

My daddy is in prison...

Not out of my life!



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Abstract

The present paper aims to shed light on the problems faced by children whose fathers are incarcerated.

Firstly, as with all other individuals, children are considered as persons with rights. Therefore, States must respect and consider the child in decision-making processes that may affect them, directly or indirectly, particularly when they see that a parent is in prison.

With this study, we explore the multiple problems these children face during childhood, as a result of their fathers' prison sentences, e.g., analyzing the legal provisions in the European Union, as well as the jurisprudence of the European Court of Human Rights.

This paper concludes by giving solutions to the problems identified throughout, so that these children can feel seen and heard.

Keywords: children; imprisoned parents; problems faced; visits; visitation rights; contact.

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Abbreviations and acronyms

Appl. – Application

CRC – Convention on the Rights of the Child

CFREU – Charter of Fundamental Rights of the European Union

ECHR – European Convention on Human Rights

EU – European Union

ICCPR – International Covenant on Civil and Political Rights

ICESCR – International Covenant on Economic, Social and Cultural Rights

No. – Number

UDHR – Universal Declaration of Human Rights

Introduction

A child with a parent that is in prison is, often, a forgotten child. Forgotten by the State itself, as well as by family, who generally tend to focus on the problems an imprisoned family member brings to the dynamics of the household.

However, neither must forget that a child that sees their parent imprisoned, in the case of this paper, the father¹, is a child that sees their life turned upside down.

This child often suffers from health, social and welfare disadvantages, that manifest in different ways, whether externalized (e.g., attention or aggression problems) or internalized by the child. The fact is that the imprisonment of a parent affects children in various ways, depending on the environment, the family life, as well as the support given to them.

The truth is that a child with imprisoned parents normally is not aware of their rights, is not considered in the decision-making process, and is not considered when visitations take place.

Therefore, in the following pages, we explain the problems these children face, as well as the European legal instruments and the jurisprudence in question, so that we can build solutions that not only make a difference in these children's lives, but that are also simple for States to put into place.

Methodologically, this paper focus on the relationship between the father who's been imprisoned and his child.

1. The multiplicity of problems faced by a child of imprisoned parents

As is well known, a child, according to international law, is considered to be any person younger than eighteen years of age. Due to their specific needs children have up and until that age where their personality is being developed, they have natural limitations in exercising their legal rights. Those needs create special rights for children that must be established and respected for both States and societies, including their parents and broader family. In addition to the natural circumstances, they face growing up, the number of children who are also dealing with one particular issue: parent

¹ Considering the specific problems that may occur in a child with incarcerated mother (as the children might live in the prison along their mother), this paper will not approach child-mother relation, but only child-father one and its problems and solutions regarding a father's imprisonment.

incarceration, is increasing in Europe. Within this study we will only refer to the problems faced by children who have an incarcerated father.

Having a father in prison can alter the child psychological (e.g., family discord, substance abuse and mental health problems) and material stability (e.g., poverty) and consequentially the child's self-esteem and knowledge and behavior when interacting with others. Those differences depend on how well structured the family life is, as well as the child's life before the fathers' incarceration and the strength of the child-father bond as well as the support given to the child and family during father's incarceration. In fact, the more problems and discriminatory factors (such as age, gender, and even lack of support) children have to deal with, the more difficulties they will have after the fathers' incarceration. After imprisonment, the difference between that family lifestyle and the patron family life of that country usually increases, as they face health, social and welfare disadvantages. This situation affects boys and girls equally; however, boys tend to externalize it through their behavior as girls tend to internalize it. When asked, children of prisoners expressed a major need for advice and support as well as the need for their feelings, behavior and choices to be understood. They also referenced the need for information, greater respect, for express support and to understand the penal justice system. For that reason, society and the judicial system have a major role to play, as the prisoner's family, and particularly his child, tend to be socially excluded, stigmatized and suffer from victimization.

