

**ENOC Position Statement on  
'The rights of children/young people in conflict with the law'**

❖ **Adopted at the 16<sup>th</sup> ENOC General Assembly, 12 October 2012, Nicosia**

***“Children should not be treated as criminals”<sup>1</sup>***

We, European Independent Children’s Rights Institutions (ICRIs), members of ENOC, express our deep concern regarding the position of children in conflict with the law in our countries and notable deficiencies in States’ policies to react to their needs and interests. Children in conflict with the law are children first and do not lose their human rights, including rights to special treatment and protection, to education and to health services. We strongly stress the need for substantial review and where necessary improvement of existing laws, policies and practices across Europe, in line with the Convention on the Rights of the Child and other relevant international instruments and standards.

We make this call based on the results of the Survey conducted among ENOC members in 2012 and the conclusions and recommendations of the independent expert as well as the proposals of the European Network of Young Advisors, as expressed at their meeting in Warsaw in August 2012.

Having regard to the Convention on the Rights of the Child, different UN standards and guidelines (“The Riyadh Guidelines”, “The Beijing Rules”, “The Tokyo Rules”, “The Bangkok Rules”, etc), the CRC General Comment No.10 - “Children’s Rights in Juvenile Justice”, the Guidelines of the Committee of Ministers of the Council of Europe on Child - Friendly Justice, the ENOC Statement on Juvenile Justice (2003) and other relevant instruments and standards,

We consider that the following measures and recommendations should be endorsed, implemented and supported by European states:

1. The principles of the best interests of the child must be paramount. Non discrimination, irrespective of any difference, and the right of children to be heard, express their views and

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<sup>1</sup> *Thomas Hammarberg, European Commissioner for Human Rights, Statement, 2009*

opinions should be mainstreamed in the laws, policies and practices dealing with children in conflict with the law.

2. Early preventive measures and interventions through education, social protection, health services, child friendly justice systems and work in local communities are key factors in prevention of behaviour that brings children into conflict with the law and reoffending. Prerequisites for success are planning, comprehensive, fast and efficient measures targeting risk factors (including facilities such as care and accommodation for children at risk) and awareness-raising.
3. Schools should have clear policies and child-sensitive systems in place for handling behaviour of students. They should establish good cooperation with parents and with local social services, and focus on students' character development, building their interests and talents, training and promoting their involvement in conflict resolution, respecting their diversity and individuality and offering additional support to children with special educational needs.
4. The minimum age of criminal responsibility (MACR) should be clearly defined by domestic laws and raised progressively as high as possible, up to the age of 18. The position and the rights of children in conflict with the law below the MACR should be clearly defined and their broader protection secured. Treatment in the justice system of children in conflict with the law above the MACR should always take into account alongside their age, their level of maturity in accordance with the principle of the evolving capacities of children and their vulnerability.
5. Children in conflict with the law should always be entitled to separate legal representation and/or legal aid by trained lawyers on children's rights.
6. Measures alternative to custody and robust application of Restorative Justice, should be adopted in the law, developed and efficiently implemented in practice. Alternative and restorative measures, chosen and adapted to the particular child and the circumstances of the case, considering their opinion and needs, should be used to the highest possible extent, leaving repressive measures always as "the last resort". If the child is deprived of liberty and placed into specialised institutions, the effects of the placement on the child should be subject to regular inspection and supervision. All services should be monitored by independent authorities, with participation of the children involved.
7. All professionals working with children in conflict with the law should be appropriately, comprehensively and continuously trained not only about the legal aspects of children's rights and child friendly justice, but also about characteristics and specificities of children,

childhood, child's development and evolving capacities. This obligation should apply to both professionals in prosecution and justice systems (police officers, prosecutors, judges, lawyers, probation officers) and professionals in penitentiary institutions, correctional facilities, social, health and education services and institutions and media.

8. Data regarding children in conflict with the law, as well as procedures and measures taken against them should be systematically and comprehensively collected, elaborated, harmonized and disaggregated and should be available and securely shared between respective authorities and ICRIs.
9. Any criminal records of children in conflict with the law should be strictly confidential and retained only for a limited period of time after completion of their sentence, while there should be provisions in law and in practice, so that records of other measures imposed to children (such as educational or other reformatory measures) are expunged once the young person reaches the age of 18. The right of the children to private life and data protection rules should clearly apply and implemented in all such situations.
10. Rehabilitation and reintegration services especially at local level, based on inclusion and support to the child in conflict with the law, should be established, developed and strengthened, staffed by multidisciplinary teams of professionals. Resettlement after custody should be assured.
11. Efficient, independent, impartial, available and child-friendly internal and external complaint mechanisms should be established and developed. Children in conflict with the law should be fully informed about their right to file a complaint and supported to make complaints within appropriate structures when necessary.

**ENOC urges European states to review their laws, policies and practices on prevention and intervention regarding children in conflict with the law and to harmonize them with international treaties and adopted standards.**

**ENOC urges European states to review the role and position of their Independent Children's Rights Institutions, with a view to harmonising their respective legal frameworks with the Paris Principles and other relevant international standards, and strengthen these Institutions' capacities for the effective fulfilment of their role in the protection and promotion of the rights of the child.**

## Summary of the major implications of the Convention on the Rights of the Child for juvenile justice systems

Children in the Convention are defined as everyone under 18 (*article 1*);

All the rights in the Convention must be respected and ensured for all children without discrimination on any ground (*article 2*);

The best interests of children must be a primary consideration in all actions concerning them (*article 3*);

Children's views must be heard and taken seriously on all matters that affect them, according to age and maturity (*article 12*).

There must be no torture, inhuman or degrading punishment or treatment, capital punishment nor life imprisonment without possibility of release;

Arrest, detention and imprisonment must only be used as a measure of last resort and for the shortest appropriate time;

Any child deprived of liberty:

- must be treated with humanity and respect, taking account of the needs of people of his or her age;
- must be separated from adults unless not in the child's best interests;
- has the right to maintain contact with family through contact and visits;
- has the right to privacy;
- has the right to prompt access to legal and other assistance;
- has the right to challenge deprivation of liberty through court, etc and to prompt decision.

(*article 37*)

Any child who may have offended has the right:

- To be treated in a manner consistent with the promotion of the child's sense of dignity and worth, taking into account the child's age and the desirability of promoting the child's re-integration and assuming a constructive role in society;
- To detailed due process guarantees;
- To have their privacy fully respected at all stages of the proceedings;

States are required to:

- Promote the development of laws, procedures, authorities and institutions specifically applicable to children who may have offended;
- Promote as appropriate measures not involving judicial proceedings;
- Establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
- Make available a variety of dispositions to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

(*article 40*)

Additional standards are provided by the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (*the Beijing Rules*); the 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the 1990 United Nations Guidelines for the Prevention of Juvenile Delinquency (*the Riyadh Guidelines*)