

October 26, 2015

Imprisonment of Youth under the Age of 14:

Position Paper by the Association for Civil Rights in Israel

- Draft -

In preparation for the discussions that are to be held in the coming days at the Ministry of Justice, the Association for Civil Rights in Israel (ACRI) is pleased to submit its position regarding the imprisonment of youth under the age of 14 accused of criminal offenses. As the official proposal has not yet been released, ACRI's position paper addresses the principle rather than the details of the proposal.

1. We oppose the proposal that would enable imprisonment of minors under the age of 14. The absolute prohibition on imprisoning minors under the age of 14 in the Israeli Youth Law reflects a proper balance between the need for deterring and punishing minors for their crimes, and the obligation to protect their rights and to refrain from any unnecessary infringement on a minor's rights. This absolute prohibition, established by section 25(d) of the Youth Law, is not new, and has been well enshrined in the principles of criminal law in Israel for many decades. This provision was **established in 1957** in the amendment to the Juvenile Offenders Ordinance (section 12(1)), which established that minors under the age of 14 cannot be imprisoned at all, **regardless of the type of crime committed**.
2. The proposal to change this provision subverts the basic principles of society as to the treatment of children who have committed crimes. The purpose of section 25(d) of the Youth Law (Adjudication, Punishment and Methods of Treatment), 1971, as determined by the Supreme Court, is "to prevent minors under the age of 14 from being imprisoned, based on the perception that the conditions of detention in prison are inappropriate for their young age. The rationale for this section is that sending minors under the age of 14 to prison has the potential to cause minors disproportionate harm. Sending a minor whose age is close to childhood to prison is likely to harm the minor more severely than the extent to which an adult is harmed by imprisonment, and this result is clearly undesirable, and perhaps even unjust." (Paragraph 12 of the Supreme Court decision CA 534/04 Anonymous v. The State of Israel (January 20, 2005).
3. Stricter punishment for juvenile offenders under the age of 14 through imprisonment is inappropriate and unnecessary. Even without the option to sentence minors under the age of 14 to imprisonment, the Youth Law provides the justice system with measures to severely punish minors under the age of 14 who have committed serious crimes. Section 34 of the Youth Law allows for sentencing a youth to a closed detention facility until the age of 20 – a severe punishment which deprives minors of their freedom.
4. The proposal to decrease the minimum age of imprisonment contravenes the overriding principle of the Youth law, whose purpose is to "uphold the rights of minors as defendants and suspects of committing crimes, while considering their developing abilities and the overriding principle of

the wellbeing of the minor, as well as the aspiration, which is the basis of the law, to rehabilitate juvenile offenders through methods of treatment and punishment detailed in the law.”¹

Comparative law

5. Imprisonment of minors under the age of 14 is **unacceptable throughout most of the world**. Most European countries take extreme care not to imprison minors under the age of 14. Our research demonstrates that **of 45 European countries, 38 do not allow imprisonment of minors under the age 14**. In a significant portion of European countries, the minimum age of imprisonment is higher than 14.² For example in Finland, the Czech Republic, Greece, Iceland, Norway, Poland, Portugal and Sweden, the minimum age of imprisonment is 15 years old.
6. In the few countries in which imprisonment of minors under the age of 14 is allowed, it is only permitted in exceptional cases of serious crimes, and only when the psychological maturity of the minors allows for it (for example in Turkey and Hungary).

The following table illustrates this policy with a number of examples:³

| | Minimum age of imprisonment |
|-----------------------------|---|
| Austria ⁴ | 14 |
| Bulgaria ⁵ | 14 |
| Czech Republic ⁶ | 15 |
| Denmark ⁷ | 14 |
| UK ⁸ | 10 However, between 10-14: only for murder or other serious crimes if the minor is a repeat offender. ⁹ |
| Estonia ¹⁰ | 14 |
| Finland ¹¹ | 15 |
| France ¹² | 13 |
| Germany ¹³ | 14 |

¹ Proposed Youth Law (Adjudication, Punishment and Methods of Treatment) (amendment no. 14), 2006, government bill 244, June 12, 2006, page 468.

² Policy of individual states from Childs Rights International Network (<https://www.crin.org/en/home/ages/europe>)

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⁴ Jugendgerichtsgesetz (Youth Court Act), Sections 1(1)-(2) and 4(2)]

⁵ Criminal Code, Articles 31(2) and 32(1)-(2)

⁶ [Criminal Code, Provision 11]

⁷ [Criminal Code, Section 15.

