



European Journal of Parental Imprisonment
The child's best interests: From theory to practice
when a parent is in conflict with the law





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Children of Prisoners Europe (COPE) is a pan-European network of non-profit organisations working on behalf of children separated from an imprisoned parent. The network encourages innovative perspectives and practices to ensure that children with an imprisoned parent fully enjoy their rights under the UN Convention on the Rights of the Child and the EU Charter of Fundamental Rights, and that action is taken to enable their well-being and development.

The European Journal of Parental Imprisonment is a publication that seeks to broaden the study of issues relevant to children affected by parental incarceration and meet a burgeoning interest in the development, implementation and evolution of entitlements, policies and practices that promote their well-being. With a view to fostering new perspectives for children with imprisoned parents, the journal features contributions by eminent scholars and experts in the fields of child rights, child welfare, criminal and social justice, psychology, penal affairs and other disciplines; published articles do not necessarily represent COPE's opinions. Selected articles are editorial screened but not peer-reviewed. The editors are committed to reasoned ideological diversity and welcome suggestions for special issues and contributions.

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The rights of children with imprisoned parents: Their best interests and views

Jean Zermatten

Member and Former Chairperson
UN Committee on the Rights of the Child

Just over 30 years ago, on 20 November 1989, the international community adopted the United Nations Convention on the Rights of the Child (CRC), a convention that set many records: never before had a legally binding treaty with international reach been so readily adopted. Countries rushed to sign it and the Convention took effect in 1990; no human rights treaty had been so enthusiastically adopted. At present, 196 countries have ratified this text, a sign of universal adoption of the idea that children have their own rights, which they may exercise gradually and independently. The universal nature of the consensus is very significant because it means that everywhere in the world the same definition of the child has been adopted; the same status and rights of children recognised. Of course the CRC has not been implemented uniformly, far from it, but no one is unaware that the specific rights of children have been recognised and no State can hide behind mere superficial adherence to this Convention.

Why was there such sympathy for a treaty that imposes obligations? Is it because its title contains the word “child”? In fact, the principal object of the CRC is not children, but rather their rights – as many countries understood only later, when they grasped the true scope of the treaty. Which State could say it was against providing aid, support and care for children? Against wanting to protect its young? Which country would dare to say, before the whole world, that its children didn’t matter? Not one! There was therefore spontaneous and nearly unanimous enthusiasm for the Convention. But the signatories did not truly grasp the obligations arising from the complex set of norms found in the Convention, having failed to analyse in detail the linkage between the rights set forth and the need to adapt their internal structures to meet the Convention’s requirements.

The pivotal change brought about by the CRC is to consider the child as a person and not as a thing, an asset or a possession; a person endowed with rights they obtain at birth, rights that they will gradually be able to exercise independently, according to their age and maturity; rights that they will be able to assert through representatives

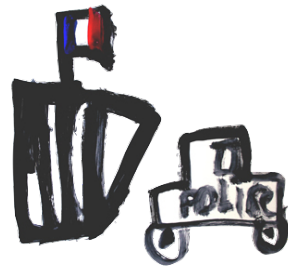
acting on their behalf, representatives who are not necessarily their parents. This is an extraordinary challenge for States and for adults: to recognise this new status of the child as one who can shape their own destiny, recognised as having the capacity to act, but who may not always be sufficiently competent to affirm their status as an independent rights holder.

In addition, it must be highlighted that the Convention did not undermine the idea that a child is vulnerable and must be protected. On the contrary, the Convention also requires States to establish the necessary protective measures against all forms of harm, abuse, violence, negligence or mistreatment, and all forms of child exploitation, active or passive. The near-universal ratification of this human rights treaty underscored the many sources of and possibilities for child exploitation by adults. And unfortunately, new media record countless examples of these rights violations in real time.

Moreover, the Convention continues to require that the child has the right to concrete benefits with respect to their economic, social and cultural rights, the main components of which are education, health care and benefits linked to specific situations including migration, disability, juvenile justice, poverty, hunger, war, work, climate change and sustainable development.

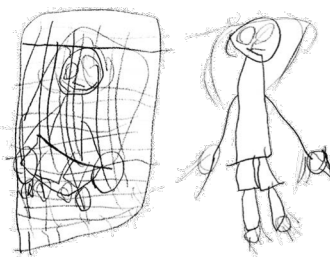
Children with incarcerated parents: a question of dignity and specific rights

When considering the question of the specific vulnerabilities of a child affected by parental incarceration, I would like to emphasise that the Convention is based on one fundamental value, one that goes beyond the idea of the rights of the child, and that is the dignity of the child. I firmly believe that the situation of a child who has a parent in prison must be assessed from the point of view of whether the dignity of the child has or has not been respected. The child’s dignity is not only a fundamental principle underpinning the architecture of the rights of the child, but also an operational tool, a standard by which we may evaluate how the right of the child is applied and whether or not it has been violated.



But to speak about the rights of children who have a parent in prison also serves as a reminder of certain obvious points, even truisms.

We must remember, first and foremost, that the fundamental rights of the child contained in the Convention are not just the rights of some children, but of all children: boys and girls, citizens and migrants, neurotypical and challenged, black, yellow or white, Muslims or atheists. All children have the same rights under the Convention and it would be discriminatory to believe that children who have a parent in prison should not enjoy the same rights as other children. Granting rights to some children but not to others based on the status of one or both of their parents would contravene Article 2, paragraph 1 of the CRC.



It is also important to underline that all children living within a State's jurisdiction must be guaranteed all their rights. This is especially pertinent for children of foreigners, either documented or undocumented migrants, whose parents are held in custody not for issues of criminality, or for having been sentenced, but because of measures that restrict the rights of foreigners. These children, from the moment they live on the territory of a State that has ratified the CRC, are protected by the Convention.

Beyond the question of fundamental rights, we are aware that there are no specific articles of the Convention that deal specifically with the situation of children who have a parent in prison. To address the issue, we must examine it through the prism of general articles, such as:

- the child's right to preserve relations with their family (art. 8);
- the child's right to be brought up by their parents (art. 5 and art. 18);
- the child's right not to be separated from both parents (art. 9); and,
- the right of the child who is deprived of a family environment to receive appropriate alternative care (art. 20).

We must not fail to mention that the child should have all economic, social and cultural rights, and benefit from all protective measures, stipulated by the Convention.

And of course the legal regime affecting the child must meet the four general principles of the CRC,

which are:

- the right not to be discriminated against (art. 2);
- the right to have their best interests evaluated and taken into account as a primary consideration (art. 3, par. 1);
- the right to life, survival and, above all, harmonious development, which is the ultimate goal of the CRC (art. 6); and,
- the right to have their views heard (art. 12).

We should not forget the crucial role of the CRC's Article 5 (the evolving capacities of the child) which sets forth how the child can develop gradually into an independent actor by exercising their rights and how parental responsibility diminishes gradually, in inverse proportion. This is a crucial article to consider at a time when assessing whether a child should stay with a mother (or father) in prison; or if a child can, on his own, request the right to visit an imprisoned parent.

