing family or social ties through expulsion, which must remain a means of last resort in the case of a juvenile offender. It finds that these considerations were not sufficiently taken into account by the Austrian authorities.’
II. Theme 3 – Deprivation of Liberty

Reintegration is *an additional incentive* to use deprivation of liberty only as a measure of last resort and for the shortest appropriate period of time

- Case law European Court of Human Rights
  - Critical on the use of pre-trial detention
  - Concerned with protection against violence + access to justice
  - Concerned with deprivation of liberty for educational supervision

- Implementation requires 1) legislation, 2) availability of alternatives and 3) child-sensitive decision making
- Welfare institutions as an alternative (?)

But if a child is deprived of his/her liberty:
- Reintegration is part of rights of the child deprived of liberty; legislative measures – after care
  - Tailored approach – positive support of child’s development – education, health care, activities etc.
  - Prevention of negative impact – e.g. violence, bad conditions
  - Active involvement of child and parents/family
II. Theme 4 – Child-friendly justice

Firmly grounded in international children’s rights law and ECtHR case law
  - Right to be heard (art. 12 CRC) & ‘effective participation’ (fair trial)

• All justice proceedings (informal and formal)
• Before, during and after justice proceedings
  • accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity

Relevant for reintegration (incl. e.g. protection against violence), effectiveness of the intervention, child’s sense of justice
III. Some reflections (I)

1. Comprehensive European framework informed by and built upon the CRC
   - Legally relevant
   - Legitimacy: informed by academia, civil society and young people
   - Brings international standards closer
   - Represents European minimum standard
   - Generates attention/awareness
   - Shapes agenda/policy – implementation

2. Regional cooperation – attention, discussion and ‘action’
   - Offers a platform for exchange
   - Interaction between EU and Council of Europe – e.g. child-friendly justice
III. Some reflections (I)

3. Lessons learned

- Some themes are complicated and too big – e.g. prevention
- Regional developments cannot do without national support and follow up
  - European cooperation / standards exist because of national support
  - European standards are not enough
  - Open norms – room for diversity and local differences
- Follow up and monitoring – e.g. children’s ombudspersons, regional monitoring
- Youth involvement (proactive) – Access to justice (retroactive)
- Awareness raising + education (also concerning perceptions)
- Research – involvement of academia
UN Committee on the Rights of the Child

A juvenile justice system that is in compliance with the UN Convention on the Rights of the Child

‘will provide States parties with possibilities to respond to children in conflict with the law in an effective manner serving not only the best interests of these children, but also the short- and long-term interest of the society at large’

(GC No. 10, para. 3)
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Child Law Education Leiden Law School

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Introduction to Child Law
Introduction to Children’s Rights

Master

Child law *(regular master program in Dutch)* → Unique in the Netherlands
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Aspects of Child Abuse

Post-graduate education

Child Law & children’s rights & Summer School Program

Student Association for Child Law

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