

# *S v SN unreported, case no. 141114/14 (WCC)*

## Sentencing child offenders after they turn 18

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<http://dx.doi.org/10.4314/sacq.v54i1.6>

*This case note reflects on the approach that should be adopted by sentencing courts when imposing sentences on child offenders who turn 18 during proceedings. The Western Cape High Court recently considered the application of the sentencing principles in the Child Justice Act and section 28 of the Constitution to child offenders who turn 18 prior to their sentencing. The court confirmed that there is ‘no arbitrary end to childhood for children who have committed offences before they attained the age of adulthood’ and concluded that the sentencing principles in the Child Justice Act are applicable to children who turn 18 prior to sentencing.*

It is established law that child offenders should be afforded special treatment and given sentences that are more lenient than those imposed on adults.<sup>1</sup> The Constitutional Court has embedded child-centred sentencing principles through its judgements by applying section 28 of the Constitution to child offenders.<sup>2</sup> In particular, the Constitutional Court has emphasised the importance of applying section 28(2), which provides that the best interests of the child are paramount in every matter concerning them and section 28(1)(g), which states that children should not be imprisoned except as a measure of last resort.

South Africa is also signatory to international and regional instruments providing for the protection of child offenders’ rights.<sup>3</sup> The United Nations Convention on the Rights of the Child<sup>4</sup> (the CRC)

makes it clear in Article 3 that ‘in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration’. Article 37 of the CRC provides, inter alia, that arrest, detention or imprisonment of a child should be used as a measure of last resort and should be for the shortest appropriate period of time. Article 40 encourages states parties to, inter alia, treat child offenders in a manner that promotes their sense of dignity and worth, reinforces their respect for human rights and the fundamental freedoms of others, and takes into account the age of the child offender and the promotion of their reintegration and ability to play a constructive role in society. Articles 4 and 17 of the African Charter on the Rights and Welfare of the Child (ACRWC) provide similar protections to children in conflict with the law.<sup>5</sup>

The Child Justice Act of 2008<sup>6</sup> (Act 75 of 2008, ‘the CJA’) was introduced to give effect to the principles in

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the Constitution and to domesticate the international law relating to child offenders. The preamble of the CJA states that the purpose of the CJA is to establish a criminal justice system for children in conflict with the law, based on the values underpinning the Constitution. In his judgement in *S v CKM and others*,<sup>7</sup> Judge Bertelsmann described the CJA's basic tenets in the following manner:

[The CJA] represents a decisive break with the traditional criminal justice system. The traditional pillars of punishment, retribution and deterrence are replaced with emphasis on the need to gain understanding of a child caught up in behaviour transgressing the law by assessing her or his personality, determining whether the child is in need of care, and correcting errant actions as far as possible by diversion, community based programmes, the application of restorative-justice processes and reintegration of the child into the community.

The CJA embraces a wide range of appropriate sentencing options specifically designed to suit the needs of children while ensuring that they acknowledge responsibility and accountability for crimes committed.<sup>8</sup> Section 69(1) of the CJA states that the objectives of sentencing are to encourage the child to understand the implications of his or her actions and be accountable for the harm caused, as well as to promote an individualised response that strikes a balance between the circumstances of the child, the nature of the offence and the interests of society. The CJA also promotes the reintegration of the child into the family and community, and ensures that any necessary supervision, guidance, treatment or services contained in the sentence assist the child in the process of reintegration. Lastly, the CJA promotes the use of imprisonment only as a measure of last resort and only for the shortest appropriate period of time.

In light of the above constitutional, international and legislative injunctions, this case note will consider the recent judgement of *S v SN unreported, case no 141114/14 (WCC)*. The Western Cape High Court had to decide whether the above principles were applicable in the sentencing of persons who commit

offences as children and become adults during child justice court procedures.

