The Council of Europe's Policy to Promote Children's Rights – Achievements and Challenges

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Abstract

The Council of Europe has worked extensively for several decades on the issue of promoting children's rights and banning corporal punishment. The organisation's work sheds light on the relationship between international conventions and national and local policies. While the landmark judgements of the Court of Human Rights are well-known, other important aspects of the organisation's work have reached academic society only to a limited degree. The article not only highlights the Council of Europe's efforts to operationalise children's rights and put them into practice in everyday life, but also reveals some dilemmas in the three-way relationship between the child, the state and the family that accompany the implementation of children's rights.

Key Words: Children's rights, Participation, Corporal punishment, Support, Positive parenting

Introduction

The Council of Europe Summit of Heads of State and Government, meeting in Warsaw in May 2005, adopted an Action Plan (Council of Europe, 2005a:6) containing two major components regarding the organisation's child policy: first, "to effectively promote the rights of the child and to fully comply with the obligations of the United Nations' Convention on the Rights of the Child", and second "to take specific action to eradicate all forms of violence against children". The programme *Building a Europe for and with children* was set up to initiate and co-ordinate actions in this field.[1] The priorities of the Action Plan are in line with the Council of Europe's values and core activities as a human rights organisation. The main tools used for promoting children's rights are (a) identifying areas needing new legal instruments, (b) promoting the ratification of the relevant European and international conventions, (c) ensuring the effective implementation of these international instruments by producing handbooks or other examples of good practices, and (d) assessing and monitoring the implementation process.

This article presents the Council of Europe's activities for ensuring the implementation of children's rights, reveals dilemmas arising from the implementation process and identifies challenges for future work. Examples will show how the Council of Europe's work in this field concerns not only the relationship between the child and the state, but also the relationship between the child and the family, and between the state and the family (Lidén, 2004). Before

beginning the discussion, I outline the legal and theoretical framework in which the Council of Europe's work is embedded.

The European context of Children's Rights

The Council of Europe's activities in promoting children's rights are grounded in an international legal framework. In addition to social rights, the UN Convention acknowledges children's political and civil rights, comprising freedom of expression and freedom to seek and receive information (12, 13); freedom of thought, conscience and religion (14); and freedom of association (15) (UNICEF 2002). The major legal instruments are the UN Convention on the Rights of the Child (UNCRC) and the Council of Europe's own conventions.[2] *The European Convention on Human Rights and Fundamental Freedoms (1950)* outlines civil and political rights for *all* citizens. *The Revised European Social Charter (1996)* is the major European treaty that addresses children's rights, partly through articles with some relevance to children (Articles 16 and 11) and partly through articles relating exclusively to children (7 and 17).

The European Convention on the Exercise of Children's Rights (1996) promotes children's rights in family proceedings before a judicial authority, including the right to be informed, to express their views in proceedings, and to apply for a special representative. The case law of *the European Court of Human Rights* and *the European Committee of Social Rights* has devoted extensive attention to children, particularly in cases where children have been ill-treated or subjected to violence and abuse. The Court has condemned corporal punishment and emphasised governments' responsibilities to protect children both in state-provided services and in the private sphere of the family.

The judgements of the Court of Human Rights have had groundbreaking impact on the interpretation of children's rights (UNICEF 2005, Oppedal 2007). In addition, numerous conventions and recommendations aim at safeguarding children's rights in specific situations, including adoption, the protection of national minorities, child sexual exploitation and abuse and cyber crime.

The discourse of children's rights is closely intertwined with contemporary trends within the science of children and childhood. The new social studies of childhood have developed a viewpoint of children as social beings living their daily lives and relationships in the present societies. They participate in the network of relations that comprise their society and contribute to society as children, not only as future adults (Alanen, 2007). The sociology of childhood, emphasising agency as well as structure, has played an important role in enhancing the view of children as actors and bearers of rights (Qvortrup et al., 1994; James & Prout, 1997; Brembeck et al., 2004). Within psychology there has also been a movement away from considering children's development as directed by universal laws, towards an emphasis on contextualisation and mutuality. The mutuality model is now a widely accepted understanding of child development, emphasising children as competent and active (Sommer, 1998; Pećnik, 2007). The Council of Europe's endeavours to promote children's rights are thus well embedded in both the social sciences and legal tradition.