⁸ Children and Young Persons Act 1933, Section 5

⁹ http://www.unafei.or.jp/english/pdf/RS_No78/No78_13VE_Blakeman.pdf

¹⁰ [Criminal Code, Section 33; Juvenile Sanctions Act 1998, Sections 2 and 3(9)

¹¹ [Penal Code, Ch. 3, Section 4(1); Ch. 6, Section 12

¹² Criminal Code, Article 122-8; Ministry of Foreign and European Affairs, “Juvenile Justice in France” May 2008



| | |
|----------------------------------|--|
| Greece ¹⁴ | 15 |
| Hungary ¹⁵ | 14 <u>However:</u> between 12-14 for a few serious crimes only. ¹⁶ |
| Iceland ¹⁷ | 15 |
| Italy ¹⁸ | 14 |
| Latvia ¹⁹ | 14 |
| Lithuania ²⁰ | 16 <u>However:</u> between 14-16 for a few serious crimes only. ²¹ |
| Netherlands ²² | 12 |
| Norway ²³ | 15 |
| Poland ²⁴ | 17 <u>However:</u> between 15-17 for a few serious crimes only. ²⁵ |
| Portugal ²⁶ | 16 |
| Romania ²⁷ | 14 |
| Russian Federation ²⁸ | 16 <u>However:</u> between 14-16 for a few |

¹³ Criminal Code, Section 19]

¹⁴ Criminal Code, Articles 126 and 127

¹⁵ Criminal Code, Section 16

¹⁶ Criminal Code, Section 16; 'homicide, voluntary manslaughter, battery, robbery and plundering, provided that the child had the capacity to understand the nature and consequences of his or her act'

¹⁷ Penal Code, Article 14

¹⁸ Criminal Code, Articles 97 and 98

¹⁹ Criminal Code, Section 11

²⁰ Criminal Code, Article 13(1) and (2)

²¹ Criminal Code, Article 13(1) and (2); 'murder; serious impairment to health; rape; sexual harassment; theft; robbery; extortion of property; destruction of or damage to property; seizure of a firearm, ammunition, explosives or explosive materials; theft, racketeering or other illicit seizure of narcotic or psychotropic substances; damage to vehicles or roads and facilities thereof'

²² Wetboek van Strafrecht (Penal Code), Article 77a

²³ General Civil Penal Code Section 46,

²⁴ Penal Code, Art. 10,

²⁵ Penal Code, Art. 10., 'an attempt on the life of the President of Poland; murder with particular cruelty or for motives deserving particular reprobation or in connection with hostage taking rape or robbery; Grievous bodily harm impairing a sense or this injury results in their death; intentional exposure to HIV; using deceit/violence to take control of ship or aircraft; causing a catastrophe on land or sea or which imperils the health of many persons or causes the death one a singular person; rape with particular cruelty; hostage taking for purpose of duress; violent burglary' .

²⁶ Criminal Code, Article 19; Lei Tutelar Educativa 1999 (Guardianship and Education Law), Articles 1 and 4

²⁷ Criminal Code, Article 113(1)-(3)

²⁸ Criminal Code, Article 20(1) and (2)

| | |
|------------------------|------------------------------------|
| | serious crimes only. ²⁹ |
| Slovakia ³⁰ | 14 |
| Spain ³¹ | 14 |
| Sweden ³² | 15 |
| Turkey ³³ | 12 |

7. In most European countries the age of criminal responsibility is higher than in Israel, and is set at 14 and above (for example Armenia, Azerbaijan, Belarus, Ukraine and Kazakhstan, where the age of criminal responsibility is 14.)³⁴
8. Establishing the age of criminal responsibility and imprisonment at 14 is also based on international law. Section 40(3) of the Convention on the Rights of the Child encourages member states to establish a minimum age under which children cannot be held criminally responsible. In General Comment number 10, the Committee for the Rights of the Child recommends that member states establish the **minimum age for criminal responsibility at 14 or 16.**³⁵
9. This demonstrates that **not only will reducing the age of imprisonment in Israel constitute an invalid and unacceptable measure when compared to other countries, but furthermore that the current legal situation in Israel does not meet international standards.**
10. Imprisonment of minors in the United States is complex and difficult to compare to Israel. In most states, the minimum age for incarceration in prison is 14, and those below the age of 14 are sent to juvenile detention centers. In order to illustrate the invalidity of reducing the imprisonment age in Israel to below 14, we will focus on how murder is treated in American law. Even for such a heinous crime as this, in most states in the US, trying minors as adults or imprisoning minors under the age of 14 in regular prisons are not possible:

²⁹ Criminal Code, Article 20(1) and (2); 'homicide (Article 105), intentional infliction of grave bodily injury causing a impairment of health (Article 111), intentional infliction of bodily injury of average gravity (Article 112), kidnapping (Article 126), rape (Article 131), forcible sexual actions (Article 132), theft (Article 158), robbery (Article 161), brigandism (Article 162), racketeering (Article 163), unlawful occupancy of a car or any other transport vehicle without theft (Article 166), intentional destruction or damage of property under aggravating circumstances (the second part of Article 167), terrorism (Article 205), seizure of a hostage (Article 206), making deliberately false report about an act of terrorism (Article 207), hooliganism under aggravating circumstances (the second and third parts of Article 213), vandalism (Article 214), theft or possession of firearms, ammunition, explosives, and explosion devices (Article 226), theft or possession of narcotics or psychotropic substances (Article 229), the destruction of transport vehicles or ways of communication (Article 267).