## A brief background

The matter concerned the sentencing of two young men who were 17 when they fatally stabbed a pupil at their school.<sup>9</sup> They both pleaded guilty in terms of section 112 of the Criminal Procedure Act of 1977 (Act 51 of 1977) and entered their guilty plea statements setting out their version of the events that led to the stabbing.<sup>10</sup> They were convicted of murder by a Child Justice Court.<sup>11</sup> The two accused were born two days apart in December 1995.<sup>12</sup> They committed the offence on 3 October 2013 and were arrested on the same day.<sup>13</sup>

Both offenders were sentenced to 10 years' direct imprisonment. The matter came before the Western Cape High Court on automatic review in terms of section 85 of the act.<sup>14</sup> Section 85 provides that if a child has been sentenced to any form of imprisonment<sup>15</sup> the sentence is subject to review by a Judge of the High Court, having jurisdiction.<sup>16</sup>

On perusal of the record, the High Court was concerned that the presiding magistrate did not seem cognisant of the fact that the two accused qualified to be treated as children for sentencing purposes, even though he was fully aware of the fact that he was presiding in a Child Justice Court.<sup>17</sup> The High Court was also concerned about the inconsistencies between the facts set out in Section 112 guilty plea statements, and the facts described by the Child Justice Court magistrate while considering the appropriate sentences.<sup>18</sup> The magistrate elected to rely on the version of the facts set out in the probation officers' report, rather than on the version provided by the accused in their plea statements. The High Court addressed queries to the magistrate on the following concerns:

- On what basis did the magistrate use the facts provided by the probation officers for purposes of sentencing when they clearly contradicted and went beyond the facts accepted on record in terms of the plea statements?<sup>19</sup>
- To what extent, if any, did the court apply section 28(1)(g)<sup>20</sup> and section 28(2)<sup>21</sup> of the Constitution during sentencing?<sup>22</sup>

This article will limit its focus to the findings of the court in respect of the second question, with the aim to contribute to discussions on the judicial application of the CJA, particularly on the issue of sentencing in terms of the CJA.

The magistrate's responses and the High Court's findings will be dealt with in the discussion on the High Court's decision below.

## Judgement of the High Court

The magistrate's response to the second question was to point out that both the accused turned 18 before they were sentenced.<sup>23</sup> In terms of section 28(3) of the Constitution, a child is a person below the age of 18 years of age. Therefore, the magistrate had concluded that section 28(1)(g) and section 28(2) were not applicable in this matter.<sup>24</sup>

The High Court rejected this reasoning and was of the view that the accused qualified to be dealt with in terms of the CJA because they were under the age of 18 when they were *arrested*. The court began its discussion on why it rejected the magistrate's reasoning by firstly affirming the importance of treating children differently from adults during sentencing. The court reiterated the principles set out in the Constitutional Court case of *Centre for Child Law v Minister of Justice and Constitutional Development*:

In *Centre for Child Law*, Cameron J, writing for the majority, explained [section 28(2)] in the context of sentencing child offenders, stating 'the constitutional injunction that "[a] child's best interests are of paramount importance in every matter concerning the child" does not preclude sending child offenders to jail. It means that the child's interests are "more important than anything else", but not that everything else is unimportant; the entire spectrum of considerations relating to the child offender, the offence and the interests of society may require incarceration as the last resort of punishment'.

The two fundamental issues at stake were the child's right to have his or her best interests considered paramount, and the right not to be detained except as a measure of last resort and for the shortest

appropriate period of time.<sup>26</sup> In addition, Cameron stated that children are accorded different treatment during sentencing because they are less morally capable than adults in their ill-considered actions but more capable of rehabilitation.<sup>27</sup> This was restated by Skweyiya in the Constitutional Court case of *Mpofu v Minister for Justice and Constitutional Development and Others*, where he said that:

Section 28 of the Constitution demands that children are accorded different treatment in sentencing. A failure to do so is a constitutional failure.<sup>28</sup>