With the father's incarceration, children tend to have disruptive care, both emotionally and financially. Many different situations may occur: children might be cared for by the other parent, by different a family member over that time, or be taken into care by an institution; they might also have to take care of younger siblings. Either way, parent imprisonment causes greater stress for children than separation or death of a parents.

At the same time, parent imprisonment may cause financial difficulties as it creates or potentiates poverty. The incarceration reduces the income of the family and as a consequence, its quality-of-life standards, including house, health and development adding an additional cost with visiting the incarcerated father. This all contributes to a higher risk of debt for the family. And even worse, as financial problems tend to extended the father's release, he will have difficulties getting a new job.

Another consequence of the fathers' imprisonment is a lack of contact between child and father. A court convicts the father of a crime and sentences him to

imprisonment, but it also “sentences” a child to living without the continuous presence of their father on a daily basis. The child is not heard by the judge – they are the “*invisible victims*” or “*hidden victims*” of the penal system. This creates feelings of abandonment by the justice system despite needing greater protection from the State and society. As the sentence is executed, the child’s separation from the father causes a disruption in the child-father relationship, which can only be remedied by contact and visits with the incarcerated father. If the contact is dramatically reduced or nonexistent, the child will start to see the father not as a care figure but as a stranger, which has tremendous consequences on their relationship and on the father’s possibility to have custody in a post-release scenario. But this circumstance can also affect other relationships of the child, namely with siblings, and others in the future, especially if they do not have extensive family member support while the parent is in prison.

Parental incarceration tends to develop in the child long-term feelings of sadness, depression, anger, aggression, fear, uncertainty, anxiety, guilt and compromising relationships with others (causing antisocial problems). It also may lead to sleeping problems, eating problems, post-traumatic stress disorder, school progression problems (low grades and aggressive behavior) or, on another level, hostility, drugs or alcohol abuse, running away and delinquent activities.

These children suffer from stigma, discrimination and oppression from society, particularly in schools among teachers and peers, creating disadvantages in their education. By fearing rejection, these children usually do not talk about the incarceration with friends and do not tell others about it.

Another problem is caused by hiding the truth about a father’s incarceration or lying to children. In fact, in the majority of known cases, father’s incarceration is hidden from the child. However, the result is that children feel reassured when they know where their father is and why he is in prison. By telling the truth, in an honest and simple way, we are allowing children to understand what they are facing and to receive the necessary and required help. With those factors, children are able to come to terms with it more easily.

Another specific issue they face is the difficulty with visiting an incarcerated father, including lack of transportation and long-distance travel, financial problems, the restrictions imposed by visitation regimes and phone regulations and the non-child-friendly environment. That environment can intimidate the child, causing stress and anxiety, reducing the child’s will of to return for another visit.

All those problems that children of prisoners have to cope with must urgently be reduced by State politics and laws, including those referenced below.

2. The European response

2.1. The European legal provisions

The legal analysis of this topic needs to start by looking at the CRC, because, although it is not a European legal provision, it sets out the general principles that secure children's rights, which is applicable in the states that ratified it².

The states that ratified the CRC are obliged to take action, whether in legislative or administrative actions or in other areas, to make sure that children's rights recognized by the CRC are ensured. The rights and principles established by the CRC are also directly relevant to the topic in question: the children of imprisoned parents.

To begin with, the base principle set by the CRC is the protection of the best interests of the child, as established by Article 3(1).³ The best interests of the child puts the child as the subject of its own rights and as an individual. Therefore, the best interests of the child must be evaluated individually, e.g., it must consider that specific child, their family and social circumstances.

When dealing with a child with imprisoned parents, that child best interests must be considered independently from the parent themselves, in order to make sure that every single decision made that affects the child only takes into consideration the needs of the child, specially, when it comes to their visitation rights, the frequency, the time and duration, the conditions in which the visitation takes place, etc.

