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Letter to DIGNITY, Elna Søndergaard

New Thinking of efforts to combat youth crime

On the 18th of December 2018, the Danish Parliament adopted the Act of Combating Youth Crime and the amendment of the Act of Social Services, the Act of adults' responsibilities for children and youth in protective custody, and the Act of Social Supervision.

The laws entered into force on the 1st of January 2019.

The Act of adults' responsibilities for children and adolescents in protective custody has been transposed into the executive order on the adults' responsibilities for children and adolescents in protective custody. The executive order entered into force on the 1st of February 2019.

The recently adopted laws concern children and adolescents between the ages of 10-17 years who are suspected of – or sentenced for major assault or extremely high level of crime.

In the motivation of the Acts, it is stated that the municipality continues to have a clear responsibility to divert children and adolescents from criminal involvement. However, it is found that the municipalities may lack focus on the crimes committed by the children and adolescents and that the social issues tend to be the focal point rather than the crime that has been committed by the child or adolescent. This means, that the child or adolescent are not held adequately accountable for their criminal behavior.

The aim is to hold children and adolescents accountable for criminal offenses, and at the same time support them so they can have a life free of crime henceforth. This must be done through a holistic approach with a clear and rapid consequence. The decisions in the cases will be undertaken by a newly established Juvenile Justice Committee (Ungdomskriminalitetsnævn) and newly established Juvenile Welfare Service, and there will be an alignment of the partially closed institutions and closed institution.

1. The Act of Combatting Juvenile Crime

1.1. The Juvenile Justice Committee

The Juvenile Justice Committee is composed of a judge (president) and two permanent representatives from the police and the municipally respectively. The committee has a juvenile expert member who is not entitled to vote, and it is not possible to involve other specialist or resource persons.

The decision from the Juvenile Justice Committee contains two elements: an immediate reaction which must be educative and of restorative nature, and a correctional process in the form of an action plan with

a duration of up to 2 years, and in special cases 4 years, which is to be determined based on the child or adolescent's situation and the circumstances of the case.

In every case, the Juvenile Justice Committee must carry out a concrete, individual assessment with the inclusion of all information in the case for determining the most suitable response to help the child or adolescent stay out of crime and to promote wellbeing. However, in cases of more serious crimes against the person, the Juvenile Justice Committee must always consider if there is a need to place the child or adolescent outside the home. The nature and extent of the crime are not decisive for the choice of reaction but must be included. If there is disagreement in Board in relation to the decision this must be disclosed but the individual member can only submit dissenting points in cases concerning placements out of the home.

If the child or adolescent does not comply with the Committees decision the municipality – if necessary with help from the police – has access to the entire residence of the custodial parent without a court order and if proper identification is presented to search and bring in the child or adolescent to execute the decision.

The assistance of a lawyer is offered for free in every case involving placement out of the home. However, free legal assistance is not offered to the 10 and 11-year-olds and in cases not concerning out-of-home placements.

Appeals against decisions are only possible for cases involving institutional placements. In these cases, the complaint must be submitted to the Appeals Board and can be submitted to the courts subsequently if desired. There is no right of appeal for other decisions beyond the provisions in the Constitution. The decisions of the Juvenile Justice Committee are binding on the municipalities and they are obliged to initiate and implement the efforts that the committee decides.

1.2. The Juvenile Welfare Service

Alongside the municipal supervision, a juvenile welfare service will be established to supervise whether the child or adolescent complies with the decisions of the committee and whether the decided arrangements have been implemented. If the child/adolescent does not fulfill their obligation the case can be reported to the Juvenile Justice Committee.

2. Amendment of the Act of Social Services, Act of Adults responsibilities for children and adolescents in protective custody, and the Act of Social Supervision.

The act is a supplement for the Act of Combatting Juvenile Crime and has the same purpose.

The act allows the municipalities to impose order on children aged 10-11 years and enables child- and adolescent order and parental order to be used in all cases where young people aged 10 to 17 are

suspected or accused of having violated the Penal Code, Act of Drug Abuse, Arms Act and the Knives Act. The requirement of a preceding child assessment when imposing child- and adolescent orders and parental order has been removed.

The purpose of efforts in the residential accommodations and institutions must be made clear.

House rules must be established in the secured and partial closed institutions and departments. Permission is granted for the reduction or withdrawal of pocket money in the event of a breach of the house rules and the use of physical force when necessary to stop the violation of the house rules.