The High Court then went on to discuss the CJA's definition of a child and why the above principles on treating children differently should be applied to the offenders in the case before it. The court noted that the CJA defines a child as a person below the age of 18 years and purposively extends, in certain circumstances, the meaning to include a person who is 18 or older but under the age of 21 years, whose matter is dealt with in terms of section 4(2).<sup>29</sup> Section 4(2) sets out the jurisdiction of the director of public prosecutions to deal with matters under the CJA, and includes a person who:

- Is alleged to have committed an offence when he or she was under the age of 18 years
- Is 18 years or older but under the age of 21 years, at the time referred to in subsection (1)(b)

Section 4(1)(b) provides that a child will fall under the provisions of the CJA if the child was between the ages of 10 and 18 when the child was handed a written notice, served with a summons, or arrested.

Section 4(1) confirms that the important age to be considered is the age at the time of the offence and the institution of criminal proceedings.<sup>30</sup> This takes into account the fact that offenders who commit crimes when they are children will not always be children when they are in the child justice court for trial and sentencing, due to systemic problems such as delays and challenges related to the laying of charges, the apprehension of the offender and, quite simply, the inertia of the criminal justice system.<sup>31</sup> Such delays and inefficiencies in the system should not prejudice a child and cause them to lose the protection provided by the CJA.<sup>32</sup>

Section 4(2)(b) permits prosecution to be initiated in terms of the CJA against an offender who is older than 18 but under the age of 21. However, this only happens in certain circumstances as set out in the national director of public prosecutions directives.<sup>33</sup> These include, inter alia, if the offence is a schedule 1 offence; if the co-accused is a child; if there is doubt about the accused's age; and if the accused appears to be intellectually or developmentally challenged.<sup>34</sup> This provision was included to give the prosecution more flexibility in the exercise of its powers.<sup>35</sup> The provision also envisions the possibility that there could be occasions where an offender has just turned 18, is still attending school, and could benefit from diversion as set out in the act.<sup>36</sup> Lastly, the provision also takes into account that if there is more than one accused in an offence, it would be 'artificial to separate the cases of one or two who are slightly older from those of their contemporaries'.<sup>37</sup>

The court in this case found that the two accused qualified to be dealt with in terms of the CJA due to the fact that they were below the age of 18 when they were arrested, and therefore fell under the purview of section 4(1).<sup>38</sup>

The High Court goes on to point out that the above sections of the CJA confirm that there is 'no arbitrary end to childhood for children who have committed offences before they attained the age of adulthood, but are still being processed through the criminal justice system when they turn 18'.<sup>39</sup> In this way the CJA promotes the spirit, purport and objects of sections 28(1) and (2) of the Constitution,<sup>40</sup> and avoids a 'misguidedly narrow application of the definition [of a child] in section 28(3)' of the Constitution.<sup>41</sup> Furthermore, this approach to sentencing of a child who turns 18 during proceedings would be in accordance with the Constitutional Court application of section 28(1)(g) in *Centre for Child Law and Mpofu*:

When a person commits an offence while under the age of 18, their conduct falls to be judged in the context of these considerations. It would make no sense then to treat them as adults for sentencing purposes simply because the intervening passage of time has resulted in their being adults when sentencing

occurs. That would mean punishing them for what they had done as children as if it had been done when they were adults. That such an approach would impinge on the substance of the rights provided in terms of [section] 28 of the Constitution is axiomatic ...<sup>42</sup>

This approach is further affirmed by the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules),<sup>43</sup> which encourage the application of principles embodied in the rules to young adult offenders.<sup>44</sup> In its discussion of the Beijing Rules, the commentary to the European Rules for juvenile offenders subject to sanctions or measures acknowledges the fact that 'young adults in general are in a transitional stage of life, which can justify their being dealt with by the juvenile justice agencies and juvenile courts'.<sup>45</sup> The Recommendation Rec(2003)20 by the Council of Europe Committee of Ministers<sup>46</sup> notes the following:

Reflecting the extended transition to adulthood, it should be possible for young adults under the age of 21 to be treated in a way comparable to juveniles and to be subject to the same interventions, when the judge is of the opinion that they are not as mature and responsible for their actions as full adults.