However, in academia numerous discussions take place on theoretical as well as practical aspects of children's rights. Researchers have raised concerns that the children's rights movements are too firmly grounded in a Western ideology that may be not only difficult but even harmful to implement in other cultures (Boyden, 1997). Others have questioned the universal character of the Convention, given children's unequal material and social living conditions (Freeman, 2002; Pirjola, 2005). Interpretations of what is actually "in the best interest of the child" have also been subject to debate. How to balance children's rights to protection against children's rights to participation and whether these can be combined or whether an inherent contradiction exists between them is another issue (Alston, 1994; Purdy, 1994). Brannen and O'Brien (1995) warn against treating children as independent adults, urging adults to promote their rights in an atmosphere that respects their need for care and belonging.

Children's political and civil rights to participation in society

The bulk of the Council of Europe's efforts in this field are focused on enhancing children's citizenship and rights in society by facilitating their participation in different organisations, leisure activities and community work. Two training manuals, "Compass" for young people and "Compasito" for children offer them, as well as teachers and other youth workers, a variety of opportunities for practising young people's human rights (Council of Europe, 2003, 2007a). A "European Portfolio for youth leaders and youth workers" aims at increasing the recognition of non-formal education, learning and youth work (www.coe.int/youth). Participation, to be meaningful, has to have a purpose, and young people's involvement should lead to outcomes and results either right away or shortly thereafter. To enhance children's access to decision-making, the Council of Europe (2005b) suggests taking action to make schools a place where young people experience democracy. Further, it suggests initiating a political campaign to lower the voting age to 15. While these instruments have young people in general as their target group, the Council of Europe's attention often goes to children in marginal situations.

The situation of children in the vast number of immigrant families in Europe has been of major concern to the organisation. The 2006 Social Forum initiated a discussion as to what extent pluralism can be institutionalised, and how diversity can play a constructive role in reforming social policy (Council of Europe, 2006a). On a more detailed level, recommendations have been developed on specific aspects of children's lives, such as providing pre-school children with adequate language skills, integrating newly arrived children of migrants into the educational system, and ensuring a successful transition from school to the labour market. The Committee also discussed how member states can promote the financial independence of migrant parents and facilitate their participation in parental activities in kindergartens and schools (Council of Europe, 2008a).

The following examples will illustrate efforts towards children and young people in more specific situations:

- A recommendation on life projects for unaccompanied migrant minors, advocates an approach in which the host society does not simply return children to their countries but helps them to strengthen their personal capacities to develop their "life projects" (Council of Europe, 2007b).
- Roma children are a minority group whose situation is critical in many European countries. The Council of Europe has adopted recommendations to safeguard Roma children's rights to quality education and health care and to improve housing conditions and reduce segregation (Council of Europe 2000, 2005c,2006b).
- A fundamental shift is taking place in society, away from seeing people with disabilities as patients in need of care towards acknowledging them as persons capable of participating in society. The Council of Europe recommends specific steps for removing obstacles facing children with disabilities, enabling them to take part in society and realise their potential (Council of Europe, 2006c, 2008b).
- The organisation has also done extensive work to safeguard the rights of children living in institutions. Rec 2005 (5) argues that placement must be considered as a temporary exception. When separation is inevitable, the best interests of the child and the child's rights and dignity must direct the process. Children living in institutions have the right to maintain family ties and the right to identity and privacy. They also have the right to equal opportunities in health care, education, vocational guidance and active and responsible citizenship, including participation in decision-making processes (Council of Europe, 2005d, 2006d).

Although the list of examples is far from exhaustive, it is comprehensive enough to demonstrate some important points regarding the implementation of children's rights as citizens. First, the examples show the discrepancy between the well-developed legal framework and sophisticated academic discourses on children's rights on the one hand and the reality of children's lives on the other. These rights are still absent in the daily life of many children, and the initiatives mentioned in the previous paragraph aim at implementing children's rights on a relatively

elementary level, such as guaranteeing their access to fundamental education and health services. Second, the examples demonstrate the necessity for implementing children's rights among specific groups and in a range of arenas. Although the Council of Europe fills an important gap here by developing standards for children's rights, there is no guarantee that member states will implement its recommendations. Third, while the UNCRC grants children and young people the formal right to be heard in matters that concern them, whether society will take any notice of their opinion is far from clear. The lack of real opportunity to have a say in social and political matters is one of the themes running through all research on young people's social rights (Wyness et al., 2004, Clark et al., 2005). The Council of Europe's suggestion for lowering the voting age to 15 is likely to a controversial issue in this regard, challenging the member states' readiness to give children and young people a say beyond tokenism.