The law requires TV-surveillance of indoor common areas around the clock and the obligation to use door alarms when necessary to ensure that order or safety regulations are observed. The law authorizes the authorities of the secured residential institutions and the specially secured departments to perform body search (by undressing) in the form of examination of the body's surfaces and to search the clothes. The law gives permission to restrict the children and adolescents telephone conversations and other electronic communications.

3. Political

The age of accountability for criminal offences is maintained to be 15 years.

In connection to the legislative work, the Ministry of Justice has completed two extensive commented overviews on the circulated hearings which were totaling almost 40 organizations and public authorities.

The answers have a great common concern for the newly adopted laws. Concerns can be gathered under the following headings:

- Whether this initiative actually is a criminal proceeding against children aged 10-14 without legal safeguards. Concerns have been expressed about the children's legal certainty. Concerns are directed at the Committees composition, that the case is submitted on the basis of the police investigation of suspicion of a crime, and that only children/adolescents aged 12 years and above are offered a lawyer in cases where placement outside the home is considered. A particular concern has been towards the issue that the committee can decide immediate reactions of punitive nature against children between 10 and 14 years based on a suspicion of a crime, without an examination of the question of guilt.

Can the composition of a Committee with a judge as president, an employee from the police and the municipally be regarded as independent, when the police at the same time refer the cases to the Committee and handles the function of Secretariat and participates in the execution of immediate reactions and orders. In addition, the police determine whether a case is to be assessed by the Committee.

- Is this in accordance with the code of good administrative behavior when there is no openness to a dissenting opinion of a Committee member?

- Does the Committee have the necessary professional expertise to only be assisted by one child and adolescent expert, and is it justifiable that the concerned has no right to vote?
- Is the child- and adolescent order and the immediate reaction an actual sentence?
- Would it cause problems that both the municipalities and the Juvenile Welfare service supervise the same clients?
- Especially in relation to the institutions there is concern regarding the requirement of aligned rules even though the clients in the institutions are different. It has been addressed in the different answers that there is a lack of proportionality in the interference in relation to what is to be regulated. The restriction on the use of a mobile phone, access to the use of force to maintain the house rules, access to body searches by undressing which also applies for children who have been sexually abused or subjected to violence in their past.

4. Practice

The newly adopted acts entered into force on the 1st of January 2019.

A handbook has been prepared for dealing with cases covered by the Act of Combatting Juvenile Crime and the executive order on adults' responsibilities for children and adolescents placed in protective custody. Additional material may have been prepared

5. Evaluation

It appears from the commented overview on the circulated hearings that it is proposed that reporting should take place when the reform has been into force for three and six months respectively and subsequently half-yearly reports. Two organizations have been denied access to the Committees decisions on the grounds that they are administrative decisions.

6. Policy on crime and administration of justice – Think Tank Forsete final remarks

Forsete finds it essential that the CPT becomes aware of this reform. The reform has been the subject of many discussions between organizations, professionals and the press.

The Juvenile Justice Committee authority in relation to 10-14-year-old children must be given special attention.

Forsete finds that alignment and tightening-up of the regime that has been introduced to the secured departments and institutions are of great concern, given that the institutions receive children and young people with very different problems ranging from anxiety, self-damaging and late -developed children to difficult externalizing behavior. As for now, there is a risk that the stay in these institutions will amount to a breach of the European Convention on Human Rights article 3, degrading treatment.

It cannot be denied that children aged 10-14 who are placed in a closed institution with adolescents up to 17 years of age under a regime adapted to the elderly can become anxious and feel inferior to such an extent that it amounts to humiliation or degradation.

Specialist in psychiatry chief Henrik Rindom, who is a member of Forsete, states that there is a significant difference in brain development whether you are 10-14 years old or 15-17 years old. Younger children require special institutions and specially trained staff. Henrik Random assesses from his work that there is a risk of these children becoming severely traumatized if they are not separated from the others to institutions with specially trained staff.

It is noted that app. 25% of the juveniles are placed at institutions for social reasons. Many of the juveniles between 15 – 17 years are placed in surrogate custody “varetægtssurrogatanbragt.” Despite that the criteria for placement at the institutions have not been changed, it cannot be ruled out that the fact that the New Committee is obliged to consider such cases will result in more placements. In addition, it has been decided to introduce further restrictions at the institutions.

Forsete would like to recommend that the CPT visits the institution Grenen. If a visit will takes place, we would – in addition to those in the law mentioned areas – recommend that questions are asked about placements in own rooms and how it is addressed that both children with drug addictions and children without are placed together.

Yours sincerely,

Lawyer Helle Lokdam, chair of Forsete and
Bodil Philip, vice-chair of Forsete.