The High Court concluded that the magistrate's reasoning during sentencing was based on a fundamentally misdirected understanding of the ambit of section 28(1)(g) of the Constitution.<sup>47</sup> The magistrate had treated the accused as youthful adult offenders and not as people who had committed the offence when they were children.<sup>48</sup> The High Court noted that the accused were placed 'on the wrong side of the "stark but beneficial distinction between adults and children" created in terms of [section] 28 of the Bill of Rights, and thus approached the determination of their punishment on the incorrect assumption that [section] 28(1)(g) was not applicable'.<sup>49</sup> This misdirection led to the failure of the magistrate to consider all the appropriate sentencing options, including compulsory residence in a child and youth care centre, in terms of section 76 of the act.<sup>50</sup>

## The order given by the High Court

In view of its findings, the court in *S v SN* made the following order:<sup>51</sup>

- The sentences of the accused were set aside, which meant that the magistrate's sentence to direct imprisonment no longer applied to the accused.
- The matter was referred back to the trial court for the urgent consideration of the sentence afresh before a different magistrate.
- The new sentencing magistrate had to take into account the guidance given in the High Court's judgement in respect of the sentencing principles that apply to children.
- The new sentencing magistrate could only sentence the accused after hearing the oral evidence from the probation officers and other relevant witnesses.
- The High Court included the additional safeguard that the matter had to be resubmitted for review by the High Court after the new sentence was imposed.

It is important to note that, in reaching its decision, the High Court was concerned that the magistrate, in his misdirected understanding of section 28, did not consider sentencing the accused to compulsory residence in a child and youth care centre (CYCC) in terms of section 76 of the CJA.<sup>52</sup> The court was of the opinion that this alone necessitated the setting aside of the sentence.<sup>53</sup>

It is interesting to note that the North Gauteng High Court had to consider a case in which an offender who had turned 18 was sentenced to a CYCC. This case will be discussed below to highlight the importance of this sentencing option in such circumstances.

## Approach of the North Gauteng High Court in a similar matter

The approach of the Western Cape High Court corresponds with that of the North Gauteng High Court when considering whether a sentence of compulsory residence in a child and youth care centre can be applied after an offender has turned 18

years old. The matter of *S v Melapi*<sup>54</sup> came before the North Gauteng High Court by way of review. The accused in question was 17 years old when he was charged with murder.<sup>55</sup> He was convicted on 28 January 2013, when he was 18 years old.<sup>56</sup> The magistrate hearing the matter indicated that he wanted to impose a sentence of detention in a child and youth care centre in terms of section 76 of the CJA.<sup>57</sup> However, the centre concerned refused to accept the placement of the child because he was 18 years old.<sup>58</sup>

Although the North Gauteng High Court ultimately found that detention was not an appropriate sentence for the accused, it also found that it was important to deal with the question of whether a sentence of compulsory residence in a child and youth care centre could be applied after an offender turned 18.<sup>59</sup>

At the outset, Judge Tolmay pointed out that section 4(1) of the CJA needs to be read with section 76, in particular section 76(2), of the CJA, which deals with the sentence of compulsory residence in a child and youth care centre.<sup>60</sup> Section 76(1) and (2) state that:

- A child justice court that convicts a child of an offence may sentence him or her to compulsory residence in a child and youth care centre that provides a programme referred to in section 191 (2) (j) of the Children's Act.
- A sentence referred to in subsection (1) may, subject to subsection (3), be imposed for a period not exceeding five years, or for a period which may not exceed the date on which the child in question turns 21 years of age, whichever date is the earliest.

