

Friday, 4th April 2008

“Respecting the Voice of the Child”

Speech by the Ombudsman for Children, Emily Logan, at the Conference “Youth Justice 2008: Measuring Compliance with International Standards” hosted by the Centre for Criminal Justice and Human Rights, UCC and the Children Acts Advisory Board.

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Ladies and Gentlemen,

It is my great pleasure to address this Conference on the subject of “respecting the voice of the child” and I would like to thank the organisers of this event for extending this invitation to me.

Many of you working in the youth justice field have day to day contact with children and young people and vast experience of listening to young people often at very difficult and challenging times in their lives. In our work as a team in the Ombudsman for Children’s office our combined participative work with children reminds us that like all of you, we are learning every day. I was hoping today to give you a sense of my own observations on how we are doing in Ireland in terms of meeting our obligations under Article 12 of the UN Convention on the Rights of the Child and to speak about the role of my Office and some of the activities we have undertaken to date aimed at facilitating the expression of views by children in Ireland.

My role as Ombudsman for Children is set out in the Ombudsman for Children Act, 2002. The Act provides that I shall:

- provide an independent complaints handling service;
- review the operation of legislation affecting children and provide advice on any matter relating to the rights and welfare of children; and
- to promote the rights of children including the principles of the UN Convention on the Rights of the Child.

At the outset children and young people have been involved in our Office. The then Minister for State with responsibility for children engaged in a process of recruitment where children interviewed candidates for the job.

I have a particular statutory role when it comes to the voice of the child. The Act provides that I shall establish structures to consult regularly with groups of children that I consider to be representative. It also uniquely provides that I shall highlight issues relating to the rights and welfare of children that are of concern to children themselves. In other words, respecting the voice of children is a statutory duty for my Office, and, I might add, a very welcome one at that.

The title of my presentation today is “respecting the voice of the child” and to start off with, it might be useful just to reflect on the concept of “respecting the voice of the child” and what we actually mean by that term. Article 12 of the UN Convention on the Rights of the Child sets out what is required of Ireland as a State Party to that Convention. It provides that the State:

shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child and that the views of the child should be given due weight in accordance with the age and maturity of the child

In order to ensure that their right to express views is guaranteed in practice, the State is obliged to provide children with:

“the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law”.

My Office’s experience of working directly with children and young people has made us aware of the value which they attach to being afforded opportunities to voice their concerns and wishes. Our experience suggests that, for children and young people, being heard is in part about being included in processes that are important to them, about being afforded the opportunity to contribute their perspectives in the context of decision-making processes whose outcomes have or will have the potential to affect their lives, possibly profoundly.

And this is where I have time and time again seen the effect of a decision being underestimated in terms of its long term effect on a child. In the context of our complaint handling work, my Office has been contacted by many children and young people either directly or through their parents. We are now seeing a consistent pattern in terms of children and young people being denied the right to participate in decisions affecting them. In the last three months I have been contacted by a number of children who have felt excluded from decisions taken or to be taken concerning them in the context of family separation. The children expressed a desire to participate in some way in the decision making process, some wanted to have their voice heard by the judge, others wanted a chance to express their views in other settings. All of them simply wanted to be recognised and to have their voice heard.

There is also an additional impetus to progress change in the form of the new EU regime for the recognition of the decisions of national Courts across the EU. The new so called Brussels II Bis regulations provide that a court decision in one EU court on a family law matter (for example a custody or access order) shall be recognised and respected in all other EU Member States. However, the EU rules also provide that children shall be heard in Court cases concerning them and it has come to our attention that, where a child had not been heard in one EU jurisdiction, the Courts in another jurisdiction might refuse to recognise the judgment. In other words, we are faced with the prospect that other EU states might not recognise the decisions of Irish Courts where the participation rights of the child concerned were not respected.

In other cases, children in care have not been involved in meetings where their care plans were discussed or decisions taken regarding their care provision. I have also been contacted by a number of children in care about access to their siblings. Why is it that there is such inconsistency and denial of the right to participate?