Two classic situations and the interest of the Committee on the Rights of the Child

The Committee on the Rights of the Child has since its first sessions examined the specific situation of children with imprisoned parents and has produced numerous concluding observations on the subject, addressed to States, with specific recommendations on this question. It has also examined the subject during a day dedicated to the discussion of this issue¹ in 2011. Overall, the Committee has consistently made a distinction between two situations:

1. Children with one or both parents in prison

The CRC has no specific provision dealing with this situation, but it is one that can easily be linked to any situation in which the child is deprived partially or totally of their family environment. We can refer specifically to Article 20 of the CRC.

If we examine the situation from the point of view of parents (father or mother), we may refer to Article 5, which recognises the rights and obligations of the parents to guide the education of their children, and to Article 18 which establishes the principle that the responsibility for raising and ensuring the development of the child lies

¹ Day of General Discussion 'Children of incarcerated parents', 30 September 2011.

primarily with the parents, or, when necessary, with their legal representatives. The actions of these representatives must above all be dictated by the best interests of the child.

2. *Young children in prison with their mothers*

There is no specific provision in the CRC concerning young children in prison with their mothers (statistics show it is almost always the mother who is concerned, rarely the father), but the issue is clearly linked to Articles 9 (non-separation), 18 (parental responsibility) and 20 (care provided in the absence of parents). This situation is also envisaged by the standard minimum rules governing the treatment of prisoners², notably as concerns the issue of health (SMR Part I, Article 23, paragraph 2, that allows mothers of young children to keep their children with them).

This issue has been the focus of attention of many NGOs, notably the Quakers United Nations Office in Geneva³. The situation involves several children's rights issues:

- the right not be separated from parents;
- the best interests of the child, which can argue in favour of separation or non-separation;
- the obligation to protect the child, even if the child is with his or her mother, given the special conditions of the prison milieu; and,
- the need for a suitable alternative environment.

The Committee on the Rights of the Child has on many occasions examined these situations when engaged in monitoring the application of children's rights in various States. For example, note the following two paragraphs addressed to authorities in Bolivia⁴ :

65. The Committee has concerns about the large number of children living within prisons as a result of the incarceration of one of their parents, and about the security, health and living conditions of these children.

66. The Committee recommends that the State Party formulate and put in place specific guidelines concerning the placement of children in detention centres with their parents, when this placement is in the best interests of the child; and to ensure security and living conditions, especially health care, that are adequate for the child's development, as required by Article 27 of the Convention. It further recommends that the State Party plan for and implement alternative care arrangements for children who have been removed from detention facilities and who are not under the protection of the extended family, and allow these children to maintain personal relationships and direct contact with the parent who remains incarcerated.

Article 3, paragraph 1 and Article 12 of the CRC: Pillars of children's rights

Returning to this new and revolutionary idea of the child as one who is endowed with rights (apart from being the receiver of protection and beneficiary of care), the child born in 1989 must always be the centre of our attention: Each time we make decisions on their behalf, particular care must be taken to allow them to be able to express their own views and have their best interests taken into account. This applies to all areas of human activity that affect children including, obviously, the case of children who have a parent in prison.

To illustrate this point, I often say that a child born with the Convention, a child who has rights, walks on two feet: one is Article 3, paragraph 1; the other is Article 12. They can advance toward harmonious development (Article 6, CRC), the ultimate goal of the Convention, only if both limbs progress together, at the same pace and in a coordinated manner.

a. The best interests of the child

Article 3, paragraph 1 of the CRC obliges each institution (or legislative, administrative or judicial body) to adhere to the principle of the best interests of the child and systematically ask whether the rights and interests of the child will be affected by their decisions and acts. Examples could include a law or a policy, either proposed or already in force, an administrative measure or a legal decision, including those that do not directly concern children but which could have

² UN Economic and Social Council (ECOSOC) Resolutions 663 C (XXIV) of 31 juillet 1957 and 2076 (LXII) of 13 mai 1977.

³ Marlene Alejos, 'Babies and Small Children Residing in Prisons', Quaker United Nations Office, 2005.

⁴ Bolivia, 2009, CRC/C/BOL/CO/4

repercussions for them.

If we consider concretely the child’s right to have their best interests taken into account in every decision that concerns them, we aren’t dealing with a vague concept, but with a three-part obligation for decision-makers:

1. To determine the concrete life circumstances of each child (the principle of individualisation); determine the circumstances of the parent’s incarceration and its impact on the child.
2. To examine which solutions would be best for the child in light of their individual circumstances; then list all the possibilities available to the child given this unusual situation of parental incarceration (of one or both parents).
3. To choose the solution that best guarantees the harmonious development of the child (Article 6, CRC): Should the child remain with an imprisoned mother? Should the child be allowed to visit their father or mother in their place of detention?

Following that, we can go so far as to ask: should the parental incarceration itself be called into question, based on the notion that the interest of the child is to be able to be raised by his or her parent(s)?

But more commonly, the question asked is: should the child of the imprisoned parent be placed in foster care?

Personally, I don’t like fixed ideologies that suggest either that everything must be done to give the child a new start in an institutional setting or a foster family, or on the other hand, that the child must stay with their biological family no matter what. For me, the assessment must be determined case-by-case, according to the specifics of each situation, as a result of a detailed inquiry into the individual, according to the solutions available, and depending on how the decision-maker weighs the different interests at stake. The assessment should also take into account Article 9 of the CRC, which is concerned with not separating parents from their children, and at the very least maintaining relations between children and parents.



In this regard, I cite a decision by the constitutional court of South Africa⁵ which illustrates perfectly how respect for a child’s right to have their best interests considered can impact a decision: in this case the court decided against imprisonment to allow the parent to remain at liberty in order to be able to raise her children.

b. The child’s right to be heard

The second pillar on which the Convention rests is Article 12, which gives the child the right to have their views heard in all decisions that concern them. Here, again, this is not a simple declaration but a double obligation imposed on States:

1. To record the views of the child in an environment that is conducive to free expression.
2. To take into account (give weight to); in other words to interpret, the child’s views, considering their age and level of maturity.

The task of professionals is a difficult one: to correctly hear children and to give their views the importance they require, while at the same time realising that the child’s opinions could be swayed, manipulated or distorted. This is also a means to help determine the best interests of the child.

Returning to the case of a child with imprisoned parents, there is a “classic” situation that we call “parentalisation” or “parentification”, meaning that children assume responsibilities that are beyond the capabilities of a child. In many cases, children are obliged to take care of themselves, their younger brothers and sisters, to run a household or even care for a parent. This creates a lot of stress and deprives them of their right to be a child.

In my opinion here, the issue is not improving the work of professionals who work for the child, but in fact improving the work of professionals who try to build solutions with the child. This necessitates

5 The 2007 *S v M* Constitutional Court ruling in South Africa that took into full account the best interests of the child and how the concept should be applied in cases where the child’s primary carer is being sentenced, which give rise to competing rights. (For example, if a possible imprisonment of the parent would be detrimental to the child, then a court is obliged to give due consideration to possibilities for a non-custodial sentence, while noting that the severity of the offence committed by the parent would be a further determining factor. Such reasoning when it comes to sentencing also values the principle of restorative justice and can help balance the rights of all parties involved, including the children and society at large. Cited by Mrs Ann Skelton, in the UN Committee on the Rights of the Child Day of General Discussion “Children of incarcerated parents”, 30 September 2011, Report and Recommendations, chapter 5).

a change in the mindsets of professionals in the legal, sociomedical and educational fields. It also means breaking taboos and promoting communication, so that everyone feels free to ask for support.