Children's right to a non-violent upbringing

The UNCRC challenges traditional parental practices in many ways. Children as holders of rights brings new elements into the relationship between the child and the family, such as the shift from parental authority to parental responsibility. Brannen and O'Brien (1995) argue for avoiding interpreting children's rights in ways that create distance and conflicts between children and parents. This point of view is in accordance with the UNCRC, which does not see the child as a stand-alone individual and does not intend to serve only the self-interest of such a stand-alone person. On the contrary, the preamble of the CRC clearly states that one of the most important conditions for the realization of the rights of the child is that the child grows up in a family environment (Doek, 2004).

Part of children's rights in the family is the child's right to a non-violent upbringing. This implies a ban on corporal punishment, defined as any punishment using physical force and intended to cause some degree of pain or discomfort, however light e.g. hitting (smacking,slapping, spanking) children with the hand or an implement, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (Council of Europe, 2007c: 19).

Interestingly, a ban on corporal punishment does not receive unconditional support from the scientific community. Researchers argue for examining the effects of such forms of punishment on child outcomes before recommending or discouraging parental use of corporal punishment (Gershoff, 2002; Parke, 2002). This preference for evidence-based research sits in sharp contrast to the Council of Europe's unequivocal human rights approach, explicitly expressed at all levels of the organisation.

The European Court of Human Rights has confirmed that it does not consider a ban on corporal punishment as a breach of parents' rights to freedom of religion and family life. On the contrary, the right to a non-violent upbringing is seen as a human rights imperative for every child in Europe: even mild forms of corporal punishment, such as what is called "reasonable chastisement", are not acceptable. The European Committee of Social Rights observed in 2001 that it "does not find it acceptable that a society which prohibits any form of physical violence between adults would accept that adults subject children to physical violence" (Council of Europe, 2005e: 11). The Council of Europe's Parliamentary assembly has called for Europe to become a corporal-punishment-free zone for children, arguing that "striking a human being is prohibited in European society and children are human beings" (Council of Europe, 2004e: 1). The Committee of Ministers followed up this statement by underlining the importance it attaches to this issue and "its commitment to protect children, a group in need of special protection in society, from all forms of violence" (Council of Europe, 2005e: 1). Further, the Council of Europe (2004f) has published examples of awareness-raising campaigns for protecting children against corporal punishment and procedures for passing necessary laws. Numerous speeches by the Deputy Secretary General are also spreading this message (www.coe.int).

Given the clear and numerous appeals for banning corporal punishment, that not many countries have followed the call may be surprising. While physical punishment in schools is banned in all European countries, in 2008 only 19 of the Council of Europe's 47 member states have explicit bans on all corporal punishment in their legislation: Sweden (1979), Finland (1983), Norway (1987), Austria (1989), Cyprus (1994), Denmark (1997), Latvia (1998), Croatia (1999), Bulgaria (2000), Germany (2000), Iceland (2003), Hungary (2004), Romania (2004), Ukraine (2004), Greece (2006), Netherlands (2006), Portugal (2007), Spain (2007) and Moldova (2008). Some states are in the process of abolishing corporal punishment by law, while in others the jurisprudence is moving in this direction. The comprehensive efforts of the programme "Building a Europe for and with children" aim at enhancing the process (www.coe.int/children). However, how to raise one's children is regarded as a very private family issue, and the use of corporal punishment has a long tradition. There seems to be an increasing recognition that a legal ban may be a necessary but insufficient pre-condition to putting a non-violent upbringing into practice. A shared concern between the scientific community and human rights institutions is to outline alternatives. Punishment is not a single variable that can be separated from its cultural context, and parents' decisions are based not only on effectiveness but also on views about ethics and humanity (Gershoff 2002; Parke 2002). The issue of differences in cultures and views on what constitutes ethics leads us to the third issue that this article addresses, i.e. the relationship between the state and the family. What kind of guidance and support accompany these new expectations from the UNCRC?

Parents' rights to state support

Parents' right to support from the state in fulfilling their obligations as the child's primary caretakers is embedded in the UNCRC, thereby confirming the political nature of the issue. However, neither political authorities nor academic society have paid much attention to analysing what parents need if they are to put children's rights into practice. Three recent publications (Council of Europe, 2006 f, 2007d, 2007e) aim at clarifying this issue, partly by elaborating what kind of parental attitudes and practices are in accordance with the UNCRC and partly by exploring what kind of support families need to have access to.

