



Council of Europe
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Human Rights and Legal Affairs

Do Children Deserve Punishment? The Council of Europe Perspective

Tendencies in Europe regarding juvenile delinquency

- The types of juvenile delinquency have not undergone substantial changes during the last decades.
- The most common crimes are still property related.
- The youngest age groups commit petty crimes in the vast majority of the cases.
- Research shows that mostly age related crimes are committed and delinquent behaviour disappears with growing out of adolescence
- Why then punish children the same way as adults?

- “... a number of European countries are responding in a more punitive manner, making increasing use of detention for children and continuing to imprison children alongside adults. In several European countries, the age of criminal responsibility is still too low, incarceration rates are a cause of concern and the number of children from minority groups in prison is disproportionate. While alternative measures are being put in place for some cases, the overall trend appears to be towards more punitive responses, especially in the case of older children and those involved in serious crime.”

Thomas Hammemberg, CoE HR Commissioner

The call for separate and distinct Rules on how to deal with juvenile offenders in the community and in closed settings was felt to be urgent because of the differing needs for treatment and care juveniles have as compared to adults:

in 2008 the Recommendation (2008)11 on the European Rules for juvenile offenders subject to sanctions or measures was adopted by the CM

Who is considered to be a child deprived of liberty?

- A person below the age of 18 placed by decision of a judicial or administrative authority in an institution which the child cannot leave at will.
- Institution is a physical entity under the control of public authorities where children live under the supervision of staff according to formal rules
- Juvenile offender is a child who is alleged to have or who has committed an offence (deliberate difference in terms as CoE is against low age of criminal responsibility – juvenile refers to an older/adolescent child)

- Respect for the human rights of juvenile offenders.
- Sanctions based on the principles of social integration and education first.
- The minimum age of criminal responsibility shall not be too low and shall be determined by law.
- Sanctions shall be based on the best interests of the juvenile offenders, limited by the gravity of the offences committed and take account of their age, physical and mental well-being, development, capacities and personal circumstances.
- Deprivation of liberty of a juvenile shall be a measure of last resort and for the shortest period possible. Pre-trial detention is to be avoided.
- Juveniles shall not have fewer legal rights and safeguards than adults.
- A multi-disciplinary and multi-agency approach shall be used in order to ensure a holistic approach and continuity of the care.
- The juvenile's right to privacy shall be fully respected at all stages of the proceedings.
- Sufficient resources and staffing shall be provided. Lack of resources shall never justify the infringement of the human rights of juveniles.

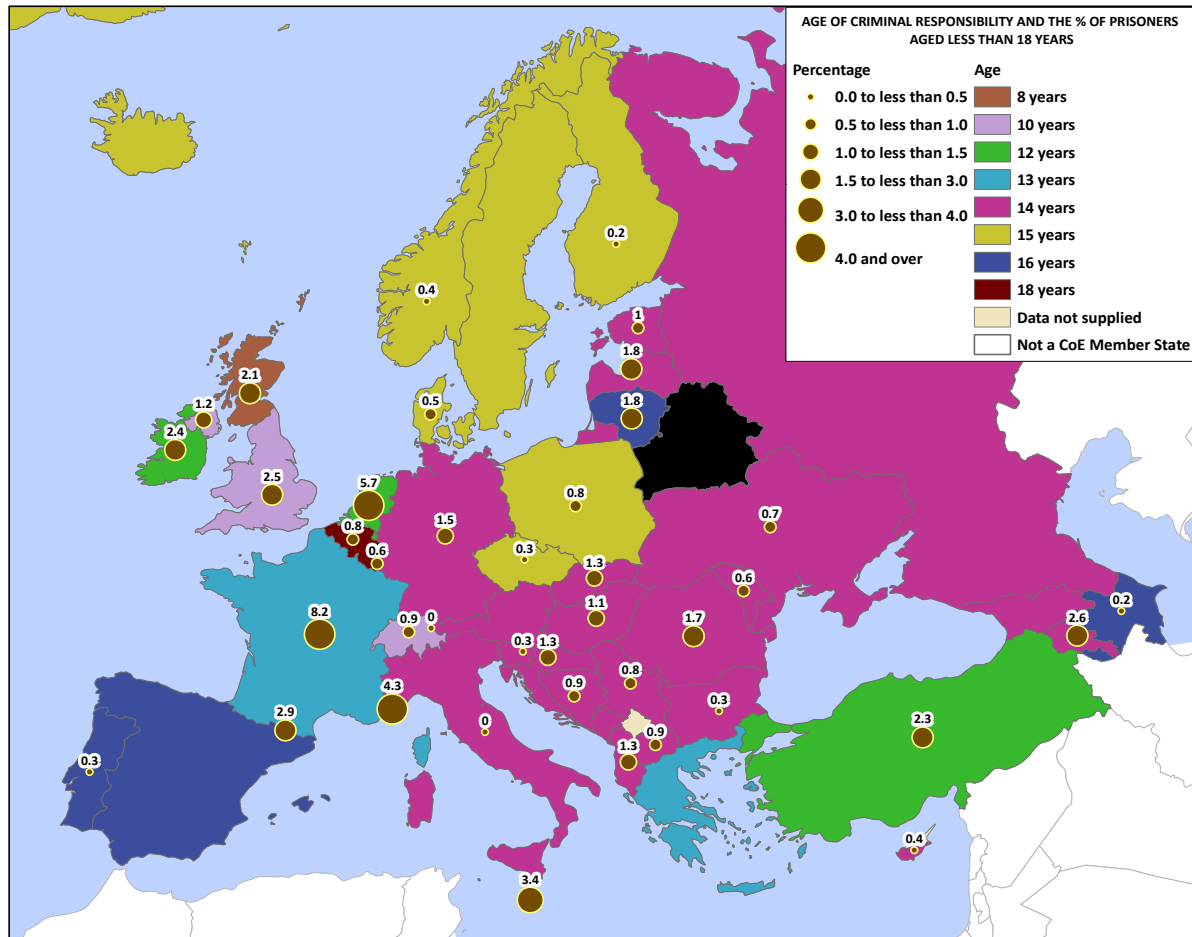
- Recommendation Rec(2008)11 deals with:
- the implementation of sanctions and measures in the community;
- the conditions in which sanctions and measures are to be executed in a penitentiary, welfare or mental health institution, as well as in police custody
- It puts emphasis first and foremost on the educational and reintegration aspects of any intervention addressing a juvenile offender
- the recruitment, selection and professional and personal capacities of staff working with juveniles
- Inspection and monitoring