Secondly, as per Article 12(1)⁴, the child of imprisoned parents has the right to express his or her view and to be heard on all subjects that directly and indirectly affect them. The child should be informed of this right as soon as their parent is detained, in a language that the child understands.

² The CRC was ratified by 194 countries. The only states that have not ratified the CRC are Somalia, United States of America and South Sudan, which means that every European states as ratified, so it is applicable in every European state. Information available at <https://www.hrw.org/news/2014/11/17/25th-anniversary-convention-rights-child>.

³ Article 3(1) of the CRC reads: *In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration.*

⁴ Article 12(1) of the CRC reads: *States Parties 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, the views of the child being given due weight in accordance with the age and maturity of the child.*

The child must be able to express his or her view on the matters that affects their lives, as well as be heard, in a form independent from the detained or imprisoned parents, as the child is his or her own person and must be granted their rights as is. The child needs to be able to exercise these rights, as far as visitation is concerned, when, for instance, there is a need to reduce the number of visitations to the parent, in order to, before any decision is made, realize how that specific decision affects the child personally.

Thus, the child's right to express his or her views, as well as the right to be heard, indicates that the child is the center of the decision-making process⁵, and the respect of the child shall be secured by the State itself.

When talking about a child of imprisoned parents, we need to secure the non-discrimination principle, as mentioned in Article 2 of the CRC.

This principle implies that the State has to ensure that a child of imprison parents is not discriminated against when exercising their own rights because of the actions of their parents. This means that no child should suffer any consequences as a result of their parents' actions, just because the parent is imprisoned.

After the overview of the CRC, we need to analyze the International and European legal instruments that protect family life, that set the tone in the protection of a child of imprisoned parents. These legal instruments are: Articles 10 and 23 of the UDHR; Articles 6 and 8 of the ECHR; Article 23 of the ICCPR; Article 10 of the ICESCR; Article 9 of the CRC; Article 24.3 of the EUCFR.

These legal instruments highlight four areas with importance to a child of imprisoned parents: respect for family life, the arrest of the parent, information about the whereabouts of the imprisoned parent, and the frequent and regular contact between the child and the parent.

Family life and the necessary respect is regulated in both Article 16 of the UDHR and Article 23 of the ICCPR, where it states that a family must be protected by the State, as well as that the State cannot interfere in a person's private and family life. Therefore, in these legal instruments, States are bound by a positive obligation to protect family life, and a negative obligation not to interfere in a person's family life,

⁵ Article 24(1) of the CFREU reads: *Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.*

unless necessary by law and/or necessary for the protection of certain interest or rights of other individuals.

In relation to the topic of this paper, although separation between a child and a parent cannot be ruled upon, as a rule, the fact is that the detention of a parent is a situation where separation does occur. However, that separation between a child and his or her parent and the interference in their family life cannot mean that the child is stripped from the parent figure.

Thus, the State has to ensure that the child and his or her parent maintain contact, either with regular and frequent visitation or with regular information about the whereabouts of the child and of the parent (so both can keep in contact with each other), and, also, so both can communicate regularly.

In the realm of the right to regular and frequent contact between a child and his or her imprisoned parent, the problem that arises is with visitation. When a parent is arrested or imprisoned, a child must be informed about the right to keep in contact with the parent. This right is articulated in Article 9(3) of the CRC⁶, as well as Article 24(3) of the EUCFR⁷.

Under the ECHR, this rights of a child of imprisoned parents are articulated in both Article 6 ('Right to a fair trial') and Article 8 ('Right to respect for private and family life').

In Article 6(1) of the ECHR⁸, States shall ensure that a child is heard, when deciding on any aspect of his or her life, which includes a situation where the parent is imprisoned. Therefore, when a court sentences a parent to a prison term, it must always consider how that affects the child, as well as determine ways how that impact can be minimized. For that to be determined, the Judge has the obligation to hear the child in the decision-making process, in order to ensure compliance with his or her best interest.