My own view is that this reflects a culture that is comfortable with a welfare approach to children, a culture where we as adults think we know best about what children need and that has not yet developed an understanding of children as active participants in the exercise of their own rights.

I also consider that the lack of provision in the Constitution for the child's right to participate in decision-making is preventing the development of a culture and official practice which respects the child's right to be heard and recognises that their voice can and will contribute to determining their best interests. Hearing a child's perspective and wishes can deepen our understanding and so improve our decision-making.

Clearly, there are a number of significant elements involved in Article 12. It involves a consideration of the capacity of the child concerned and the weighting of their views in line with their age and maturity. Our own Act provides that we will give due consideration to the wishes of the child or young person in the context of a complaint. What often surprises me is the frequency with which people make decisions about children without hearing their views. The most common reason cited for this is the child's age. It is often assumed that your chronological age can be used as a determinant of your capacity to form a valid opinion.

We need to challenge our own thinking on children's involvement and perhaps to be honest about our fear or apprehension about seeking their views. We also need to look at the adult environment in which children spend their time. A teacher, who was very supportive of hearing children's voices in school, said to me recently that it was difficult to create an environment conducive to child participation when as an adult that person was not encouraged to freely express their own views. Last week on radio I heard a discussion about unruly students in schools. When the interviewer asked for examples of unruly behaviours the response was 'idleness' and 'speaking out of turn'.

In September 2006, the UN Committee on the Rights of the Child reviewed Ireland's record under the Convention and recommended that additional measures be taken to ensure compliance with Article 12 of the Convention. In particular, it called for Constitutional change aimed at ensuring that children have the right to express their views in all matters affecting them in particular in families, schools, the health sector and communities. The experience of my Office mirrors the view taken at international level that more needs to be done to secure children's Article 12 rights.

Overall, I am convinced that change will only come about if it involves a requirement on the State and on all of us involved in working with children to actively facilitate the hearing of children's voices. If we are really to put Article 12 into practice, it means that we must give consideration to the children concerned in any particular participation activity. We must ask ourselves: what is their level of knowledge and what are their abilities, what perspective might they be coming from and how can we best assist them in expressing their views. These considerations often mean that we need to consider new ways of working. Sometimes we need to depart from the old ways of doing things, acknowledge that we need to adopt new techniques tailored for children and particular groups of children and always we need to invest time and resources into the adequate preparation of participation activities with children and young people.

In the context of the youth justice sector and the experience of children detained or accommodated in care and youth justice settings, I have visited the four Children Detention Schools, St Patrick Institution and residential care centres for children and young people. I would like to take this opportunity to thank the Directors, Governor and staff that facilitated those visits. While in those settings, it was obvious that there are particular problems for the young people in this environment. Clearly many young people

appeared to have a low self-esteem and were given more opportunities in the detention centres than they had experienced prior to being in conflict with the law. Children and young people in the youth justice sector may not always be aware of or confident about their own capacity to form a view and express their opinions. Certainly my own experience is that they do not recognise the perspectives they have to offer as valuable. So, I think that in the context of youth justice we need to look at our ability in supporting these children and young people to recognise their own capacity rather than, for example, children and young people having to demonstrate to us that they have capacity.

Compliance with International standards is the principal theme of this Conference. While there are very many good examples here in Ireland of participation work with children and young people, we have a long long way to go to ensure compliance with international standards in relation to respecting the voice of the child.

I see that the new Youth Justice Strategy makes provision for consultation with children and young people regarding the implementation of the strategy. This is a very welcome measure and one which might be used to ascertain the views of children in the youth justice system on the degree to which their participation in decisions affecting them is facilitated. Our ability to produce Strategies was complemented by the UN Committee back in 2006 but they did criticise our lack of implementation.

The challenges faced by children seeking to exercise their Article 12 rights have been documented in a number of publications including Dr Ursula Kilkelly's Audit of the Children Court and the research "Barriers to the exercise of children's Rights" which was produced by Dr Kilkelly on commission from my Office. The latter piece of work identifies the groups of children who face multiple barriers when seeking to exercise their rights. These groups include children in the criminal justice system.

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