Conclusion

At the end of this review, it seems to me necessary to recall that in all decisions which must be taken with regard to the child, decision-makers must:

- take special care to evaluate the individual situation of each child in the course of their assessments;
- respect the real subjective and concrete right of the child who is the subject of a decision to express himself (art. 12) and to have their interests taken into account with particular consideration (art. 3 par. 1);

- proceed according to the principle of individualisation, which is so important in the field of children's rights, where no situation is ever really identical to another;
- consider the child as a full-fledged person who is sufficiently competent, despite their young age, to participate in decisions taken on their behalf and who can express themselves concerning their own interests; and,
- make the child the focus of your attentions, even if there are other interests at stake.

This applies, of course, to all children whose parents are incarcerated.

Translated from the French by David Howley.

Die Vater Kind Gruppe in der JVA Nürnberg



A child's best interests are not an abstraction

Alain Bouregba

Psychoanalyst

President

Fédération des Relais Enfants Parents

A child's best interests are not an abstraction; they correspond to taking into account and respecting the child's bonds of kinship and their development.

The child is a person in the etymological sense: one about whom it is possible and permitted to speak. It is by the child's identity — which has been assigned to them and which grants them, among other characteristics, a nationality, a gender, a parentage — that the human infant, a social, political and speaking mammal, is recognised as a person. If the notion of the *individual* — one who is indivisible — reduces the subject to themselves, the notion of the *person* refers to their identity, and to the links to their human environment that this identity conditions.

In the first hours after birth, the newborn infant has no past yet nonetheless is the bearer of a long history, one recounted to them by those who have awaited the infant and who welcome them. Like a prologue in a Greek tragedy, the tales told to the infant are not understood by the infant yet unwittingly influence and model their reactions to their environment. The stories told to the child impose an obligation on those who nurture the child, while positioning the infant within a family and community history to which they in turn become obligated. The word “obligation” derives from the Latin verb *ligo* (to attach, join or link) and the prefix *ob* (in this case: a cause of). The bonds that from birth unite the child with their human environment, in other words which “hominise” them, are the product of, and at the same time give rise to, obligations.

The child is a person, and for this reason is not shaped mechanically or involuntarily by their environment but by the way their personality acts upon it. The notion of need is relevant only with respect to the physiological domain, and to distort this notion and apply it to the psyche presupposes applying a schematic and mechanical mode of analysis to the various situations the child will encounter. Merely observing the degree to which the child's environment satisfies or fails to satisfy predefined “emotional needs” common to all children obliterates the human dimension of a child. The child as an individual has physiological needs that must be met, as for any individual of a non-human species. The child who is considered as a person, a term applicable only to humans, has the need to be loved, of course, to be in a safe and caring environment; but a happy environment does not ensure that the child's life will be happy as well. Some children who are psychically unstable grow up in secure and caring surroundings while other children who are confronted with unhappy, even dire situations are able to develop a degree of resilience that allows them to mitigate the destabilising effects of adversity. The characteristics of a given situation or context are not the determining factors in how a child is affected by them. The psychic impact of a difficult situation or distressing context on the child is a function of the manner in which they make their demands, expectations and desires (legitimate or not) known, as well as their aversions, fears and loyalties — the myriad expressions of their network of connections with their human environment. The expression “emotional need” presupposes needs common to all children, whether or not their environments are satisfactory. But these needs vary in both their nature and intensity depending on the personality of each child.

A child is a person and it is their individual personality that must be taken into account by an adult who is concerned with their interests.

Translated from the French by David Howley.



Judicial discretion and the child's best interests in Belgian sentencing law and practice

Heleen Lauwereys

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The principle of the best interests as a symbolic constitutional right

Belgium has ratified the UN Convention on the Rights of the Child (UNCRC) and has included a provision on the child's best interests in the Belgian constitution. However, the highest courts in Belgium disagree as to whether Article 3(1) of the UNCRC and Article 22bis(4) of the Belgian constitution should be the basis on which decisions are made about individual children, given that the best interests of the child are too vague to provide a basis for individual rights, and given that a specific provision on the child's best interests would be needed in relation to the proceedings in order to apply it. The Belgian criminal code does not include a specific legal obligation for criminal courts to consider the child's best interests when sentencing parents and/or primary caregivers.

Change may be coming, however. In the proposal for a new criminal code, which is currently under debate in the parliamentary commission on justice, a provision is included that would require judges to consider the impact of the sentence on the accused, his or her environment and the community at large (although no particular child rights language is used, it is clarified that the 'environment' of the accused includes family). The explanatory text to the proposal clarifies that the judge should determine which sentence holds the least negative consequences for all parties involved, according to the sentencing goal(s) set forth. If two different sentences can make for the same result, the sentence with the smallest negative impact should be chosen¹.

Though currently the criminal code does not enforce these obligations, Belgian judges have significant discretionary power in sentencing, and can tailor individual sentences to the offence committed, the circumstances of the case and the personal circumstances of the defendant. This discretionary power allows judges to also take into account the child's best interests in the determination of the appropriate sentence

¹ Voorstel van wet tot invoering van een nieuw Strafwetboek – Boek 1 en Boek 2, *Parliamentary Documents Chamber of Representatives* 2018-19, number 54-3651/001, 116.

type and the suspension of both conviction and sentence.

Multi-method interviews with judges

Simply being given the option of considering the child's best interests in the sentencing decision does not, of course, mean that judges necessarily do this in practice. To investigate whether and how criminal law judges interpret and apply the best interests of the child, qualitative interviews were conducted with seventeen correctional judges (five women and twelve men) who are seated in different Flemish judicial districts². The judges were invited to participate in a study regarding mitigating circumstances in general. The interview consisted of three parts, in which open-ended questions and case scenarios were used.

The interviews started with a general question to discuss which personal mitigating circumstances the respondents normally consider, if they are considered at all. The respondents were then asked to impose a sentence in three fictitious scenarios in which the theoretical defendant had at least one minor child, and to give their reasons out loud to reveal their thought processes.

Five of the seventeen judges deemed the best interests of the child irrelevant in the sentencing decision and indicated that they would not consider them. Although the other judges responded that they do consider children in the sentence decision, the analysis of the interviews shows that this does not necessarily mean that they consider the impact of the sentence on children. In many cases, children are considered as an indicator in the assessment of the risk to reoffending and the chances of rehabilitation, or to determine whether the accused would be in fact able to execute a sentence, as in the case of a pregnant woman sentenced to community

² These interviews were conducted as part of the author's doctoral research on the role that the principle of the best interests of the child has when sentencing parents and primary caregivers (Heleen Lauwereys, 'Het belang van het kind in het Belgische straffoetingsrecht: de visie van correctionele rechters', *Tijdschrift voor Strafrecht* 2020/2, 98-111). For further publications on the role of the child's best interests in the sentencing decision (in Belgium), see biblio.ugent.be/person/000170872570.

service. Not only those judges who oppose a best interests consideration, but also those judges who do find it relevant, gave several arguments against the consideration of the child's best interests generally or in individual cases. Among those were the following responses:

'I find, however sad it is for the children and the family, that this person knew this at the time of the offence, and that he should actually own up to the consequences.'