Section 76(2) allows young offenders who have been sentenced to CYCCs for serious crimes to remain at the centres until they turn 21. This allows for custodial sentences to be imposed without the risk of exposing the young offenders to prison.<sup>61</sup> This promotes the principles that apply to sentencing of young offenders.<sup>62</sup>

Tolmay held that a proper interpretation of the law must promote the spirit, purport and objects of the Bill of Rights.<sup>63</sup> An interpretation of law that is constitutionally compliant must be selected over one

that is not.<sup>64</sup> An interpretation of the CJA must be one that takes into consideration the best interests of a child.<sup>65</sup> Tolmay found that reference to 'child' in section 76(1) (read with section 4(1)), must be read in a manner that includes persons over 18 years or older but under 21 years at the time of sentencing.<sup>66</sup> This interpretation applies only if the person concerned was under 18 at the time of the offence, arrest and issuing of written notice or summons.<sup>67</sup>

The court invited the Centre for Child Law to make submissions as *amicus curiae*.<sup>68</sup> The *amicus* submitted that in terms of the principle of legality everyone has the right to benefit from the least severe prescribed punishment if it changed from the time the offence was committed and the time of sentencing.<sup>69</sup> The CJA requires a less onerous sentencing regime to be applied to children than that of the regime applicable to adult offenders.<sup>70</sup> A child is advised and assisted by his legal representative, based on the sentencing principles in the CJA.<sup>71</sup> The passage of time should not render the child liable to a more onerous sentencing regime than he is given to expect at the start of his case.<sup>72</sup>

The CJA was enacted to give effect to the principles that apply to children who come into contact with the criminal justice system, and in particular to recognise the vulnerabilities and special needs of children throughout their interaction with the criminal justice system, including during sentencing.<sup>73</sup> The application of a more onerous sentencing regime after the child turns 18 goes against the objects and purpose of the CJA,<sup>74</sup> as sentencing options under the CJA will no longer be available. This prevents the court from applying sentencing options such as diversion and restorative justice forums that may be more beneficial for the successful rehabilitation of the child offender.<sup>75</sup>

The *amicus* submitted that the CJA should be applied in a manner that observes the principle of legality, which directs that a child who turns 18 during the course of proceedings should still be treated as a child until the case is concluded.<sup>76</sup> This takes into account the fact that the best interests of children have been at play since the commencement of the proceedings.<sup>77</sup> Other courts have acknowledged that children who turn 18 during the course of proceedings do not lose the protections granted to

them as children.<sup>78</sup> The *amicus* made reference to the case of *S v IO*,<sup>79</sup> in which the court anonymised the name of an accused who had turned 18.<sup>80</sup> The court also interfered with his sentence on appeal because he was a child at the time of commission of the offences.<sup>81</sup> The following reason was given by the court in *S v IO*:

It appears from a careful perusal of the learned trial judge's judgment on sentence that there is absolutely no reference therein to the imperative provisions of s 28 of the Constitution. Nor is there any trace therein of an informed and nuanced weighing of all the interlinking factors of relevance to the sentencing process, and indicative of a changed judicial mindset consonant with an awareness of the Constitution regarding the sentencing of juveniles.<sup>82</sup>

Tolmay concluded that the reference to a child in section 76(1) must be read in a manner that includes persons 18 or older but under 21 years old at the time of sentence, as long as the person was under the age of 18 years at the time of the commission of the offence, and at the time of arrest or of the issuing of a written notice or summons as set out in section 4(1).<sup>83</sup> The interpretation that the sentencing provisions in the Act do not apply to a person who turns 18 during the course of proceedings, would be untenable.<sup>84</sup> It would result in a child who committed an offence while still a minor, being sentenced as an adult.<sup>85</sup>

Tolmay confirmed that section 76 is a competent sentence for an offender who turns 18 during the course of proceedings but is under the age of 21, listing the following reasons:<sup>86</sup>

- To conclude that a child is a person who is under 18 years old during the entire course of the proceedings would cause section 4(1) of the CJA to be futile
- It would also lead to an irregular situation in which, on the one hand, a child who turns 18 during the course of proceedings is stripped of all legal protection, and, on the other hand, protection is provided to a person who qualifies as a child in terms of section 4(2)
- Making the date of conviction the relevant date when determining a sentence for a child deviates from the principle expressed by the Constitutional