⁶ Article 9(3) of the CRC reads: *States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.*

⁷ Article 24.3 of the CFREU reads: *Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.*

⁸ Article 6(1) of the ECHR reads: *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*

The hearing of a child, however, has to be done with respect to the age and maturity of the child, because, if not respected, there is also a violation of the right to be heard.

The Article 8 of the ECHR emphasizes that a child, as the subject of rights and an individual that should be considered as one, needs to see his or her family life respected and protected, which includes the need to be ensured regular and frequent visitation of the imprisoned parent, as long as the child wishes to do so and their best interests are respected, as well as the right of the child to keep in contact with the parent.

It is the State that must ensure that the child is informed of this right, as well as it being the State's obligation to ensure that the child has every condition in place to keep in contact.

States, as well as the European Court of Human Rights, cannot forget that the center of these rights is not the imprisoned parent, but the child him or herself. The child is the person that the State needs, and is obligated, to protect, non-discriminate against, and consider when deciding on each aspect of a child's life, even if the parent is imprisoned, because a child cannot carry the sins of his or her parent.

2.2. The jurisprudence of the European Court of Human Rights

On Several occasions, the European Court of Human Rights has been called to evaluate on the violation of article 8 of the Human Rights Convention. However, most of the time, these decisions focus on visiting rights, such as the restrictions on visits to prisoners on remand, their frequency and the conditions under which they take place. Even when it comes to the restrictions on visiting rights between a prisoner and his wife and child, several times, these limitations on visits are justified with the risk of collusion.

The court has addressed the duration of the restrictions on visitations and the impact that could have on family life. In the case of *Moiseyev v Russia*⁹, visitation restrictions were imposed for the entire duration of the detention, which in this case, was three and a half years. Another example of restrictions is the case of *Khoroshenko v Russia*¹⁰, where the prisoner at the time of his arrest had a three-year-old son, and had been sentenced to life imprisonment, not being allowed to have any contact with his

⁹ See Conclusion on Article 8 of the ECHR, in the Case of *Moiseyev v Russia*, available at <https://hudoc.echr.coe.int/fre#%7B%22itemid%22%3A%22002-1884%22%7D>

¹⁰ See paragraph 20 in the Case of *Khoroshenko v Russia*, available at <https://hudoc.echr.coe.int/fre#%7B%22itemid%22%3A%22001-156006%22%7D>

family for the first five years of his imprisonment from 1994 to 1999, and after that and until 2009, he could only have a visit every six months, which led him to lose contact with his son. In both cases, the Court agreed that the measures taken constituted an interference with the applicant's "private life" and "family life". But what about the child's life?

The common denominator between all the decisions from the European Court is that the child's right to visit his parent in prison is never mentioned. The court mentions whether or not there has been a violation of the convention, reiterates the prisoner's right to visitation and family life, but never, under any circumstances analyses the rights of the child. It seems that the child ends up being punished for the parent's mistake, first by being stripped of that parent on a daily basis in their home, and afterwards when their rights to maintain a relationship with that parent aren't secured.

In the *Khoroshenko* case, the child was deprived of a paternal figure for years, having no connection whatsoever with his father, and there wasn't any comment in the European's Court decision about the implication of this on the child's development. Why was it never questioned in any of the decisions mentioned above, how the duration of the restrictions on visitation could affect the child, instead of focusing on the parents right to be with his child? In the case of *Alexandru Enache v Romania*¹¹, why was there no appreciation for the benefits the child would have in staying with that parent, since it was only a few months old, and was the only parent present in his life, instead of focusing the discussion on the father's right to have his sentence delayed just like women in the same circumstances had? How is it possible, that with so many decisions the views of the child were never taken into account, nor was the respect for the best interests of the child even mentioned?

