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Conference

The protection of children in European justice systems

organised by
the Council of the Europe
in co-operation with
the Ministry of Justice of the Kingdom of Spain

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TOLEDO CONCLUSIONS

The participants of the Conference on the Protection of Children in European Justice Systems, held in Toledo, Spain, on 12-13 March 2009, expressed their warmest thanks to the Spanish Government for the excellent organisation and for its kind hospitality.

Combating violence against children through a more efficient legal framework

The participants, referring to a number of key international legally binding instruments adopted at global and regional levels safeguarding the rights of the child and protecting children from various forms of violence and to conditions that legal frameworks should fulfill to effectively fight violence against children, and highlighting a series of accompanying measures aiming to ensure coherence, comprehensiveness, implementation and impact assessment of the measures taken, agreed that:

- accession to these international legal instruments should be strongly encouraged and, once ratified, they should be effectively implemented, as they set out standards for the development of national legislation, policies, plans and programmes on the rights of the child, and for addressing violence against children; this was also the call made by the UN SG's Study on Violence against Children;
- national laws should be brought in full conformity with the United Nations Convention on the Rights of the Child (UNCRC) and all other international legal instruments. They should be guided by the best interests of the child, ensure child protection from discrimination, stigmatization and re-victimization, and be informed by children's views and experiences. Their enforcement should be effectively ensured, including by national courts, to safeguard children's protection from all forms of violence. Any draft legislation should be submitted to a child impact assessment;
- national legal frameworks should:
 - prioritise prevention of all forms of violence against children and safeguard children's rights;
 - guarantee access of children to justice;
 - take into account the specific needs of some children (such as unaccompanied/separated children and children with disabilities);
 - prohibit all forms of violence against all children within the state's jurisdiction, at all times and in all settings (e.g. in all forms of care, including institutions, penal system, schools, home, workplace, etc.);
 - protect and assist children who bring complaints on violence;
 - ensure that offences involving violence against children are punishable by effective; proportionate and dissuasive sanctions;
 - reflect the sensitivity of offences committed against children or abusing a recognised position of trust, authority or influence over the child (through the introduction of aggravating circumstances, for instance);
 - prohibit all arbitrary or unlawful restriction of children's freedom, including within the migration control system. Where deprivation of liberty is absolutely necessary as a measure of last resort, it should be used for the shortest period of time. The conditions and regime of detention should be in conformity with the UNCRC and other relevant standards and take into account children's specific needs;
 - establish national jurisdiction over important offences against children committed abroad by the state's nationals and persons who have their habitual residence in the state's territory (e.g. sexual offences, child abduction, trafficking);

- ensure that statute of limitation for initiating proceedings with regard to offences against children continues for a period of time sufficient to allow the efficient starting of proceedings after the child victim has reached the age of majority and which is commensurate with the gravity of the crime in question, namely offences identified by the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse;
- legislation aimed at safeguarding children's rights and protecting them from all forms of violence should be widely disseminated, including among children, and fully and appropriately enforced. It should be supported by relevant institutions, including national independent institutions for children's rights and governmental monitoring mechanisms, human and financial resources, and be accompanied by the provision of guidance for its implementation to all relevant actors and professionals working for and with children;
- countries need to develop a sound monitoring system, ensure the collection, analysis and dissemination of disaggregated data and the development of research to promote evidence based policies and actions; surveys with children should be promoted to this effect;
- measures taken through legislation should be part of a wider national plan or strategy to promote children's rights. Countries should adopt integrated national strategies on violence against children highlighting the links between the legal and the institutional framework and the relevant policies and services notably in the education, justice, social, and health fields; a lead agency should be identified to promote implementation, collaboration and child impact assessment of decisions taken. The participants welcomed current Council of Europe work on the drafting of European policy guidelines for integrated national strategies on violence against children and encouraged all member countries to use them when developing their own national strategies;
- international cooperation needs to be further developed to promote exchange of information and experiences, to identify good practices and support change of attitudes towards violence against children; to support standard setting and effective implementation, and to promote the development of national integrated strategies to prevent and combat all forms of violence. The Council of Europe plays a crucial role as the regional forum for the follow up to the UN Study on Violence against Children. In its internal and external action, the EU is an instrumental player in the promotion of the protection of children from all forms of violence; the EU future Strategy on the Rights of the Child provides a critical opportunity to move this agenda forward.