'I don't find it okay, to have a child be born in that context [prison], but my colleagues said, well, actually we don't think so because it is rather easy to have a baby and then you escape.'

'You can also say that someone who has children, we will treat differently than someone who does not have children.'

These counterarguments show that judges still have difficulty applying the principle of the child's best interests in a sentencing context, as it may go against their sense of equality and justice. Only seven judges mentioned the children of the offender when asked about the general mitigating circumstances at the start of the interview. Likewise, children were not always mentioned, or mentioned in scant detail, during the assessment of the sentencing exercises. Even though judges may find the child's best interests relevant or even important when asked about it, this survey found child's best interests to be an unlikely consideration in the usual sentencing practice of the majority of the respondents.

[Editor's note: The above text is an excerpt. Lauwereys' complete article can be found in the Children of Prisoners Europe publication Keeping children in mind: Moving from 'child-blind justice' to child-friendly justice during a parent's criminal sentencing.]



Children and incarcerated parents: A Dutch perspective on recovery-focused work

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On any given day in the Netherlands, an estimated 25,000 children have a parent in prison. This is an estimate based on the average birth rate in relation to the imprisoned population. In reality, the number of children with imprisoned parents is higher, as parents who are in pre-sentence detention are not included in these calculations. That we are obliged to estimate the number of children impacted by parental imprisonment is an example of a 'system' which inadequately considers the best interests of the child. To better support children with imprisoned parents, there is a need for information about who and where these children are. Such data should be accurate and readily available to key stakeholders.

Pursuit of collaboration

Dutch authorities, such as the police and the judiciary, often make use of their own instruments to develop a picture of the social network (including

children) of a suspect or person in detention. Police are obliged to execute a "Child Check" before proceeding with the arrest of a parent. Upon arrival at a penal institution, a check is also performed to determine if a prisoner has children and whether arrangements must be made for the care and shelter of the children. A Child Check is a standard procedure for police, municipalities and penal institutions to ensure that alternative care is arranged for children who have been left without caretakers due to the arrest or detention of a parent. The purpose of this Child Check is also to promote cooperation between these parties and to guarantee the health and safety of children with an incarcerated parent. Following arrest, parents are expected to provide accurate information about the care of their children and

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to arrange for their care within their existing social network. In practice, it is evident that there is minimal to no coordination within the criminal justice system to ensure that the care and best interests of the child(ren) are adequately served. For this to occur, there is a need for a centralised care and registration system, coordination among all parties and a shared vision regarding children who have incarcerated parents.

Understanding parenthood

Parenthood means that from a child's birth onwards a person is responsible for the well-being and development of that child. A person *becomes* a parent; this is not a status that can be exchanged or reversed, and they remain parents despite the restrictions that detention imposes upon their freedom of movement. Even if a person no longer has contact with his or her child, or if the child has died, the person remains a parent. Parenthood is always unique, and every parent fulfils his or her parental role in a manner that corresponds to their personality. Parenthood is an identity, while parenting is a variety of actions which occur primarily in the early years of the child's life, often ending by the time the child reaches the age of 18.

During adolescence and puberty, parenting frequently takes on a different and often more limited function. Parenting comprises feeding, caring for and providing rules and boundaries for a child in preparation for all facets of adulthood.

Recognition of parenthood is crucial

Recognising the parenthood of an incarcerated parent is extremely important. Research shows that detention interferes with or prevents individuals from fulfilling their role as mother or father. This results in negative consequences for mothers and fathers as well as their children, and in long-term negative consequences for society¹. As conventional thinking often associates the role of primary caregiver with motherhood, the question of how to care for a child with an incarcerated parent is more likely to be raised regarding female prisoners. Incarcerated fathers, however, experience serious difficulties as well. We know that fathers who are involuntarily separated from their children often wish for more involvement in their children's lives². They experience a high

degree of stress related to this unfulfilled parental role, which can lead to more aggression, violent behaviour and depression, in comparison to male prisoners without children³. In short, the lack of attention given to fatherhood among imprisoned persons can be considered a risk factor for the well-being of incarcerated fathers and their children.

Effects of detention on families

The incarceration of a parent also presents a risk for well-being within a family dynamic, with clear effects on the social attachment of the entire family. Children in particular may experience negative effects, including but not limited to traumatic stress, difficulties at school, poverty, negative self-image, behavioural problems, depression, anxiety, addiction, shame and stigma. Some evidence shows that without the appropriate support, children impacted by parental imprisonment have a greater chance of being convicted or imprisoned for a crime⁴.

Focus on attachment

Strengthening the attachment between incarcerated parents and their children has the potential to encourage the social capital of the child, the imprisoned parent and their social network. This is particularly the case when there is adequate support from the social network of the incarcerated person. Research points to the importance of social support, especially from families, when attempting to put an end to criminal activity⁵. Social support generates feelings of reciprocity and can contribute to an incarcerated parent making significant, positive and sustainable changes to their lifestyle. The involvement of incarcerated parents in the lives of their children can also help in preventing children from demonstrating problematic behaviours in the home⁶.

3 Loper A.B. (2009), 'Parenting Stress, Alliance, Child Contact, and Adjustment of Imprisoned Mothers and Fathers', *Journal of Offender Rehabilitation*, (6) 483-503.

4 Novero, C.M. Booker Loper, A. & Warren J.I. (2011), 'Second-generation prisoners: Adjustment patterns for inmates with a history of parental incarceration', *Criminal Justice and Behaviour*, (38) 761-778.

5 Cid, J. & Marti, J. (2015), 'Imprisonment, social support, and desistance: a theoretical approach to pathways of desistance and persistence for imprisoned men', *International Journal of Offender Therapy and Comparative Criminology*, 1-22.

6 Cid, J. & Marti, J. (2015), 'Imprisonment, social support, and desistance: a theoretical approach to pathways of desistance and persistence for imprisoned men', *International Journal of Offender Therapy and Comparative Criminology*, 1-22.

1 Reef, J., Dirkzwager A.J.E. & Nieuwbeerta P. (2015), 'Children's well-being prior to paternal incarceration', *European Journal of Parental Imprisonment*, (2) 25-27.

2 Nurse A.M. (2002), *Fatherhood arrested: parenting from within the Juvenile Justice System*, Nashville: Van Derbilt University Press.

In recent years, the relationship between children and their incarcerated parents has received growing attention in the Netherlands. In 2017, the National Child Ombudsman wrote a report containing recommendations based on interviews with a diverse group of children who have experienced life with an imprisoned parent. The goal of this report was to improve the information, care and support for children with a parent in detention⁷. As a consequence, a number of suggestions have been drawn up to improve the care for children whose parents have been arrested or otherwise incarcerated⁸. More recently the Ombudsman has launched a roadmap that considers how to act in the best interests of the child, with one of the guidelines being to speak with children about decisions that may affect them. It is also evident that greater attention is being paid to this subject on a European level, resulting in the adoption of specific recommendations from the Committee of Ministers of the Council of Europe in 2018. These recommendations are focused on the rights, needs and best interests of children with imprisoned parents, throughout the entire period from arrest up to and including the execution of the sentence and the return to the community⁹. Nevertheless, these recommendations remain generally unknown and/or unacknowledged within the Dutch police, penal and judicial systems and there is still much work to be done.



