

## PART 1: THE CoE GUIDELINES ON CHILD FRIENDLY JUSTICE

This session aims to:

- Build on the previous sessions and make a link to the practice on the field, translating major children's rights principles into the reality of justice settings
- Familiarise participants with the content of the CoE CFJ guidelines with a focus on communicating with children and young people
- Introduce approaches and methods to interact with children in judicial settings
- Learn from each other's experiences
- Reflect on daily practice
- Deepen the knowledge and competence to work in amore child friendly way

- Introduction to the Child Friendly Justice Guidelines
- Focus on the more specific guidelines on environment and CF organisation and language
- Focus on the more specific guidelines on evidence and statements by children
- What do children and young people tell us?
- What can participants tell us? Q&A (Tour de table)

Some of the most important conclusions of a survey of Belgian children were stated as such<sup>1</sup>: "We think that decisions are often taken without our knowledge. We want more say, and have more of a feeling that we are really being listened to by our adviser, our lawyer or the judge in the juvenile court. At present, our opinion is too often sought via our lawyer. We can answer for ourselves." "We also find it unfortunate that if our opinion is sought, it is not really taken into account sufficiently. We sometimes have the feeling that juvenile court judges only ask our opinion because it is a requirement, but that they do not actually listen to what we have to say."

"I was raped when I was 13, now I am 15. First I was at a Children's hospital where I was examined and questioned by a gynaecologist and a psychiatrist. Later I went to Polyclinic where I spoke to a psychiatrist, a psychologist and a social worker. Then I had to go to the Police where I was interrogated 4 times. I was also told to come to the Social service centre and there I talked about what happened twice. At Court I was questioned once via video link. I also had to undergo a forensic evaluation and I spoke again to a psychiatrist and a psychologist. I had to talk about what happened to me 11 times altogether. It felt terrible to talk about it so many times, as if I am the one to blame."<sup>2</sup>

### 1. Introduction to the CFJ guidelines

#### **What is at stake?**

After the theory, legal context and policies, it is important to move on to the more practical issues for practitioners in the judicial field (judges, prosecutors, lawyers...). During the first sessions, it was mentioned how important art. 12 of the CRC is, not only as a right in itself, but

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<sup>1</sup> Survey carried out by the Ministry of Justice and UNICEF National Committee, 'That's My Opinion. What do you think? First report by children and young people living in Belgium for the Committee on the Rights of the Child', UNICEF Brussels, 2002, p. 22

<sup>2</sup> [http://ec.europa.eu/justice/fundamental-rights/rights-child/european-forum/seventh-meeting/files/gordana\\_buljan\\_flander\\_en.pdf](http://ec.europa.eu/justice/fundamental-rights/rights-child/european-forum/seventh-meeting/files/gordana_buljan_flander_en.pdf)

also as a relevant principle to interpret and implement all other rights. It was also made clear that different actors are responsible for rendering sufficient efforts to give children the most beneficial opportunity to exercise their right to be heard. That this may require some creativity, as well as some assistance among professionals of different background and disciplines. Now how can this be done and what tools are available to bring the necessary support here.

A first intro on the issue at stake and a very short preview on what needs to be done can be seen here: [https://www.youtube.com/watch?v=N2WZatf\\_Z2E](https://www.youtube.com/watch?v=N2WZatf_Z2E)

**TOOL:** FRA report on CFJ – perspectives and experiences of professionals (available to all participants) and [https://www.youtube.com/watch?v=N2WZatf\\_Z2E](https://www.youtube.com/watch?v=N2WZatf_Z2E)

“What young people want, is to know that the person making the decision was aware of their views at the point they made the decision. A lot of young people don’t want to make the decision themselves, they understand it’s not for them to make it, they don’t want that pressure. But they want to feel that the person making the decision has heard their voice in the process” (Social worker, UK)<sup>3</sup>

“It seems like judges still use children to simply check what they already know or believe, not to find additional information on a case.” (Participant in a recent conference in Porto ‘Children and the Law’)

**Main paradox: children are not aliens, so ‘communicating’ with them should not require all that training, BUT, children who have had negative or downright traumatizing experiences have specific additional vulnerabilities to take into account. In these cases a more ‘specialist’ approach will be advisory/necessary.**

We also need to be aware of the existing perceptions, including misunderstandings, about children and young people and their competences. We need to learn to read not only what they say but also how they behave, try to really understand them. A simple way to do this is to try to ‘put yourself in their shoes’, try to remember what it was like to be 7, 13 or 17 years old.