The role of the private sector in the prevention of sexual exploitation and abuse of children

The participants called upon the governments of Council of Europe member states to:

- require the information and communication technology industries (Internet service providers, mobile phone companies, search engines, etc) to collaborate with law enforcement agencies on any case of child pornography on the Internet and to remove it;
- encourage the information and communication technology industries in coordination with public authorities to develop and disseminate messages informing users of the criminal legislation on producing, offering, distributing, procuring, possessing and viewing pornographic images of children;

- oblige Internet service providers (ISPs) to retain traffic data (log files) for a fixed period of time in order to assist international investigations. Any search of such data should be subject to procedural safeguards and judicial supervision. The role and responsibilities of ISPs in helping law enforcement to combat sexual exploitation and sexual abuse of children on and through the Internet, and namely in “realms of lawlessness”, such as cybercafés, should also be examined, particularly in the context of the Convention on Cybercrime;
- encourage and support the private sector, through public-private partnership, to conduct research into the development of technologies of image identification, to trace the victims and apprehend the perpetrators, while being attentive to the possible misuse of such technologies;
- encourage public authorities, in co-operation with the information and communication technology industries, to raise awareness for parents on the specific dangers of the Internet for their children, while ensuring that children can fully exercise their freedom of expression and information responsibly and safely;
- raise awareness of the risks of "grooming" through communication channels such as Internet, television, radio, magazines, etc, that are commonly used by children and their families, while taking care to avoid scare-mongering and dissuading children from using the Internet;
- encourage cooperation between financial intermediaries providing payment services on the Internet and law enforcement in order to obtain information related to child abuse Internet investigations;
- encourage and support the tourism, travel and hotel industries to commit to the prevention of sexual exploitation of children in relation to their operations by joining and implementing the Code of Conduct for the Protection of Children in Travel and Tourism (initiated in 1998 by ECPAT – End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes – in collaboration with the World Tourism Organization);
- require the travel, tourism and hotel industries to place notices in travel brochures, in-flight magazines, hotel room information, etc, alerting travellers that they can be prosecuted for engaging in sexual activities with a child;
- ratify, wherever not already done so and as rapidly as possible, the Council of Europe Conventions on Cybercrime, on Action against Trafficking in Human Beings, and on the Protection of Children against Sexual Exploitation and Sexual Abuse.

A child-friendly justice system: protecting children during civil/criminal proceedings

The participants invited the Council of Europe Group of Specialists on child-friendly justice, in drafting the future European guidelines on child-friendly justice, to take into consideration the following recommendations:

- all professionals - in particular judges, psychologists, and lawyers - dealing with children in justice should receive appropriate information, awareness-raising and training on appropriate interviewing methods of a child;

- indications should be given in particular concerning: the appropriateness, contents, settings, communication techniques, duration of the interview and interpretation of the child's word;
- furthermore, professionals' awareness should be raised on the necessity to avoid repeated interviews, promote child-friendly interview mechanisms (such as video-recording), avoid the confrontation of the child witness or victim with his offender, and adapt the treatment of the child to his/her age;
- mechanisms should be put in place to ensure pluridisciplinary co-operation between all professionals, including judges, lawyers, psychologists, police, prosecutors, social workers, and peer professionals in charge of parallel proceedings involving or affecting a same child;
- information conveyed to the child should include information on each stage of the procedure, possibilities surrounding his/her representation (including access to legal aid) and participation, as well as on the objectives, risks and consequences of his/her participation/testimony. For this purpose, a reference person should accompany the child throughout the procedure, including in follow-up proceedings;
- when assessing the best interests of the child, the judge should:
 - take into consideration all specific needs of the child, including his/her psychological needs;
 - assess the best interests of every child involved in a same procedure and strive to reconcile possible conflicting best interests of children at stake;
 - consider the best interests of the child in proceedings which affect them indirectly (for e.g. best interests of the child of an illegal migrant subject to an expulsion procedure);
- children involved in proceedings should be protected against mediatisation;
- professionals should encourage as much as possible alternative dispute resolution (for example, family mediation) and means of restorative justice.