The necessity of an integrated approach

Initiatives for children with imprisoned parents in the Netherlands are mostly focused on the performance of concrete, practical tasks. There are positive examples in Dutch prisons with respect to the organisation of children's visits, programmes in which parents record themselves reading stories for their children, arts and crafts sessions, or even an autumn camp during which children have the opportunity to spend a few days with their imprisoned parent. However, these opportunities generally remain limited to a particular activity carried out at a specific moment. Often, they seem to be strictly demarcated activities such as sports,

a walk or time spent together within the prison. A broader, more integrated approach regarding the relationship between a child and his or her imprisoned parent is absent. This integrated approach places the relationship between a child and the imprisoned parent within a process or journey: How does the child see the relationship with his or her father? What does the child expect? And what expectations does the father have? How do they want to build a relationship together? And what about the mother who has been left behind? Or grandmother and grandfather? What support do they need? What is the role of the penal institution? Or of other professionals? Secondly, an integrated

approach means that other organisations involved with the child, such as school, community teams, volunteers, youth organisations, etc. are given a place in this process and act together in the best interests of the child. Various professionals and volunteers involved with the incarcerated parent can also play a supporting role. In this instance, an integrated approach means not only broadening the network to include more professionals and volunteers, but actively bridging the gap between life inside and outside the detention setting, both for the child and for the incarcerated parent.

New Dutch Expertise Centre on children and imprisoned parents

An integrated consideration of the relationship between children and incarcerated parents entails focusing on the participation of a variety of professionals and volunteers. It is precisely these participants who request additional information, advice and especially tools to intervene and provide support when noticing the child or imprisoned parent may be having difficulty. Professionals who provide assistance to prisoners, community groups such as teachers, family organisations and social services are also searching for an operational framework within which they can work to better support the often-damaged relationship between children and their incarcerated parents. The first Dutch Expertise Centre, KIND¹⁰, was founded in November 2018 with the purpose of responding to requests and questions of professionals, volunteers, children and incarcerated parents. This Expertise Centre is the result of a collaboration between Avans University of Applied Sciences and

⁷ Child Ombudsperson (2017). *Zie je mij wel? Kinderen met een ouder in detentie*. Utrecht: Author.

⁸ Reef, J. & Ormskerk, N. (2019). *Zorg voor kinderen bij aanhouding van ouders*. SDU: Den Haag.

⁹ Recommendation CM/Rec(2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents (Adopted by the Committee of Ministers on 4 April 2018 at the 1312th meeting of the Ministers' Deputies).

¹⁰ Expertisecentrum KIND (Kind, Informatie, Netwerk & Detentie)

Exodus Nederland¹¹, an organisation specialised in programmes for prisoners once they have completed their sentence and have left prison. The Expertise Centre believes that the restoration of the bond between a child, their formerly incarcerated parent and their social network contributes to an improved quality of life for the child. The social network comprises the people and organisations with whom the child and their incarcerated parents are in regular contact, including but not limited to the family context, the detention context, the school and the family's neighbourhood.

The child's best interests as focal point

The Expertise Centre considers that the rights and the wishes of the child should determine the starting point to focus on restoration of the bond between a child, their incarcerated parent and their social network. By aligning with the individual strengths, wishes and goals of the children, their incarcerated parent(s) and their social network, efforts can be made to restore relationships and work towards a better quality of life. The Expertise Centre works from a recovery- and strengths-oriented approach and professional framework to enhance and expand the resilience of all involved.

Recovery-oriented work

Many relationships within the social network of the imprisoned parent are damaged by his or her criminal act(s). The restoration of relationships between the child, the parent who is not incarcerated and other members of the social network is often necessary. This restoration can lead to multiple positive effects for the child. Restoring healthy, positive relationships can also have the effect of preventing the development of certain negative feelings and experiences that can result from a parent's imprisonment. These positive effects are also applicable for the incarcerated parent. In many cases, criminal activities are more likely to occur when the incarcerated parent's bonds with their family are weakened or entirely severed. Social ties are important factors that deter individuals from committing crimes. In their relationships with family, friends or their own sons and daughters, incarcerated parents can find the motivation and support to make enduring changes to their lifestyles.

¹¹ For more information: www.exodus.nl

Information and advice

The Expertise Centre primarily focuses its services on the children of an incarcerated parent, the incarcerated parent, their social network consisting of family, school, social services agencies and other professionals actively involved with these parties. The Centre is a network organisation working to inform and advise those who support imprisoned parents. The information and advice provided is an essential precursor for offering customised support, guidance and both general and individual prevention strategies. Once they have access to information and advice, as well as the crucial recovery and strengths-oriented framework, professionals are more empowered to take appropriate action to act in the best interests of the child. This also contributes to increased awareness from professionals and volunteers who are actively involved in the broader social network of the child and incarcerated parent. To ensure accessibility of these necessary services, the Expertise Centre is readily available to the aforementioned groups by telephone (weekdays) and online (around the clock)¹².

Further research and training

In addition to providing information and advice, the Expertise Centre conducts practice-oriented research to explore best practices and the effects of recovery and strengths-oriented interventions in the restoration of the bonds among children, incarcerated parents and their social networks. This practice-oriented research provides the opportunity to educate and train professionals and volunteers in the use of recovery and strengths-oriented interventions. The Expertise Centre aspires to increase attention given to recovery-oriented work which focuses on the relationship between children and incarcerated parents. While the Expertise Centre is primarily focused on work within the Netherlands, it certainly does not exclude the possibility of collaboration with other countries. This network organisation – working from a position of cooperation, knowledge-sharing, providing support and information, research and training – can contribute added value to organisations and professionals in other European countries.

¹² For more information: www.expertisecentrumkind.nl

Ethics in conducting research with children: Harmonising their best interests

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It is necessary to consider the ethical aspects of all direct or indirect contact with children in a research context. At its core, this means that researchers must not cause any harm to the child. We should respect the child, no matter the child's background, age, gender and any other characteristics that might provide a basis for discrimination. We have to be fair, trustworthy and honest with each child, and concentrate on building a relationship of trust and mutual acceptance. We must not exclude or stigmatise any child and must allow every child to participate freely and voluntarily, affording them the freedom to be autonomous and make decisions independently.

Maintaining children's rights and promoting child development are important concerns for research ethics in general, but consideration of the welfare and best interests of children should be seen as central to the child research process. This should be applied to all activities involving children, including research 'that focuses on the promotion of knowledge and a deeper understanding of the child's development, the needs of children and the efficiency of interventions that are undertaken for the benefit of children'¹.

Adherence to these ethical considerations of humanities and social research takes a variety of forms. It may be through a universal code of ethics for research involving children, as is the case in Croatia², or through ethical protocols developed for a specific survey, such as the one used in the COPING project³.

