

9 - Sentencing of children

Author : Simona Florescu - Last update : 11.07.2022

Sentencing relates to the aftermath of trial when the domestic courts have found that a child has infringed criminal law. Factsheet no 3 (Children's rights in pre-trial detention) has dealt with the rights of children when imprisonment is considered during trial whereas this Factsheet is concerned with the types of sentences post-conviction.

In line with the principle that detention should be a measure of last resort and used for the shortest period of time (Article 37 (b) of the [CRC](#)), even after a finding of guilt, children should have the right to sentences alternative to detention. Whenever detention is nevertheless imposed it should be substantially shorter than in the case of adults and children should have the right to early conditional release. Life imprisonment and capital punishment are in all cases, regardless of the nature of the offence, incompatible with children's rights. Ancillary sentences, such as criminal records should also not be used in the case of children in view of their serious impact on the potential for reintegration into society.

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Purpose of sentences

The [Beijing Rules](#) set out that strictly punitive approaches are not appropriate for young offenders as they are hardly reconcilable with the interests and future of the young person. The Rules also encourage granting of probation via suspended or conditional sentences, board orders or other dispositions (Commentary to Rule 17). The same view is echoed in [General Comment no 24](#) where the CRC Committee considers that a strictly punitive approach is not in accordance with Article 40 (1) of the CRC (General Comment no 24, § 76).

Proportionality of sentences

The proportionality of sentences means that this process should follow an individualised approach, taking into account the situation of the individual child and excluding minimum sentences, life sentences or the capital punishment

A recent research report has developed a set of principles for sentencing youth convicted of serious, violent or sexual offences. These principles could arguably be adopted for the sentencing of children more widely, and they could serve as guidance for practitioners. For these reasons they

are reproduced below:

An approach to sentencing compliant with children's rights should take into account the following elements:

1. Sentences should be proportional to the seriousness and the circumstances of the offence, taking into account the lesser culpability of the child;
2. Sentences should be specifically designed for children and young people, taking into account their age, interests and evolving capacities;
3. Sentences should not solely be punitive in nature;
4. Sentences should be adapted to the individual circumstances of the child and cannot provide a mandatory minimum;
5. Deprivation of liberty can only be used as a last resort and for the shortest appropriate period of time;
6. Deprivation of liberty of children should be considerably shorter in duration compared to the sentences that can be imposed on adults for the same offence and cannot result in life imprisonment;
7. Deprivation of liberty should take place in facilities that are suitable for the age, maturity and interests of children and young people; and
8. Sentences should be aimed at the reintegration of children into society, so that the child can take a constructive role in society and does not reoffend.

Article 37 of the **CRC** prohibits in absolute terms life imprisonment without parole and capital punishments for children. Recent studies have shown however that life imprisonment without parole in particular is still possible in some jurisdictions. A 2015 [Report](#) indicated that of the then 28 EU Member States, 22 countries (mostly of the civil law tradition) had prohibited life imprisonment for children.

The ECtHR has analyzed the proportionality of sentences under Article 3 of the Convention -the prohibition against inhuman and degrading treatment (T v the United Kingdom, 24724/94). While not ruling out that indeterminate sentences (where an administrative body has the discretion to decide on the length of sentence) may give rise to breaches of Article 3, the ECtHR has not found so far a violation of Article 3 of the Convention on account of the length of the sentence imposed for children or on the basis of the sentence's indeterminate nature. The determination of proportionate and appropriate sentences is ultimately a matter of domestic law (*Aleksandr Aleksandrov v Russia*, no. 14431/06, § 22). The ECtHR has held however that young offenders should have the right to an oral review before a court or a court-like body and should benefit from the procedural guarantees of Article 5 (4) ECHR to challenge the lawfulness of the discretionary periods of detention post-conviction (*Hussain v the United Kingdom*, 21928/93, § 61).

The proportionality of sentences is also envisaged under Article 7 (4) (c) of the **Procedural Safeguards Directive** which provides that the individual assessment -thus the personal characteristics of the young offender – shall also serve during sentencing. Further, under Article 10 of the **Procedural Safeguards Directive**, in cases of deprivation of liberty due account should be taken of the child and their individual situation and the child should have the right to periodic review of detention. Arguably this guarantee should also apply to sentencing situations, in the case of detention post conviction. (see also Factsheet no 3: Children's rights in pre-trial detention).

The CRC Committee has considered that mandatory minimum sentences are incompatible with the principle of proportionality. In contrast to the ECtHR, the CRC Committee considers that discretionary minimum sentences impede the proper application of international law ([General Comment no. 24](#), § 78). Conversely, the Committee has recommended that States set maximum

sentences which reflect the principle that deprivation of liberty should only be used as a last resort ([General Comment no. 24](#), § 78).

Further, concerning release on parole the CRC Committee has recommended that the period to be served before parole is substantially shorter for children than for adults ([General Comment no. 24](#), § 81).

The CRC Committee has also dealt with the proportionality of sentences in the context of serious offences and it has stressed that the best interests of the child is the primary consideration in these cases as well together with the need to promote the child's reintegration into society (General Comment no 24, § 76).

Alternative dispositions

Detention of children should be used as a measure of last resort and for the shortest possible time (CRC, Article 37 (b) CRC). The **UN Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health** has called for the abolition of child prisons and large care centers alongside scaled-up investment in community-based services (A/HRC/38/36, para. 53). This is also the position of the **CRC Committee** who has recommended that states reduce reliance on detention to a minimum (General Comment no 24, §§ 83, 84). The calls for ending child detention are echoed in the recommendations of the [2019 UN Global Study on children deprived of liberty](#).

The **UN Beijing Rules** recommend that states resort to frequent and early conditional release (rule 28). Support in the community is essential for successful reintegration and it is highlighted in these rules as well as in the more recent General Comment no 24.

The UN [Beijing Rules](#) also list various measures for States to consider as alternatives to detention as follows: (a) care, guidance and supervision orders; (b) probation; (c) community service orders; (d) financial penalties, compensation and restitution; (e) intermediate treatment and other treatment orders; (f) orders to participate in group counselling; (g) orders concerning foster care, living communities or other educational settings; (h) other orders (Rule 18.1). (see also Factsheet no 8 on Diversion)

Conditions of detention

Even though detention should be applied as a measure of last resort when sentencing children, detention remains one possibility. The extent of detention of children worldwide has been documented in the [2019 UN Global Study on children deprived of liberty](#).

When detained, international case law and instruments have developed several standards which are specific for children. These standards are analysed in Factsheet no. 4: Conditions of detention.

Further reading

Lynch, van den Brink & Forde (eds), "Responses to Serious Offending by Children. Principles, Practice and Global Perspectives", Routledge 2022

<https://www.routledge.com/Responses-to-Serious-Offending-by-Children-Principles-Practice-and-Global/Lynch-Brink-Forde/p/book/9781032107585>

Canton, "Why punish", Bloomsbury Publishing 2017

[2019 UN Global Study on children deprived of liberty](#)

Child Rights International Network (crin), "Life Imprisonment of Children in the European Union" (2015b). Available at: https://archive.crin.org/sites/default/files/life_in_the_eu3.pdf.