Court in *Mpofu*. The Constitutional Court held that the relevant date for purposes of sentencing is the date of the commission of the offence

- Legislation must be interpreted in accordance with the Constitution, as required by section 39(2) of the Constitution

## Conclusion

It is the opinion of the authors that the decisions reached by the high courts in *S v SN* and *S v Melapi* conform with section 28(1)(g) and section 28(2) of the Constitution and with the objectives of the Child Justice Act. In confirming that the age at time of the commission of the offence is the relevant age for determining an appropriate sentence, the courts have set a precedent that we hope will be followed in future judgements and court orders. It is in this vein that Skelton notes the following:<sup>87</sup>

[J]udges of the future [are] the important upper guardians of an effective child system. Their vigilance can indeed ensure that children's best interests are protected in the child justice system, that detention truly is a measure of last resort, and, where unavoidable, that it is for the shortest period of time so that every day a child spends in prison should be because there is no alternative.

It is acknowledged that judicial precedents set by high courts only have persuasive value for high courts in other jurisdictions. This, however, does not take away from the fact that the decisions are in line with principles established by the Constitutional Court. The two courts especially conformed to the principles set out in the *Mpofu* judgements, where the Constitutional Court confirmed that the relevant age for sentencing is the age at which the offence was committed.<sup>88</sup>

## Notes



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1 SS Terblanche, The Child Justice Act: a detailed consideration of Section 68 as a point of departure with respect to the sentencing of young offenders, *Potchefstroom Electronic Law Journal*, 15:5, 2012, 436–638, 436.

2 See *Mpofu v Minister of Justice and Constitutional Development and Others* (Centre for Child Law as amicus curiae) 2013 (2) SACR 407 (CC); *Centre for Child Law v Minister of Justice and Constitutional Development and Others* (National Institute for Crime Prevention and Reintegration of Offenders as amicus curiae) 2009 (6) SA 632 (CC).

3 The Constitution of the Republic of South Africa of 1996 (Act 108 of 1996), section 39(1)(b) compels courts to consider international law when interpreting the Bill of Rights, and section 233 requires courts to interpret domestic legislation in a manner that is consistent with international law.

4 The United Nations Convention on the Rights of the Child, 1990.

5 The African Charter on the Rights and Welfare of the Child, 1999.

6 The Child Justice Act of 2008 (Act 75 of 2008).

7 *S v CKM and Others* 2013 (2) SACR 303 (GNP) at para 7.

8 See Child Justice Act, Preamble and Chapter 10.

9 *S v SN* unreported, case no 141114/14 (WCC) at para 1.

10 Ibid.

11 Ibid.

12 Ibid.

13 Ibid.

14 *S v SN* at para 2.

15 This includes detention in a child and youth care centre, see *S v FM* 2013 (1) SACR 57 (GNP).

16 *S v SN* at para 2; case law dealing with the automatic review of sentences imposed on child offenders include *S v FM* (Centre for Child Law as amicus curiae) 2013 (1) SACR 57 (GNP) and *S v LM* (Centre for Child Law as amicus curiae) [2013] All SA 110 (WCC).

17 Ibid.

18 *S v SN* at para 3.

19 Ibid.

20 Section 28(1)(g) of the Constitution states: 'Every child has the right – (g) not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be – (i) kept separately from detained persons over the age of 18 years; and (ii) treated in a manner, and kept in conditions, that take account of the child's age.'

21 Section 28(2) of the Constitution states: 'A child's best interests are of paramount importance in every matter concerning the child.'

22 Ibid.

23 *S v SN* at para 4 (see sub para 9 to 12).

24 Ibid.

25 *Centre for Child Law v Minister of Justice and Constitutional Development* 2009 (6) SA 632 (CC).

26 *S v SN* at para 5.

27 *Centre for Child Law v Minister of Justice and Constitutional Development* at para 28.