Croatian code of ethics for research with children

The code of ethics for research with children established in Croatia in 2003 addresses three groups of questions concerning the status of the child, the status of the parent/guardian and the status of the researcher(s) and research

staff. Questions about the children's status revolve around the right to autonomy and self-determination through the child's consent to participation, as well as respect for the child's opinion over the course of the research and their ability to withdraw from the survey at any time. Questions also refer to the anonymity of participation and the privacy of collected data; the age and maturity of the child as criteria for participation in the research (i.e., child's ability to give consent to research); the protection of the child's welfare; the respect of the individual rights of the child protected by the United Nations Convention on the Rights of the Child (UNCRC); and the child's insight into research findings. In addition, researchers must be prepared to react if they notice that the child is experiencing any physical or mental health struggles during research. The second group of questions refers to the status of the parent/guardian: whether or not the parent/guardian will receive information about the research; parent/guardian consent to the child's participation; and parent/guardian insight into the research findings. The third group of questions refers to the rights and obligations of researchers regarding the avoidance or minimisation of risks, including responsibility for potential damages caused and the insight of other experts into the research findings.

Ethical protocols in the COPING study

The ethical protocols adopted in the COPING study research⁴ had a two-fold purpose and covered eight different categories of principles and procedures. The protocols aimed to highlight any necessary differences between countries in their ethical principles and procedures and to collate any amendments that may have been required in ethical principles and procedures as the research progressed and unanticipated situations arose. The principles and procedures addressed permissions and approvals, consent, confidentiality, anonymity, support, research staff, external scrutiny and review.

Consent should be obtained from all individuals who take part in research, in particular parents/guardians. Individuals should be fully informed as to the nature of the research prior to giving their

1 Code of ethics for research with children (2003), Council for Children's Affairs of the Government of the Republic of Croatia and the State Office for the Protection of Family, Maternity and Youth, ed., M. Ajduković and V. Kolesarić, Zagreb, p. 7.

2 The code of ethics for research with children is the national code of ethics for research with children in Croatia, which was undergoing revision at the time of drafting of this text.

3 Jones, A., et al. (2013). *Children of prisoners: Interventions and mitigations to strengthen mental health*. Huddersfield: University of Huddersfield (COPING project).

4 Jones, A., et al. (2013), p. 249.

consent and should be asked to sign a consent form. They should also be given assurances concerning their involvement in the research. While research was being conducted for the COPING study, children participated in the research only after they had given their consent⁵.

What do ethics and the ethical approach imply in the case of children with imprisoned parents? Children with a parent in prison have the right to privacy, non-stigmatisation, non-discrimination, inclusion, equality, freedom and sensitive media coverage just like any other children. It is also in the interest of these children for researchers to have the best possible understanding of their development, their needs and the efficiency of interventions on behalf of these children. It is this understanding that is the objective of research, which is in the interest of the general public, as it enables us to have insights into the child's functioning, behaviour and needs, in addition to having an impact on the public image of a child in a specific vulnerable situation.

We believe that each code of ethics or protocol should be harmonised with the United Nations Convention on the Rights of the Child.

In this paper, we will analyse the link between two rights that are at the same time two conventional principles (the best interests of the child and child participation) with child autonomy and with the ethical approach in dealing with children, in particular with regard to consent to participation in child research in general and specifically concerning children with imprisoned parents. We will consider child participation and the right of the adult, in this case an imprisoned parent, to make decisions and give consent for their child to participate in different activities, regardless of the fact that they are temporarily absent from the child's everyday life.

These four dimensions should be harmonised so that the ethical standards of research focus on the same objective – the overall welfare of the child – by ensuring the best interests of the child, encouraging the child's autonomous participation,

⁵ Gallagher, B., Berman A.H., Bieganski, J., Jones, A.D., Foca, L., Raikes, B., Schiratzki, J., Urban, M. & Ullman, S. (2015), National Human Research Ethics: A Preliminary Comparative Case Study of Germany, Great Britain, Romania and Sweden in *Ethics & Behavior*, 20(7), 586-606, p. 591.

protecting the child's rights and respecting the child's needs. Sometimes the understanding and the interpretation of an ethical aspect and the best interests of the child stem from an adult's subjective or partial interest and can be in conflict with the best interests of the child.

The best interests of the child

According to UN General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration⁶, the principle of the best interests of the child is a dynamic concept that requires an assessment appropriate to the specific context, aimed at ensuring both the full and effective enjoyment of all the rights recognised in the UNCRC. The principle of the best interest of the child focuses on securing the holistic physical, psychological, moral and

spiritual integrity of the child, while promoting his or her human dignity. A child's best interests should have priority when interests of different parties are being considered⁷. It should be ensured that the best interests of a child are a primary consideration whenever a decision is to be made concerning a child, a group of identified or unidentified children or children in general. Whenever a decision is to be made that will affect a child or children, the decision-making process should include a thorough evaluation of the possible positive or negative impact of the decision on the child or children concerned. Furthermore, procedural guarantees have to be established, and the decision must show that this right and this principle have been explicitly taken into account.

One question that is often raised is whether or not it is a child's right to know why a parent is absent and in prison. Experts from different fields that deal with the welfare of children affected by parental incarceration believe that it is the child's right to know that they have not been abandoned, that it is not their fault that their parent is in prison, that the parent is alive and still loves their child, and that they can obtain answers to these questions. Decisions on how to best communicate this information to the child is up to the parent.

⁶ General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, United Nations, CRC/C/GC/14.

⁷ Article 3 of the United Nations Convention on the Rights of the Child.

When considering the rights and best interests of children who have a parent in prison, we can expect two things. The first is that there is a degree of fear linked to the above questions, that can lead to the belief that children should be protected from facts and reality. At the same time, due to the vulnerability of people in prison to judgement, exclusion and stigmatisation, and because of the negative attitude of society towards prisons and prisoners, it is important that the prisoner, in as many ways possible, exercise his or her parental role, including giving consent and approval for the child's activities and participation.

Questions remain about the real meaning of the parental consent or denial of consent for child's participation in certain activities or in research. Does this consent imply that the parent approves the topic, theme and/or purpose of the research, any general or particular benefits of the research? Does denial of consent mean that the parent does not accept potential risks involved in research? Can they challenge the type and duration of the procedure? Concerns about the protection of privacy of the child's identity and other data can lead to questions about the degree of confidentiality of the data obtained. Is the parent unconvinced about the child's voluntary participation and his/her right to withdraw from the research? Does the parent disapprove of the methodology or the content of the questionnaire?

In our work, we have realised that what is relevant for the parent (information, topic, methodology, organisation of research) does not have to be relevant for the child, and vice versa.

Child participation and autonomy

True child participation is based on the autonomy of the child. At the same time, autonomy develops from participation. This fact by itself does not diminish the parental role or parental rights and responsibilities, just as a parent's support of a child does not jeopardise the child's autonomy. However, sometimes the adult perceives the child's autonomy as a threat to parenthood and parental rights. This may happen during attempts to strengthen the child's autonomy when decisions are being made as to how best incorporate child participation in research concerning children. Child participation provides space for the emancipation of a child, in particular a child who is excluded and marginalised or in a vulnerable situation.

Article 12 of the UNCRC considers the importance of a child's free expression of their own opinion. If the child is denied this freedom, it is not only this right that is violated, but also the UNCRC general principle considering participation that refers to all rights. Therefore, leaving it up to the parent to limit the expression of their child or refusing consent to allow their child to make a choice to participate or not, jeopardises the child's interests.

Why is it important to consider a child's autonomy in making a decision on whether a child should participate in specific research?