It is important to understand that bringing in the child’s views and perspective into a case is not only needed because it is their right (CRC, Art 12) but also because it has advantages for the quality and outcome of proceedings. Listening to children in a correct and child sensitive manner brings more background information on the context of a case, can increase the quality of evidence and can add to already available information, sometimes in quite surprising ways. Involving children in e.g. family law cases, can result in a better understanding by the child of the decision taken and the outcomes may be more successful. When people – not only children – feel that their views were respected, even if their views were not followed, they will tend to better abide by the decision taken.

### **The CFJ Guidelines<sup>4</sup>**

For the purpose of this training, some specific guidelines will be discussed in detail, but it is also important to keep all the guidelines in perspective as a whole.

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<sup>3</sup> FRA, *Child-friendly justice – perspectives and experiences of professionals, Summary, 2015, p. 3* (<http://fra.europa.eu/en/publication/2015/child-friendly-justice-professionals-summary>) Report and summary are available in different languages.

<sup>4</sup> For all info, see [http://www.coe.int/t/dghl/standardsetting/childjustice/default\\_en.asp](http://www.coe.int/t/dghl/standardsetting/childjustice/default_en.asp)

**TOOL:** Guidelines of the Committee of Ministers of the CoE on child-friendly justice, Monograph 5, Building a Europe for and with children (CoE publishing edition)

The CFJ guidelines were drafted by a group of specialists from different areas of expertise: academics, NGO's, practitioners from the justice system, the police and the social sector. The main impetus for the CoE to work on this, is the gap that still exists between children's law on paper and in practice. Not being able to really use your own rights, almost makes them irrelevant. Knowing that children and young people still need to deal with so many barriers to really get access to justice, made drafting these guidelines a necessity and one of the many steps forward.

As was said before, the guidelines deal with all kinds of proceedings, in and outside of court, dealing with all kinds of legal questions affecting children in their day-to-day life. (Other documents presented in this training deal with more specific situations or proceedings.) The guidelines are built on some fundamental children's rights principles and cover situations both before, during and after proceedings. The underlying goal was mainly to draft a tool, by which proceedings should no longer be harmful for children – as it is too often assumed – but, on the contrary, make the judiciary more aware of children's rights and needs and adapt the judicial system into a system where their rights and needs are respected, upheld and protected.

“While there is a certain belief that children should be kept out of courts as much as possible, court procedure is not necessarily worse than an outside court alternative, as long as it is in line with the principles of child friendly justice.”<sup>5</sup>

### **Fundamental principles and main content**

- Participation
- Best interest of the child
- Dignity
- Protection from discrimination (including age!)
- Rule of law

Without discussing these in detail, as they are presumed to be known, it is essential that the guidelines clearly state that ‘the rule of law principle should apply to children as it does to adults’. These principles, so evident for adults, are still too often not fully respected when it comes to children. They are often minimised or denied under the excuse of ‘the child's best interest’. This is explicitly refuted in the guidelines.

Also important is that the guidelines, like the CRC itself, do not introduce age limits, as this is a very arbitrary way to judge a child's competence and maturity. In general children are also more capable or competent than we tend to give them credit for. When e.g. an 8 year old girl has been living with her mom and her mom's new partner for a while, this child may well be capable enough to give her views on whether or not she would like to be adopted by him or not. That is, if it is clearly explained to her what adoption means. What does this mean for the status of her own father, whom she hasn't seen in ages: is every legal bond definitely cut, will she still be able to see him in the future? How will this work out with other members of her father's family (grandparents, cousins...)? What will happen to her name? Does she get a whole new family, in the legal sense? Or, what about a young couple, who got to know each other while living in care for a long time

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<sup>5</sup> CoE, CFJ Guidelines, memorandum par. 83

and who want to get married but are not allowed to by law because they are not 18 yet? Can they ask for a dispensation to the judge, when their parents do not consent? Do they have at least the right to ask a judge? Or, what to think about the young workers' unions in Latin America. These are fully fledged unions, run by young people who defend their rights in the labour force.

In other words, we can research children's competences, mostly done in rather sterile research settings far away from real daily life context, but we need to look at this on a case by case basis as this can strongly influence the child's capacities and competences. A terminally ill child of 9, who has been through countless treatments, shall be mature enough to consent to yet another treatment or not, or even ask for euthanasia where that is legally possible, while a healthy peer is often not even mature enough to choose what school to attend. This just goes to show that maturity or as the CRC mentions 'evolving capacities' is a multifaceted issue and rules merely based on objective age-limits can often be very arbitrary and unrealistic.

As this training focuses on how to work with children in judicial proceedings, we will not go into the whole set of guidelines. However, it is important that it is clear what the overall framework looks like. We will then go into more practical issues on communicating with children (in italic in the scheme).