Another example of the systematic indifference to the child's rights from the European Court is the case of *Horych v Poland*¹². In this case, the prisoner had only one visit from his two young daughters because the Kraków Remand Centre didn't have conditions for visits by children or minor persons, as they had to go through the dangerous detainees' ward, past the prison cells to reach the visiting area, which presented a traumatic experience for the girls. Even after getting to the visiting area, they were separated by bars and a window, making it impossible for a normal

¹¹ Case of *Alexandru Enache v Romania*, available at [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-177223%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-177223%22]})

¹² See paragraphs 31-41 in the Case of *Horych v Poland*, available at [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-110440%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-110440%22]})

interaction and was very stressful for the children. This prisoner was considered dangerous because of the drug smuggling charges against him and the possibility of tampering with witnesses or colluding with associates, which led to a restriction on his visits. However, we can't apply this principle to his minor daughters. They didn't represent a risk of getting messages to his associates or being a means to tamper with any witnesses, which was also the interpretation of the European Court. In this particular case, and only because the conditions the visitations of his minor daughters were stated by the prisoner in his complaint, did the European Court pronounced on the matter, stating that *'However, positive obligations of the State under Article 8, in particular an obligation to enable and assist a detainee in maintaining contact with his close family, includes a duty to secure the appropriate, as stress-free for visitors as possible, conditions for receiving visits from his children, regard being had to the practical consequences of imprisonment'*¹³, and that the fact was that this wasn't done - it didn't strike a fair balance between the requirements for a 'dangerous detainee' and the prisoner's right to respect for his family life. Although we salute The European Court for analyzing the conditions of the visits by the children, we believe the Court should have made reference to the violation of the children's right to be with their father, instead of analyzing the issue exclusively from the applicant's perspective.

Can we really hope to change the practices in European countries on this subject, when the European Court doesn't even address the subject?

A child can't suffer greater consequences for the crimes of a parent, and therefore it is imperative that, when discussing the visitation rights of an imprisoned parent, or the conditions under which these visits should be held, we also take into account the best interests of the child and the child's own right to family life. That is the only way we can hope to alter the current practices.

3. The required solutions needed: the recommendations to the EU

As seen above, the needs of a child of imprisoned parents must be at the center of the decision-making process. Therefore, we must find solutions that focus on the child's best interests when it comes to their visitation rights.

¹³ See paragraph 131.

The first thing that might change is the relevance that children of prisoners have in the penal system. The Tribunal does not consider the right of the child to contact his father while he is in prison, nor the child's importance for his father's rehabilitation. Considering these factors – and the consequences imprisonment can have on a child's development – judges must, limit incarceration penalties only to the most serious crimes, and sentence alternatives whenever possible and proportional. Acting in this way, judges avoid harming innocent parties, like children, as well as forcing a family separation. Only when the application of these measures does not ensure that the sentence functions, can the judge use imprisonment. In this case, the judge might define the contact and/or visits between child and father according to the gravity of the crime and their proximity and affection before the sentenced, keeping in mind that the child must grow with a present father as long as this corresponds to the child's best interests, even if this father is in prison. To do so, the criminal judge can hear the child¹⁴ after the sentence and, preferentially, after the *res judicata*. Other solution is the criminal judge officiously transfers the decision of child-father's contacts and visiting to the family judge or to the penalty's enforcement court judge. The hearing, besides being a child right – as this solution affects her/him, allows the judge to know if the child wants to visit her/his father, wants to maintain the contact between them (if existent before) and to take that into account as well as the child age in the regulation visits if it is for her/him best interests.

On the one hand, the determination of the time and frequency of the visits or, if those are not possible or do not correspond to child's best interests, the regularity of the contact between the two, allows the child to understand, from the start, what he or she can count on. That single fact has an undeniable impact in assuring that the child-father relationship will continue despite his imprisonment. In addition, the system proves that the child matters, and that her/his rights will be guaranteed by the judiciary system.

On the other hand, despite the penal sentence being fixed, visits and contact should be provisory, and subject to alteration, based on future circumstances that may occur. Denying those alterations could have a negative effect on the child's development.