The wish to listen to and involve children in decision-making in issues relevant to them originates in a cultural climate that recognises their value (Moss et al., 2005). When asked to identify the core component of a non-violent upbringing, children and young people invited to the Council of Europe to discuss positive parenting pointed to the importance of feeling loved and cared for by their parents, thus highlighting in their own way the importance of the emotional climate in which they are being raised (Council of Europe, 2007e). To enhance such a climate and provide parents with alternatives, a recent report (Council of Europe, 2007d) outlines desirable parental behaviour that may make violence less likely to be used. The focus is on how parents can prevent situations likely to trigger violence through creating good relationships, structures and routines, and attitudes and values (Pećnik, 2007). Concrete alternatives to corporal punishment are also explored, while at the same time warning the reader against a laissez-faire approach; children need and want to be educated by their parents (Janson, 2007). Again, as just mentioned, children and young people themselves confirmed this view. While children expressed how hurtful and painful corporal punishment can be, they were equally clear about their acceptance of and request for non-violent parental guidance and boundaries (Council of Europe, 2007 e).

However, a vital part of the approach to positive parenting is parents' rights to material support and access to services. Public transfers and taxation, regulations for reconciling work and family life, and an infrastructure of childcare services aim at providing the basic material conditions for families. While all European countries describe ongoing activities in these areas, the

gap between what governments can offer and what families and children need is still wide. Services such as counselling and educational programmes that focus more on the qualitative aspects of parenting are even more rare. To be efficient such support should be provided on a continuum, ranging from formal support programmes (via professional persons and agencies) through semi-formal support (via community groups and organisations) to informal support (through relatives and friends). Further, services must treat parents as partners, with respect for their life experiences as subjects and contributors (Sandbæk, 2007). Families at risk of social exclusion may need particular support. Abela and Berlioz (2007) argue that empowering and collaborative services must reach out to these families where they live, offering help on their own terms. Society must also provide them with primarily social rights such as these to employment, housing, health, education and social protection.

The content of positive parenting has been transformed into recommendation (2006) 19 on policy to support positive parenting (Council of Europe, 2006f). This recommendation urges member states to disseminate the messages of positive parenting and to provide necessary services. Two appendices to the recommendation's explanatory report may prove useful in communicating the content of positive and non-violent upbringing to adults: "Keys for parents" aims at conveying directly to parents the main messages on children's rights and positive parenting. "Guidelines for professionals" sums up the main messages from research and policy to professionals working with families.

Discussion

Through analysing the Council of Europe's work to promote children's rights, this paper has identified three major challenges to the relationship between the child and the state, the child and the family, and the family and the state. First, children's rights are far from implemented in their daily lives, not even when it comes to basic issues such as access to education and health services. The Council of Europe's work demonstrates how member states must implement children's rights in very concrete ways, towards identified groups such as children with disabilities or children in institutions. Yet another problem with children's rights in society is the unwillingness to grant children and young people full rights as citizens. To make children and young people exercise their rights as co-citizens, society must institutionalise their access to decision-making. Second, that children are not legally protected against violence in their own family in most European countries reveals the serious shortcoming of the implementation of children's rights. The remedies do not rest only with the parents, but depend on the kind of legal regulations, guidance and support the state can offer the parents. Third, the increased attention to the relationship between parents and the state, in terms of parents' entitlement to support from the member states, may provide an alternative to sanctions against parents, which are rather widespread, for example, in family policy in Britain (Such & Walker, 2005). Advocating providing parents with supportive measures does not suggest subsuming child-focused issues within family policy, as Ruxton (1999) has warned against. Nor does supporting parents mean taking away parents' responsibilities. Rather, because the policy recognises that factors such as class, gender, ethnicity and health create different conditions for positive parenting, it aims at enabling all parents to care for their children in accordance with the UNCRC.

As this article has shown, the Council of Europe exercises its role as a standard-setting body. The content of the recommended policy is of utmost importance in a human rights perspective for children in the European communities. However, a key question is whether the member states will implement the policy on the ground. While the main responsibility rests with the governments in each country, the Council of Europe should first critically analyse its implementation and dissemination policy and, second, make that policy open to public scrutiny.

Notes

1. The programme "Building a Europe for and with children" (2006-2008) has been prolonged into A strategy for 2009-2001. It is only briefly mentioned here as it is still in progress. For further information see www.coe.int/children

2. Texts from Council of Europe Publishing/Press may be ordered from: http://book.coe.int. All conventions (Legal Affairs, European Treaty Office), Committee of Ministers and Parliamentary Assembly texts may be found via the Council of Europe website: http://www.coe.int. Most other texts may be order from the Directorate General of Social Cohesion

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