

Cross-border safeguards for children in conflict with the law

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Content and objectives of presentation

Focus:

Children in cross-border instances – problems, challenges, safeguards and priorities

Outline:

I. What is the problem?

II. How big is the problem?

III. Two perspectives

IV. European perspective

- Standard-setting by European Union
- Interaction between EU and Council of Europe

V. Conclusions

Overarching perspective: international children's rights.

**BECAUSE
EVERY CHILD
IN THE WORLD
HAS ONE THING
IN COMMON.
THEIR RIGHTS.**

I. What is the problem?

Starting point – ‘economic integration & freedom of movement’

Cross-border issues:

1. Children who cross borders after they have committed criminal offences
2. Children who cross borders while committing offences
3. Children from abroad who have been sentenced and who cross-borders
4. Children from abroad committing criminal offences in ‘your country’
 - a. Children from ASEAN
 - b. Children from third countries
- 5a. Children from abroad who are victims of criminal offences in cross-border situations (and who may be involved in criminal offences)
- (5b. Children from abroad who are witnesses of criminal offences)

II. How big is the problem?

1. 'Freedom of movement' does not automatically generate (more) criminal justice issues with children crossing borders, but...
 - criminal activities may very well become more international and concern children
 - children cross-border more easily (unaccompanied/separated or with family) - this may affect criminal justice system and need for cooperation + certain level of harmonisation
2. Incentive to gather disaggregated data – visibility of children in the system
 - How many foreign children in your justice system (ASEAN and third countries)?
 - How many children are victims of cross-border criminal activities? Victim – perpetrator continuum
 - Children under MACR + other characteristics (e.g. unaccompanied/separated or with family)
 - ...
3. New phenomenon? Not really, but numbers & complexity increase.

II. Two perspectives

1. Law enforcement / judiciary

- How to effectively combat crime? Cooperation, exchange of information/data
- Enforcement of judicial decisions / sentences
- *Mutual trust and recognition*

2a. Child accused of or convicted for committing a criminal offence

- How to safeguard child specific and fair treatment, i.e. child rights approach?
- Art. 40 and 37 UN Convention on the Rights of the Child (CRC)
 - Beijing Rules (admin of juvenile justice), Havana Rules (deprivation of liberty)
- General principles of the UN CRC
 - non-discrimination (art. 2) (!)
 - best interests of the child (art. 3(1))
 - right to life, survival and development (art. 6)
 - right to be heard / participation (art. 12)

2b. Child as victims and/or witnesses

- Child sensitive procedures

III. European (EU) perspective (I)

- European Union – 28 member states
 - Economic and political unity
 - Freedom of movement
- No European criminal justice system – no EU harmonisation
- Joint interest to combat crime (transnational/national) and willingness to cooperate
 - Area of freedom, security and justice
- Cooperation between criminal justice systems within EU
 - Principle of mutual trust & recognition – but MACR (!)
 - A certain harmonisation is required – minimum standards
- Harmonisation of criminal justice systems within EU (i.e. procedural)
 - Human rights and rule of law – Council of Europe, UN Convention on the Rights of the Child
 - EU Directives – principles of subsidiarity & proportionality

III. European (EU) perspective (II)

Framework decisions concerning cross-border cooperation and mutual recognition

- European Arrest Warrant + surrender proceedings (2002)
- Mutual recognition of judgments – custodial sentences (2008) + probation / alternative sentences (2008)
- Protection of personal data processed in the framework of police and judicial cooperation (2008)
- Exchange of information extracted from criminal records (2009)
- Supervision measures as an alternative to provisional detention (2009)

III. European (EU) perspective (III)

Stockholm Programme 2009

- Directive on right to interpretation and translation in criminal proceedings (2010)
- Directive on right to information in criminal proceedings (2012)
- Directive establishing minimum standards on rights, support and protection of victims (2012)
- Directive on access to a lawyer and on right to have third person/consular authorities informed about deprivation of liberty (2013)
- Directive on strengthening presumption of innocence and the right to be present in trial (2016)

EU Agenda for the Rights of the Child (2011)

- Directive on procedural safeguards for children who are suspected or accused persons in criminal proceedings (2016) – EU Agenda for the Rights of the Child

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

•Subsidiarity & proportionality

- Minimum safeguards necessary to foster mutual trust and cooperation
- Issues left out: age of majority, juvenile courts, diversion, no harmonisation of procedural codes

EU organisations

- European Commission – EU Agenda for the Rights of the Child

http://ec.europa.eu/justice/fundamental-rights/rights-child/friendly-justice/index_en.htm

- European Crime Prevention Network (EUCPN)

<http://eucpn.org/>

- Fundamental Rights Agency (FRA) – <http://fra.europa.eu>

- Europol - <https://www.europol.europa.eu/>
- OLAF - http://ec.europa.eu/anti-fraud//home_en
- Eurojust - <http://www.eurojust.europa.eu/Pages/home.aspx>

Conclusions

- Opportunity to work towards:
 - More efficient system of law enforcement, based on mutual trust & recognition
 - Minimum safeguards for children in cross-border situations – Children's rights perspective – harmonizing laws and practices within ASEAN
- Important steps to be taken:
 - Standard-setting at ASEAN level
 - Exchange of practices
 - Data collection and evaluation
 - Education and training (!)
- Safeguarding the *rights* of children involved or affected makes a positive contribution – i.e. in best interests of children and society (UN CRC Committee, General Comment No. 10)

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