A second solution we propose is specialized assistance and support to the child – and, if possible, the whole family of the prisoner. In fact, children with imprisoned

¹⁴ See article 12(2) of the CRC.

fathers note a lack of information regarding the penal system and their rights. That fact makes it more difficult for them to understand the opportunities in their life and to adapt thereto. Dealing with a fathers' incarceration requires special techniques and support in order to fully understand the situation and how to act properly to maintain stability and care when a major role figure is not present in the way he used to be. This specialized support must be determined by the judge in the sentence or be required by the child himself if older than sixteen years of age or by child's representatives, including his imprisoned father. The main functions of this support are: (i) to inform children of their rights regarding their fathers incarcerations; (ii) to help children to deal with these types of situations; and (iii) to support children's families to face the prison sentence of the relative, adapting their live to the new circumstance. One way to do this, is to publish child directed videos and films informing them of their rights. Ideally that information must be spread across society, in order to inform people of all ages to the problems faced by these children. At this point, the disadvantage faced by these children and their families will be considerably reduced.

Another solution we feel is necessary is to make sure there is a child-friendly environment in prisons, where the child can be received for the visitation.

First of all, upon a child's entrance in the prison facilities, the security procedures, e.g., searching, need to be adequate to the child's age and maturity, making sure that it is a stress-free process.

In order to ensure that the process is as stress free as possible, prison officers need to be able, before initiating the security procedures, explain to the child why the security measures need to happen, as well as what that security process really is, in a language that the child comprehends.

For that to happen, officers need to have special training on how to speak properly to a child, or the prison needs to have a specialized professional to properly explain the security procedures to the child.

Regarding these two subjects, is our recommendation for States to provide prison facilities with child appropriate videos explaining the visitation process, with a view of the facilities, so that the child can prepare mentally and emotionally.

Also, the space where the visitation take place needs to have books, posters, drawings and other visuals that can help the child to feel more at 'home', instead of feeling like being in a prison setting.

The space needs to be a space where a child can freely play with the parent and interact in a way as similar as possible to that which the child would have if the parent was at home and be big enough for the child to ease the tension and distress that usually accompanies these visitations, preferably with an outside visiting area, where a child can run, play sports with the parent and not feel confined.

These solutions would help maintain the bond between the child and the parent that existed prior to the imprisonment, which is essential to healthy development.

The regulation of visitation time is also imperative. In several situations, short term visits enable the frequency of the visits. Children have strict schedules regarding school and other activities and States cannot expect a change in their routines because of a parent being imprisonment.

Therefore, it is our advice that the time schedule for visitation not be limited to a specific hour in the day, but a period of time, e.g., a morning or an afternoon whenever a child wishes, independent of the day of the week.

Although in person visitations are important and should be the rule, when not possible, online visitations are the solution. We recognize the difficulty that online visits pose on both parties, the child and the parent, however, it is an important tool to preserve the bond between a child and a parent in the periods when in person visitations do not occur.

Thus, in order for online visits to resemble an in-person visitation, some guidelines should be observed.

Before the online visitation happens, the first step is to prepare the child for the video call. In the preparation, both the adults that are responsible for the child, as well as the child's imprison parent, need to discuss the time of day that is the best for the visitation to take place. The time in which must take place should be determined based on the schedule of the child him or herself, and not in the best interests of the adults.

When preparing for these visits, the adult should explain to the child how the program for the online visit works. When technical difficulties arise, the adult present should explain to the child what happened, e.g., when the call is dropped, the child needs to understand that it wasn't because of the imprisoned parent.

Then, because in the videocalls the child only sees and hears the parent on the other side without the benefit of smell and touch, the adult that is with the child should repeat any questions the imprisoned parents asks, so that the child remains focused, as well as point out anything that could interest the child.