28 *Mpofu v Minister of Justice and Constitutional Development and Others* 2013 (2) SACR 407 (CC) at para 7; A Skelton, The Mpofu case: sentencing of child offenders in serious

- cases, *Article 40*, 15:1, 2013, 1–5.
- 29 *S v SN* at para 8.
- 30 Terblanche, *The Child Justice Act*, 455.
- 31 *Ibid.*
- 32 *Ibid.*
- 33 *Ibid.*; National Director of Public Prosecutions, *Child Justice Act 75 of 2008: directives in terms of Section 97(4)*, GN R252 in GG 33067 of 31 March 2010.
- 34 *Ibid.*
- 35 South African Law Commission (SALC), *Project 106: juvenile justice*, report, Pretoria: SALC, 2000, 26.
- 36 *Ibid.*
- 37 *Ibid.*
- 38 *S v SN* at para 8.
- 39 *Ibid.* at para 10.
- 40 *Ibid.*
- 41 *Ibid.*
- 42 *Ibid.*; also see Skelton, *The Mporu case*, 1–5.
- 43 The Beijing Rules are a set of minimum standards developed by the United Nations that provide guidance on the treatment of child offenders.
- 44 See Beijing Rules, rule 3.3.
- 45 Recommendation Rec(2003)20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, 24 September 2003. See Council of Europe, Recommendation Rec(2003)20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, <https://wcd.coe.int/ViewDoc.jsp?id=70063>.
- 46 *Ibid.*
- 47 *S v SN* at para 11.
- 48 *Ibid.*
- 49 *Ibid.*
- 50 *Ibid.*
- 51 *S v SN* at para 28.
- 52 *Ibid.* at para 11.
- 53 *Ibid.*
- 54 *S v Melapi* 2014 (1) SACR 363 (GP).
- 55 *Ibid.* at para 1 and 2.
- 56 *Ibid.* at para 3.
- 57 *Ibid.* at para 4.
- 58 *Ibid.* at para 4 and 30.
- 59 *Ibid.* at para 43.
- 60 *Ibid.* at para 44.
- 61 Centre for Child Law, written submissions SJ Melapi and the State (Centre for Child Law as *Amicus Curiae*) RC case no. SH74/12, 26 August 2013, para 27.
- 62 *Ibid.*
- 63 *S v Melapi* at para 46.
- 64 *Ibid.*
- 65 *Ibid.*
- 66 *Ibid.* at para 47.
- 67 *Ibid.*
- 68 Centre for Child Law at para 41.
- 69 *Ibid.*; the principle of legality has been dealt with by the Constitutional Court in the following cases referred to by the Centre for Child Law: *Masiya v Director of Public Prosecutions*, Pretoria (Centre for Applied Legal Studies as *amicus curiae*) 2007 (5) SA 30 (CC) and *Veldman v Director of Public Prosecutions* 2006 (2) SACR 319 (CC).
- 70 Centre for Child Law, at para 31.
- 71 *Ibid.*
- 72 *Ibid.* at para 32.
- 73 See the Child Justice Act, Preamble; *J v National Director of Public Prosecutions and Another* 2014 (2) SACR 1 (CC) at para 36.
- 74 The Constitutional Court explained why it is necessary to treat children differently in *J v National Director of Public Prosecutions and Another* 2014 (2) SACR 1 (CC) at para 36.
- 75 Goals as set out in the Child Justice Act, Preamble.
- 76 Centre for Child Law at para 33 – 34.
- 77 *Ibid.*
- 78 *Ibid.* at para 35.
- 79 *S v IO* 2010 (1) SACR 342 (C).
- 80 Centre for Child Law at para 35.
- 81 *Ibid.*
- 82 *Ibid.*; *S v IO* at para 15.
- 83 *S v Melapi* at para 47.
- 84 *Ibid.* at para 49.
- 85 *Ibid.*
- 86 *Ibid.* at para 52.
- 87 A Skelton, *The automatic review of child offender's sentences*, *South African Crime Quarterly*, 44, 2013, 37–44, 44.
- 88 Skelton, *The Mporu case*, 4.