The National Strategy on the Rights of Children in the Republic of Croatia for the period 2014-2020⁸ defines ensuring the active participation of children as its strategic objective. One of the measures to ensure this is to increase the autonomy of children in deciding to participate in research in accordance with age and maturity, and to enable children between the ages of 7 and 14 to express their views regarding participation

in research, while at the same time strictly and consistently respecting all other provisions that contribute to the protection of the rights of the child and that safeguard the child's best interests.

For children with imprisoned parents, it is always important to maintain the parental role and the presence of the imprisoned parent

in all aspects of the child's life. At the same time, keeping in mind the need to empower the parent and to encourage them to exercise his or her parental rights, it is important to avoid jeopardising the child's autonomy or burdening the child with additional challenges in their development (e.g. loyalty conflict). Children and their best interests always need to be a central focus, as stipulated in the UNCRC. The respect for a child's autonomy is a manifestation of an overall respect for the child by showing regard for the child's capacity for self-determination, independence and the expression of the child's own individuality.

The child's and/or parental consent

The process of securing parental consent might in some cases give rise to the risk of additional stigmatisation and the limitation of the child's

⁸ National Strategy on the Rights of Children in the Republic of Croatia for the period 2014-2020, p.72.

autonomy. With regard to the child's participation in research, we believe that it is crucial to define the personal boundaries of a child's integrity and to enable the adequate involvement of the parent, who should be informed about the child's participation in the research. In this way we avoid depriving the parent of their rights, while at the same time minimising the risk of stigmatisation and additionally burdening the child. Securing consent can often take time, and as a result, the child can be excluded as a potential participant in the research. Challenging a parent's decision to either give their consent and insist on their child's participation, or to refuse to consent to their child's participation when the child would choose the opposite is not necessarily a representation of a denial of power or a weakening of the parental role.

If we assume that in the research there is a formalised structure of ethical committees, which carefully review the planned research with children and are focused on child's welfare, it is important to ensure the high level of independence of the child in their decision to participate or not (in line with their maturity) is written into an ethical code for research with children. Parents or guardians should be informed about the research, should have the opportunity to get additional information about the methodology of the research and should have the chance to express their disagreement about the child's participation. This would also provide the opportunity for discussion about the reasons for a specific parental attitude to research and for the assessment of whether the parents in question are potentially jeopardising the rights of the child.

Consent can also be linked to the problem of sample representativity. The question is how the refusal to participate reflects in the sample representativity and how the needs of the child are met in families in which the child's participation is denied.

Allowing parents the prerogative of giving or denying consent often places the child in a passive role, where they are expected to cope with the decisions made by adults. When this happens repeatedly, a child can begin to believe that they do not have the power to make their own decisions. The recent survey on children's

participation in the school setting⁹, conducted by the Croatian Ombudsman for Children, emphasises how strongly the UNCRC solidifies the understanding of the child as rights-holder and an active participant in society. The survey cites the views of Reynaert, Bouverne de Bie and Vandeveld (2009) about the academic discourse on children's rights, which since the adoption of the UNCRC has been defined by the understanding of the child through the prism of competence (in contrast to the earlier consideration of children as vulnerable and incompetent 'objects' that need protection because of their vulnerability). They believe that, given the child is the rights holder under the UNCRC, and parents have the obligation to guide the child and help them to fulfil these rights, there is a sort of dichotomy that appears between the right of the parent to

There is a sort of dichotomy that appears between the right of the parent to raise their child and the right of the child to autonomy and self-determination.

raise their child and the right of the child to autonomy and self-determination. This 'child-parent dichotomy' is formulated by the concept of parental responsibility, i.e., the benefits that the government provides to parents to exercise the rights of their children. In this sense, the rights of parents are viewed as functional rights, derived from

the rights of their children¹⁰.

In their recommendations, the authors of the project and heads of the research on the participation of children in school activities emphasise that participation is the right of every child and should be reflected at the level of values, beliefs, norms, customs and relationships¹¹.

We believe that the change in relationships between children and adults will contribute to diminishing the fear in the relationship, as well as the feeling that children and adults are on opposing sides. The dialogue between children and adults seems to be a very important initial step. More conversation between children and adults and more sharing of powers will contribute to the feeling of motivation for participation and the expansion of the possibilities of children's participation and influence¹².

9 Borić, I., Čosić, A., Huić, A., Kranželić, V., Miroslavljević, A., Osmak Franjić, D. & Širanović, A., (2019) Participation of children in school activities, ed. D Osmak Franjić and I. Borić, Ombudsman for Children, Zagreb, p. 20.

10 Ibid. (2019), p. 20.

11 Ibid. (2019), p. 158.

12 Ibid. (2019), p. 159.

Children of prisoners: Participants in research

Any research that involves children with imprisoned parents deals precisely with the relationship between the child and their parent who is in prison. It often analyses this relationship or the impacts of parental imprisonment on the relationship. The parent's ability to deny or give consent to the child's participation mirrors the relationship of the adult towards the child. The possibility of giving consent may seem at first like the affirmation of the parental role of the incarcerated parent. However, as mentioned, it can jeopardise the autonomy of the child. In addition, it seems that the order in which consent is given, after the survey is described to the participants, is also important. If the consent is first given by the parent, there is a possibility that the child will adapt to the parent's consent. Some children might refuse to participate if the parent refused to give their consent, despite being interested in participation. Some children will be willing to participate, but if their parent has a negative attitude towards participation they may not feel inclined to. The practice of asking the parent first and then asking the child for consent seems to be more common.

Within the framework of the child participation methodology in the COPING study research, children and adults were asked where, when and how they wished to answer the questions from the questionnaire or to be interviewed (at a café, at home or elsewhere), and they made independent decisions about these elements.

It is difficult to determine what can be considered to be in the best interests of a child whose parent is in prison, especially if we wish to provide a general

answer to this question. It is necessary to take into account the individual needs of each child, to pay attention to these needs and to take into consideration legal and the highest psychological and social standards, always respecting the rights of the child. When these elements are considered together, there is a better chance of working towards meeting the best interests of the child. We believe that there are as many answers to the question, 'what is best for the child whose parent is in prison?' as there are children whose parents are in prison.

As experts tasked with the protection of the best interests of the child and the exercise of supporting the participative rights of the child, the view we will take with regard to the testimonies of children affected by parental incarceration will be a topic of discussion on another occasion. Through testimonies, we obtain authentic and direct information about the child's needs, feelings and experiences regarding the situation in which their parent is in conflict with the law, detained or in prison. The testimonies of children by their nature are very impressive, as they contain an authentic message about the needs of the child in relation to adults, whose task is to provide protection and support to the child. However, despite the value of hearing about children's experiences directly from the children themselves, it is important not to lose sight of the need to focus on a child's protection, in particular if we take into consideration the risk of a child being exposed to potentially negative reactions from society and the violation of the child's privacy, which must be minimised as much as possible.



‘What’s safe and good’: Children’s takes on the best interests principle

After the adoption of Council of Europe Recommendation CM/Rec(2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents in April 2018, organisations across Europe worked with children to include their voices and make this milestone document more accessible. This set of European guidelines is designed to help encourage action, as well as being a useful resource for children, parents and professionals, to better support children with a parent in prison and to advocate for and promote their rights.