Also, so that the child can maintain interest in the visitation and concentrate, the child needs to feel engaged by the imprisoned parent. That is possible, depending on the child's age, by reading storybooks, singing a song together, asking how their day went, how school is going, what university or major they are interested in etc.

Although an online visitant does not have the same contact as an in person one, the conversation must flow easily, the child should be able to feel like the parent is involved in their feelings, day-to-day life and their interests.

One of the periods when these visits could occur would be at meal time, e.g., when the child is lunching or having dinner, allowing the imprisoned parent to share the meal with the child.

Another example how online visitation could work, is at the child's bedtime, with a video call where the parent could read a bedtime story or talk about how the child's day went, for a period of at least 30 minutes.

Through these online visitations, the relationship between the child and the parent could continue to develop as 'normally' as possible, and could mitigate the negative effects of the imprisonment of the parent on the child, e.g., the feeling of separation that comes with having an imprisoned parent.

Finally, since the child's problems after the father incarceration are due to miss information relating to her/his rights and to discrimination and stigma by the whole society and particularly by the ones child contact daily, we think that should be made court films and cartoons as institutional propaganda to sensitize the child and the society to those children feelings and rights in order to disclose this subject and they feel integrated again as they should have been since the first day of their father's incarceration because they do no wrong. That propaganda must be adapted to children of different ages and it should be made different ones according to child ages allowing them to understand that imprisonment is not a death sentence and their father will be in freedom some day in the future with them as long as they want to be with him.

In our humble opinion, we believe these solutions are best to ensure the child's best interests, and their own right to family, so we urge the European States to make changes to their criminal justice departments in order to accommodate these solutions, never forgetting that the child must always be the center of the decision-making process.

Conclusion

A child that sees a father going to prison, although forgotten by the criminal justice system, is a subject of their own rights which must be protected, seen and heard by all. While their father is incarcerated, other problems tend to be aggravated and another's appear whose gravity depends on how well-structured the family life was, the support given to the child and family, and the strength of the affective child-father bond after the father's incarceration. These 'hidden victims' have to cope with forced separation, disruptive care, financial difficulties, lack of contact between child and father, isolation, discrimination and oppression specially by their peers, as well as inner problems like sadness, depression, anger, aggression, fear, uncertainty, anxiety, guilt - leading to more severe problems in the long-term.

When it comes to legal provisions, a child's rights, which include the right to see their family life protected and visitation rights, when separated, are present in various international instruments. The core principle when it comes to the rights of a child, as a subject of rights in the decision-making process, is the best interests of the child at the center. These must therefore be considered independently of the parents themselves. The best interests is also manifested in their right to be informed and heard, when decisions are being made. Although the separation between a child and their father is inevitable, this child cannot, by any means, be stripped of their right to keep in contact. Therefore, States need to find solutions in order for that not to happen, and not forget that the child cannot suffer the consequences of their fathers' actions.

Through the analyses of several decisions from the European Court of Human Rights, we can see just how often children's rights are neglected when it comes to maintaining a relationship with an imprisoned parent.

We hope that with this paper, we are able to shed the light on the importance of prioritizing the child's best interest, ensuring their own visitation rights with their parents.

- (i) First of all, the Judge should consider if imprisonment is absolutely necessary.
- (ii) If so, the Judge must define the contacts and/or visits between child and father with reference to the gravity of the crime and their proximity and affection of the child and father prior to the sentenced, as well as the child's best interest, child will and age.

- (iii) Visitations, if not possible in person, must be through online services and, if in person, must occur in a child-friendly environment.
- (iv) At all times, the children must be informed of their rights and, if necessary, the State should provide specialized assistance, in order for them to face and overcome these circumstances.
- (v) Finally, there should be made court films and cartoons as institutional propaganda, which will allow the child to know her/him rights and to feel that she/he is not the only one dealing with father's incarceration and also sensitize the whole society as a way to stop discrimination and stigma to those children and their families.

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