

'Let's Talk to One Another: a cross-sectoral approach for children with a parent in prison'

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Festsall der Berliner Stadtmission

Berlin

Zusammenarbeit mit der Justiz/Working with the Judiciary

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Children have the right to maintain regular, rewarding, personal contact with parents, unless it is proven contrary to their best interests.

So, how do Courts decide whether it is in a child's best interests to have personal contact with a parent in prison?



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My daddy is in prison...

Not out of my life!



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An important part of the Convention on the Rights of the Child (CRC) are the guarantees related to the position of the child within the justice system.

They entail the establishment of a national judicial system responding to the specific needs of children, with a view to ensuring children's effective and appropriate access to justice and their treatment in any field – civil, administrative or criminal.

It is based on four main principles, but of which the following stand out:

- . *The best interest of the child*
- . *The views of the child*

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The best interests of the child is both a fundamental principle of Child-Friendly Justice, and a dynamic concept that encompasses various issues that are constantly evolving.

According to the ECtHR, the best interest of the child is:

- * an interpretative legal principle of the highest prominence;
- * a substantive right to be identified and valued in each individual case, and always taken as an overriding consideration;

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* a procedural rule requiring an assessment of the impact of the decision on the child.

Its content must be determined on a case-by-case basis, and it should be adjusted and defined according to the specific situation of the child or children concerned, taking into consideration their personal context, situation and needs.

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When deciding whether it is in a child's best interests to have personal contact with a parent in prison, identification of the child's best interests and the assessment of the overall proportionality of any given measure require Courts to weigh a number of factors in the balance.

In all proceedings involving children, the urgency principle should be applied to provide a speedy response of Courts and protect the best interests of the child, while respecting the rule of law.

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The Portuguese Project named “3 C’s” (= Knowledge, Awareness and Empowerment/Training):

How can ALL of us, as a community, help children achieve integrated, complete and comprehensive development, especially those with a parent in prison?

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The aim was to:

- . understand how to minimise the impact of arrest or detention on their lives during police and/or judicial proceedings (specially if they were present at the moment of arrest);
- . establish mechanisms within multi-agency services for effective cooperation and protection of these children;
- . define strategies for communicating the parental situation to the child;

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- . identify, understand and overcome the interprofessional knowledge gaps of the project members;
- . list the circumstances that deter children from expressing their point of view and how judicial proceedings should co-involve them;
- . recognise the barriers children face when face-to-face contact is allowed.

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This project included, *inter alia*, members of the security forces, lawyers, prison staff, a judge, psychologists, anthropologists, social workers, teachers and members of the commission for the protection of children and young people.

The model adopted was proactive, argumentative, multidisciplinary, inter-organizational and collaborative.

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In order to safeguard their special rights and needs:

- 1) A multilevel, intersectoral, holistic and integrated approach (also referred to as a “one-roof approach”), is of the utmost importance.
- 2) Children must know they are not to blame.
- 3) Children in contact with the law face an intimidating and potentially harmful adult world, feel left alone and set aside from the proceeding due to their status as children.

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4) Long-term support solutions must enhance the human factor (the trusted adult/the beloved teacher).

5) Only if we actively listen to children (which doesn't mean we will do what they say) and to each other, and work together towards a common goal – the child's well-being –, it is possible to surpass scarce human resources, money allocation or non-existent objects, conditions, materials or spaces, countless deadlocks in institutions, or gaps in the legal framework.

6) Sustainable solutions must involve all (from the family to the legislator).

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Operational guidelines from Centro de Estudos Judiciários (the Portuguese Judicial Academy):

- . Children with a parent in prison must not get that stigma or label for life.
- . It is important to create channels for open communication with children in a judicial proceeding.
- . Children in contact with the law and their guardians, especially those facing vulnerabilities, have to be empowered about their rights before, during and after judicial proceedings.

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. Legal professionals (judges and prosecutors) working for and with children in contact with the law receive targeted ongoing training, ensuring they have the necessary skills and knowledge to apply child-friendly procedures effectively.

. The mandatory forensic psychology seminars and workshops for trainees on child hearing, psychology, assessment and evaluation of testimony or medico-legal assessment help them to have a broader view of the non-legal and legal difficulties and challenges of hearing a child.

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. Role-playing, which is part of the curriculum, sensitises trainees to prejudices or biases, makes them aware of body language, posture and attitude, and forces them to think about tone of voice, choice of words, the room in which the hearing takes place, professional dress and courtroom ceremony (Judgecraft).

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How do Courts decide whether it is in a child's best interests to have personal contact with a parent in prison?

First and foremost children need to be heard by Courts.

Why should children be heard?

Because they can be directly affected by a Court's decision (sentencing a parent to prison) FOR LIFE, hence must be heard by the Court and taken into account during all the different stages of the judicial process.

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Their point of view must be assessed and the opinions they express must be duly taken into account.

This presupposes, *v.g.*, they receive all relevant information; know they have the right to express their views, only if they wish to do so (it's not an obligation, it's not a duty); are informed of the possible consequences of compliance with these views and the possible consequences of any decision; may be assisted by a representative or lawyer... – Convention on the Rights of the Child and European Convention on the Exercise of Children's Rights.

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A sensitive child-centred approach demands explaining them the procedure and its phases, that they are an indispensable part of the procedure, and their rights, in a clear and accessible language, making sure that they have understood it, treating them as the fully fledged subjects they are.

Co-involving children is the only way for them to feel in control of their own path and is key for the comprehension, acceptance and implementation of the decision that will be taken.

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When should children be heard?

During a pre-trial proceeding phase, or (sentencing options), during an ongoing trial or only after the prison sentence has already been passed.

The same question also arises as to whether children should be heard in precarious exits from prison or in cases of early releases from prison.

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Which is the competent Court?

The Family Court, the Criminal Court or the Sentence Enforcement Court?

A case-by-case analysis is required, taking into account the judgement and assessment reports of experts from different fields (criminologists, social workers, prison staff, psychologists, teachers, speech therapists...).

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There is no exhaustive list of factors to be taken into account, as they vary depending on the circumstances of the particular case.

Nevertheless, in order to conclude if it is in a child's best interests to have personal contact with a parent in prison it should be weighed:

- age, maturity, understanding, opinion of the child;
- degree of relationship with the imprisoned parent;

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- who was the victim and degree of relationship with the child (where applicable);
- type of offence, conditions under which the offence was committed;
- injuries, compensation;
- length of sentence, probation;
- prison institution, its location, security conditions and conditions, etc.

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Thank you!

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