Key Principles – International and European standards in juvenile justice

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1. Brief history of international children’s rights instruments

- 1924 Declaration of the Rights of the Child (Declaration of Geneva, League of Nations)
- 1948 Universal Declaration of Human Rights
- 1959 Declaration of the Rights of the Child
- 1966 International Covenant on Civil and Political Rights (ICCPR)

By the present Declaration of the Rights of the Child, commonly known as the “Declaration of Geneva”, men and women of all nations, recognising that Mankind owes to the Child the best that it has to give, declare and accept it as their duty that, beyond and above all considerations of race, nationality or creed:

I. THE CHILD must be given the means requisite for its normal development, both materially and spiritually.

II. THE CHILD that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succoured.

III. THE CHILD must be the first to receive relief in times of distress.

IV. THE CHILD must be put in a position to earn a livelihood and must be protected against every form of exploitation.

V. THE CHILD must be brought up in the consciousness that its talents must be devoted to the service of its fellow-men.
2. UN Convention on the Rights of the Child

- Adopted in 1989
- Core legally-binding international children’s rights instrument
- Most widely ratified international human rights treaty
- Part I: 41 substantive provisions, Part II: 13 procedural provisions
- Three Optional Protocols
  - Optional Protocol to the Convention on the Rights of the Child on a communications procedure, 2014
2. UN Convention on the Rights of the Child

General principles
- Art. 2 CRC: non-discrimination
- Art. 3(1) CRC: best interests of the child
- Art. 6 CRC: right to life, survival and development
- Art. 12 CRC: right to be heard
2. UN Convention on the Rights of the Child

• Article 40: juvenile justice
  - Procedural safeguards (due process rights)
  - Pedagogical and child specific approach

• Article 37: deprivation of liberty
  - No child shall be subjected to torture or other cruel, inhuman or degrading punishment
  - Measure of last resort and for the shortest appropriate period of time
3. UN Guidelines

**Beijing Rules, 1985**
- UN Standard Minimum Rules on the Administration of Juvenile Justice
- Non-legally binding
- Apply to children in conflict with the law

**Havana Rules, 1990**
- UN Rules for the Protection of Juveniles Deprived of their Liberty
- Non-legally binding
- Apply to children deprived of liberty
4. UN Committee on the rights of the child

- General Comment No. 10 – *Children’s rights in juvenile justice*

- General Comment No. 12 – *The right of the child to be heard*
5. Effective participation

• Recent developments in Europe
  - EU Directive on procedural safeguards for children suspected or accused in criminal proceedings (2016)

• Child-friendly justice and participation
5. Effective participation

European Convention on Human Rights (ECHR, 1950)

Art. 6 – Fair trial

‘(...) everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law’.

ECtHR case law

• T. v. the United Kingdom / V. v. the United Kingdom (1999, Bulger case)
• S.C. v. the United Kingdom (2004)
• Güveç v. Turkey (2009)
5. Effective participation

  - Right to be heard / Right to information and advice / Right to protection of privacy / Best interest of the child / Adapted proceedings / Right to representation / Training of professionals / Multidisciplinary cooperation

• EU Directive on procedural safeguards for children suspected or accused in criminal proceedings (2016)
  - Art. 4: right to information
  - Art. 6: right to legal assistance
  - Art. 13: right timely and diligent treatment of cases
  - Art. 16: right to effective participation
  - Art. 20: specific training of professionals
6. The right to legal assistance

• The right to legal or other appropriate assistance?
• Can the child waive his right to be assisted by a lawyer?
• Temporary derogation in pre-trial stage
7. Protection of privacy

• Prevention of stigmatisation
• Express views freely
• Confidential lawyer-client relationship

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<th>Always in camera</th>
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Rap, 2013
8. Adolescent development

Age-crime curve

Offending drops steeply after age 18

- Violent Crime
- Property Crime

Rate of violent crime per 100,000 persons

Rate of property crime per 100,000 persons

Age

Bureau of Justice Statistics, 2010
8. Adolescent development

Cognitive development

• Lacking ability in abstract reasoning (Steinberg, 1999; Steinberg & Cauffman, 1996)

• Inability to see the legitimacy of the law and legal procedures (Grisso, 2000; Buss, 2000)

• Less experience in life and with the law and government (Buss, 2000; Scott & Steinberg, 2008)

• Vulnerability to peer pressure, risk-taking and overseeing of consequences (Knoll et al., 2015; Blakemore & Mills, 2015; Steinberg, 2011)

• From around 14 years capable to understand criminal procedures (Driver & Brank, 2009; Grisso, 2000; Grisso et al., 2003)
8. Adolescent development

• Mental health problems
  - Attention Deficit Hyperactivity Disorder (ADHD)
  - Conduct disorder (aggression towards people and animals, destruction of property, deceitfulness, theft and serious rule violations)
  - Antisocial personality disorder (failure to conform to social norms, deceitfulness, impulsivity, irritability and aggressiveness and lack of remorse and empathy)
  - Substance abuse (alcohol and drugs use)

• Learning and communication difficulties
  - Intellectual disability (IQ < 85)
  - Autism spectrum disorder
9. Concluding

• Special regard for the vulnerable position of child suspects and accused
  - Protection against stigmatisation and rights violations
  - Respect for the dignity of the child

• Adapted proceedings for child suspects and accused
  - Procedural safeguards
  - Adaptations based on the age and maturity of the child