There are thirteen instances of the use of ‘best interests’ of the child in the body of the text of Recommendation CM/Rec(2018)5 and several more in the accompanying Explanatory Memorandum¹. This wording echoes the language of the United Nations Convention on the Rights of the Child (UNCRC) and ensures that the Recommendation provides for children’s needs as well as rights. In some ways, using ‘best interests’ is a form of shorthand and this journal volume dedicated to examining what the principle actually means is very welcome.

In keeping with Children of Prisoners Europe’s aims to act with and for children with imprisoned parents, COPE network members across many different linguistic backdrops and legal jurisdictions were involved in working with groups of children to ‘translate’ the fifty-six articles of Recommendation CM/Rec(2018)5. Editors then worked to produce a harmonised child-friendly version faithful both to the original and as far as possible to the children’s recorded perceptions; the child-friendly version was then validated by a group of young people to ensure that it still made sense to them. The result was published as *It’s Time to Act*².

How did child-friendly editors and children translate ‘best interests’ in *It’s Time to Act*?

The two original underlying principles of the Recommendation refer to ‘best interests’, and the introduction to *It’s Time to Act*, entitled ‘Why do

¹ The full text of CM/Rec(2018)5, is accessible at <https://childrenofprisoners.eu/council-of-europe-recommendation-cm-rec20185/>; the Italian Memorandum of Understanding can likewise be found at <https://childrenofprisoners.eu/the-memorandum-of-understanding-on-children-with-imprisoned-parents/>.

² *It’s Time to Act* can be accessed at <https://childrenofprisoners.eu/its-time-to-act-cm-rec20185/>.

Kate Philbrick, OBE
Former COPE President

we need these rules?’, sets out the following in response:

Children need regular contact with their parents, except when it would not be good for the child [...] All help and support must make children feel better, not worse; they need to have the same life chances as all children.

The editors decided on including a wordlist offering translations and definitions used throughout the booklet. The entry concerning best interests reads as follows:

Child’s best interests: As used in the UNCRC, this phrase becomes ‘what is best or good for the child’, and in this document becomes ‘safe and good for them’. It has to be what is good for each child individually, and everything happening in their lives needs to be looked at to decide this.

This definition was melded together from the refreshing interpretations of several groups of children who examined the best interests principle as put forward in the UNCRC. What follows is a non-exhaustive list of articles, some of them excerpts, as published in *It’s Time to Act*, followed by relevant excerpts originally ‘translated’ by children (in italics), with the corresponding Recommendation from the Council of Europe’s CM/Rec(2018)5.

Article 1.

It’s Time to Act: [...] Children must be protected, people should make sure that decisions made are good for the child and their family and respect their privacy.

Children’s take: *Children with imprisoned parents shall be treated with respect and their situation and needs should be regarded.*

Council of Europe Recommendation: Children with imprisoned parents shall be treated with respect for their human rights and with due regard for their particular situation and needs. These children shall be provided with the opportunity for their views to be heard, directly or indirectly, in relation to decisions which

may affect them. Measures that ensure child protection, including respect for the child's best interests, family life and privacy shall be integral to this, as shall be the measures which support the role of the imprisoned parent from the start of detention and after release.

Article 2.

It's Time to Act: When a judge is thinking about sending a parent to prison, they should think about how this can change things for each child, their rights and what is best for them.

Children's take: *The rights and the effects on children should be taken in consideration every time a sentence has to be decided.*

Council of Europe Recommendation: Where a custodial sentence is being contemplated, the rights and best interests of any affected children should be taken into consideration and alternatives to detention be used as far as possible and appropriate, especially in the case of a parent who is a primary caregiver.

Article 16.

It's Time to Act: The people in charge should always consider what is best for the child when deciding which prison their parent should go to.



Children's take: *When a parent goes to prison, when it is possible, he or she must be sent to the jail that is the nearest to his or her children, so it is possible for them to be together.*

Council of Europe Recommendation: Apart from considerations regarding requirements of administration of justice, safety and security, the allocation of an imprisoned parent to a particular prison, shall, where appropriate, and in the best interests of their child, be done such as to facilitate maintaining child-parent contact, relations and visits without undue burden either financially or geographically.

Article 27.

It's Time to Act: Parents in prison should be helped to stay involved in their children's lives,

and can communicate with school, health and welfare services, and make decisions where it is safe and good for their children.

Children's take: *If it's safe, good and healthy for the child, parents in prison should be allowed to be involved in their kids' everyday life.*

Council of Europe Recommendation: Arrangements should be made to facilitate an imprisoned parent, who wishes to do so, to participate effectively in the parenting of their children, including communicating with school, health and welfare services and taking decisions in this respect, except in cases where it is not in the child's best interests.

Article 37(2).

It's Time to Act: Make sure the safety of babies and their rights are a priority: they should have a chance to grow, learn, play, be listened to and understood, just like all babies.

Children's take: *Make sure that the safety of children is a priority as well as their rights and their chance to grow, play, be listened to and understood, no matter where we are from.*

Council of Europe Recommendation: Ensure that the best interests and safety of infants are a primary consideration, as are their rights, including those regarding development, play, non-discrimination and the right to be heard.

Article 37(8).

It's Time to Act: Make sure that the baby can spend time with other family members, if it is good for the baby.

Children's take: *Make sure that seeing your family not in prison is allowed, but only if you want to.*

Council of Europe Recommendation: Ensure that contact with the parent, siblings and other family members living outside the prison facility is enabled, except if it is not in the infant's best interests.

Article 38.

It's Time to Act: The decision that a baby should live away from their parent in prison should be made following the rules and considering what is best for that baby.

Children's take: *To take a baby away from a parent in prison should be based on what is best for the baby within the rules of the law.*

Council of Europe Recommendation: Decisions as to when an infant is to be separated from their imprisoned parent shall be based on individual assessment and the best interests of the child within the scope of the applicable national law.

Article 49.

It's Time to Act: Across each country people should be connected to make sure that children are supported and looked after. Children and their rights are important. Their views and feelings matter. All the right people need to be involved in this support, such as probation services (people to arrange release), people in the community, school, health and social services, police and people with power to keep children safe.

Children's take: *Over the whole country people should be connected to make sure that we (children) are supported and looked after, this should be thought of first and not last. We are important. Our views and feelings matter.*

Council of Europe Recommendation:

The relevant national authorities should adopt a multi-agency and cross sectoral approach in order to effectively promote, support and protect the rights of children with imprisoned parents, including their best interests.

As can be seen, based on the interpretation of the articles by children, the editors decided that 'best interests' included a mixture of what is good for the child and what is the best of various options for a child, depending on the context. In Article 49, for instance, it seemed as if the children had powerfully captured the notion of best interests by saying that they, their views and feelings matter. In some cases, the notion of safety was included as well. The children broadly used similar language, though it is noteworthy that sometimes the children did not even include a modified version of 'best interests' when it was originally present in the Council of Europe Recommendation. This could be because there is an assumption that adults will make good decisions — in other words, that their best interests are self-evidently worth protecting and thus worth considering when children are affected by a decision.

The voices of children who have a parent in prison do matter, and it is hoped that the implementation of Recommendation CM/Rec(2018)5 will follow the publication of *It's Time to Act*, giving them the same life chances as all children.



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