### **Scheme of the guidelines**

<b>GENERAL ELEMENTS</b>	Information and advice Protection of private and family life Safety Training of professionals Multidisciplinary approach Deprivation of liberty
<b>BEFORE PROCEEDINGS</b>	MACR, informed choice between alternatives and proceedings, legal safeguards
<b>POLICE</b>	Information, legal counsel, parents, custody separate from adults
<b>DURING PROCEEDINGS</b>	Access to justice (vital!) Legal counsel and representation Right to be heard and express views Avoiding undue delay Organisation of proceedings and CF environment and language Evidence/statements by children
<b>AFTER PROCEEDINGS</b>	Information, guidance, support, remedies, damages, constructive responses

In order to be able to use your right, you have to know them. This **right to information** is also a detailed part of the guidelines (par. IV 1-5):

- In all stages and by all authorities (police, immigration, educational, social or health care services, justice professionals)
- On their rights, the upcoming proceedings, support mechanisms, process events, appeal and complaints mechanisms etc.

- In language they can understand and which is gender- and culture-sensitive and adapted to their age and maturity, in a language and a manner which they can understand.
- As directly as possible. Informing the parents should not be an alternative to communicating the information to the child.

The guidelines also focus on **the importance of training and interdisciplinary cooperation** (par. IV 14-18):

- Interdisciplinary training is required for all professionals working with and for children
- Training on communication with children, on child development and on particular vulnerabilities
- Close cooperation between different professionals should be encouraged – respecting the child’s right to privacy - in order to obtain a comprehensive understanding of the child, as well as an assessment of his/her legal, psychological, social, emotional, physical and cognitive situation.
- Respecting professional rules and ethical codes on confidentiality

**Case law and good practices:**

In the cases of both *V. and T. against the United Kingdom*, the Court noted that effective participation in the courtroom presupposes that the accused has a broad understanding of the nature of the trial process, including the significance of any penalty which may be imposed. Therefore, juvenile defendants must be, in any case, represented by skilled lawyers experienced in dealing with children. (*T. vs UK*, Dec 16<sup>th</sup> 1999, nr 24724/94 and *V. vs UK*, Dec 16<sup>th</sup> 1999, 24888/94)

In *Z.J. vs. Lithuania* on custody and foster care, the ECtHR cited the guidelines on issues of best interest, right to be heard and to be treated with care and sensitivity. The Court also referred to the guidelines on avoiding undue delay, which is vital in custody cases. (*Z.J. vs. Lithuania*, April 29<sup>th</sup> 2014)

Flemish bar *training for youth lawyers*. Specific training in communicating with children is deemed necessary in order to avoid additional harm. (Some even state that ethical sanctions may or should be used when mistakes are made, due to lack of training). The Flemish bar offers an 80 hour training with courses on children’s rights and several legal issues (child protection, torts, family law...), youth care, child development and psychopathology, parental issues and custody in a legal, a psychological and a pedagogical approach, juvenile delinquency, youth (sub)cultures, forensic reporting. Note that in 12 EU member states mandatory training on the rights and needs of children is required for judges, in 11 it is required for prosecutors and in 7 for lawyers. Only 5 countries have mandatory training for all 3 groups and multidisciplinary approaches are common in 4 member states only.

In Iceland, Norway and Sweden, cases of abuse and violence can be dealt with in so-called “*children’s houses*” (*Barnehuset*). Professionals from social services, forensic medical experts, paediatricians, the police and prosecutors’ offices work together, primarily in the initial stages of a police or social services investigation. They organise and allocate the different tasks to be carried out. Interviews with the children concerned take place in these houses, with the possibility of a third party listening in by video link in an adjacent room. There are also rooms for medical examination and counselling. The Children’s House model has proven to be more effective, even in criminal law terms, as there is more cooperation between professionals, more reporting of crimes against children,

better paediatric expertise and more medical examinations (leading to more prosecutions). And above all, more children received the treatment, support and care they're entitled to and evaluations show that they appreciate the hospitality.

*TOOL:* [https://www.youtube.com/watch?v=LO1IFnkhb\\_g](https://www.youtube.com/watch?v=LO1IFnkhb_g)

In Sweden, the Migration Board developed guidelines for questioning children in asylum proceedings. Staff was trained in this matter and there is a children's rights expert on the appeal Board.

This particular part of the training however will focus more on practicalities of hearing children during proceedings and how to relate to the input they bring.

"A child cannot be heard effectively where the environment is intimidating, hostile, insensitive of inappropriate for his or her age." (Gen Comment, nr.12, par. 34)
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So what do the guidelines have to say more specifically on this environment?