³⁰ Criminal Code, Section 22(1) and (2)

³¹ Organic Law 5/2000 of 12 January, on the criminal responsibility of minors, Articles 1(1) and 3

³² Criminal Code, Ch. 1, Section 6

³³ Criminal Code, Article 31(1) and (2)

³⁴ The minimum age of criminal responsibility, Justice for Children Briefing No. 4, February 2013, http://www.penalreform.org/wp-content/uploads/2013/05/justice-for-children-briefing-4-v6-web_0.pdf

³⁵ UN Committee on the Rights of the Child (CRC), CRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10 Paragraph 32

- a. In accordance with statutory execution laws, only in seven US states can a minor under the age of 14 be tried for murder as an adult.³⁶
 - b. In accordance with the mandatory waiver, in ten states there is an obligation to transfer the case from the juvenile court to a regular court when the charge is murder; however, nine out of ten of these states limit this rule to cases of minors older than 14.³⁷
 - c. With respect to prosecutorial discretion, eleven states allow the prosecution discretion to request that a murder case be transferred to a regular court, however only in one state (Montana) is it allowed if the defendant is younger than 14.³⁸
 - d. With respect to judicial discretion, only ten states provide the judge of a juvenile court with discretion to transfer a murder trial from a juvenile court to a regular court when the defendant is under the age of 14.³⁹
11. In light of the above, it is clear that the Ministry of Justice's proposal to imprison youth under the age of 14 is anomalous and incongruous with comparative law.

Conclusion

12. The provisions currently established by the Youth Law reflect principles based on the International Convention on the Rights of the Child and correspond to the democratic values of the State of Israel. The provisions limiting the age of imprisonment to 14 have been rooted for decades in our legal approach as to the proper treatment of minors.
13. Promoting this bill would lead to an extreme deviation from the legal and social values upon which the Youth Law is based, and its implementation would have disastrous consequences for all of society.
14. Furthermore, the bill betrays the purpose for which it was conceived. Confronting the severe phenomenon of criminal activity of minors below the age of 14 in general, and the phenomenon of stone-throwing by minors under the age of 14 in particular, must be undertaken with tools that are appropriate to the age of the minors and which can enable their proper integration into normative society. Imprisonment of minors under the age of 14 in regular prisons is in fact likely to increase violence and crime in Israel. Imprisonment of minors has severe ramifications on the rest of their lives, and studies show that the probability of minors who serve time in prison returning to the cycle of crime is higher than for youths who were provided with alternatives to imprisonment.⁴⁰

³⁶ The states that allow minors under the age of 14 to be tried for murder are Georgia, Illinois, Nevada, New York, Oklahoma, Pennsylvania and Wisconsin.

³⁷ P. Griffin, S. Addie, B. Adams, K. Firestine; table 2 'Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting', Juvenile Offenders and Victims: national report series (September 2011).

³⁸ P. Griffin, S. Addie, B. Adams, K. Firestine; table 3, 'Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting', Juvenile Offenders and Victims: national report series (September 2011).

³⁹ P. Griffin, S. Addie, B. Adams, K. Firestine; table 4, 'Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting', Juvenile Offenders and Victims: national report series (September 2011).

⁴⁰ Eliav Berman, Dror Walk, "Recidivism percentage among prisoners released in 2008," Israel Prison Service, February 2015, Page 5 Table 3. Available here: <http://www.ips.gov.il/Items/11144/reci.pdf>.

15. In light of all this, expanding the variety of educational and rehabilitation treatments available in East Jerusalem should be considered in order to address stone-throwing by minors, including those who are younger than 14. Today, there are practically no appropriate alternatives to imprisonment of minors in East Jerusalem: ankle monitoring is not available in East Jerusalem, as the company which operates the monitors does not enter East Jerusalem; there are no locked day-time juvenile facilities for Arab youth in Jerusalem (the only existing option is to attend one of two facilities for Arab youth in the far north); and there are only very few rehabilitation and supervision programs which can cater for a very small number of youths.