A transversal Council of Europe programme for the promotion of children's rights and the protection of children from violence "Building a Europe for and with children" was launched in 2006

- **Guidelines for Child-Friendly Justice** -adopted by the Committee of Ministers in 2010
- All decisions concerning children shall be taken in a way that respects their rights.
- Children have the right to be heard and their views must be taken seriously.
- Children who understand their rights should be able to go to court to have those rights protected. They have the right to their own lawyer.
- Before going to court they should be explained the procedure and what is expected of them.
- Decisions should be taken as quickly as possible and should be explained to children in a way they understand.
- Special rules should apply to children victims.
- Governments must take steps to promote child-friendly justice.

- Council of Europe Annual Penal Statistics: SPACE
- SPACE I –first enquiry in 1984, 20 countries participated; since 2006 – 49 prison administrations participate in the survey
- A very important tool which allows for analysing tendencies and taking informed decisions at national and international level
- SPACE II – first inquiry in 1999, so far 4 annual surveys have been carried out, a fifth one is on its way

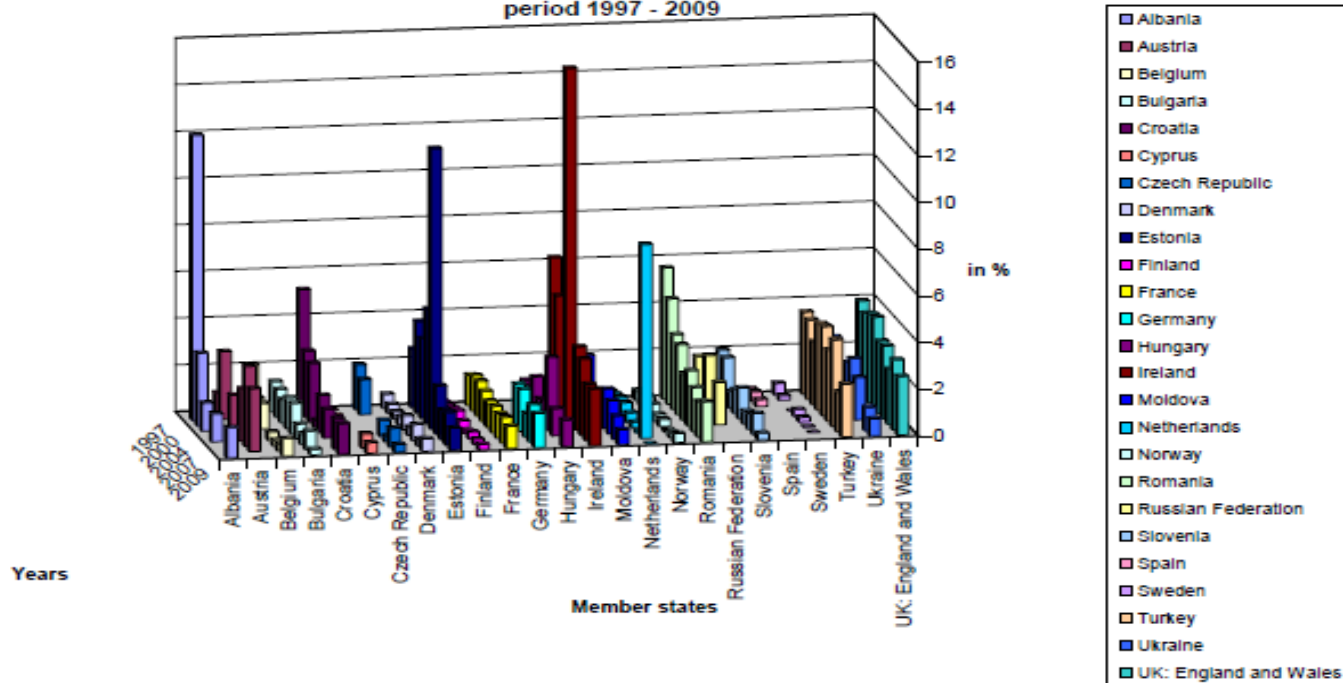
Age of criminal responsibility and % of prisoners < 18 years of age in Europe





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Evolution of the proportion of detained juveniles in the Council of Europe member states for the period 1997 - 2009



- **WHICH WAY TO GO NEXT?**
- Europe needs to agree on the lowest age of criminal responsibility!
- It should be possible to find a common and adapted policy in Europe regarding children in conflict with the law! Europe has overcome much greater challenges than this one



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Thank you for your
attention!

For more information:

www.coe.int/prison

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