

Speakers' Contributions



THE RIGHTS OF THE CHILD IN PRACTICE: EXPLORING A MULTIDISCIPLINARY APPROACH TO CHILD-FRIENDLY JUSTICE IN EUROPEAN LAW



115DT101 Bucharest, 7-8 December 2015



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The Rights of the Child in Practice

Exploring a Multidisciplinary Approach to Child-Friendly Justice in European Law

Bucharest, 7-8 December 2015

Speakers' contributions

Simona Franguloiu

- Child-friendly justice: an introduction based on scenarios of children participating in judicial proceedings
- Guide to interviewing minors

Helen Stalford

- Furthering the best interests of the child in European law
- Workshop I: Case study on trafficked child-the interplay of criminal and child protection laws

Aisling Parkes

- Ensuring Effective Participation: The Children's Right to be Heard
- Workshop II: case studies on the child's direct and indirect participation in legal proceedings

Ankie Vandekerckhove

- Best practice guidelines for interacting with children in legal situations
- Workshop III: Role-playing exercises and cases on interacting with children in different legal situations

Simona Maria Vladica

- Best practices in communicating with children in legal proceedings



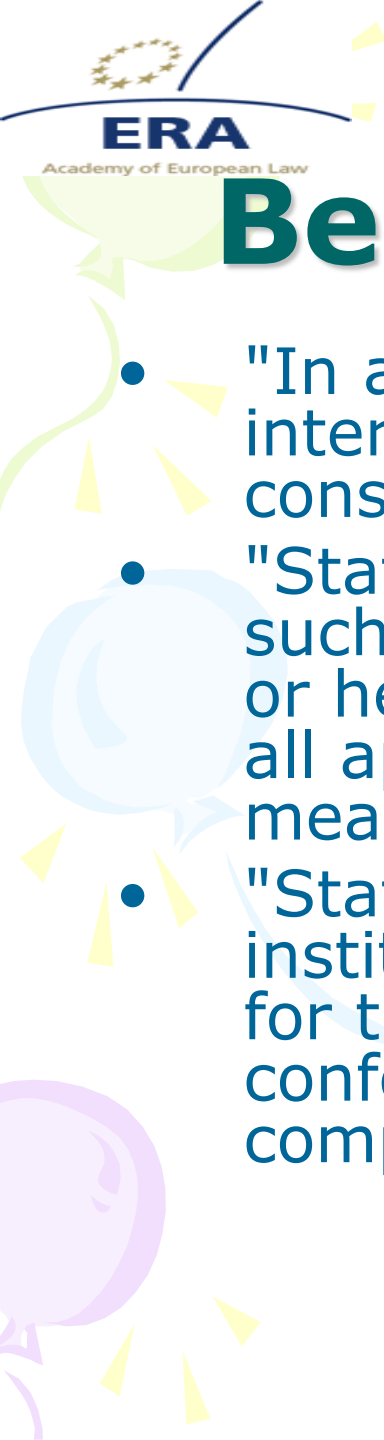
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CHILD FRIENDLY JUSTICE

Turning law to reality

CRC - OPSC

- the Convention on the Rights of the Child (Geneve, 2009) and its Optional Protocol on the sale of children, child prostitution and child pornography - obligations on States to follow the principles of child-friendly justice



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Best interests: Article 3

- "In all actions concerning children...the best interests of the child shall be a primary consideration."
- "States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being...and, to this end, shall take all appropriate legislative and administrative measures."
- "States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities..."

The child's opinion:

Article 12

- "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..."
- "For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body..."



Protection from abuse and neglect: Article 19

- "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation..."
- "Protective measures should...include effective procedures for the establishment of social programmes to provide necessary support for the child...and, as appropriate, for judicial involvement."

Torture and deprivation of liberty: Article 37

- "States Parties shall ensure that:
- No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment...
- No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- Every child deprived of liberty shall be treated with humanity and respect...and in a manner which takes into account the needs of persons of his or her age. In particular every child deprived of liberty shall be separated from adults...and shall have the right to maintain contact with his or her family...;
- Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of...liberty before a court or other...authority, and to a prompt decision on any such action."

Rehabilitative care:

Article 39

- "States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child."

Administration of juvenile justice: Art. 40

1. "States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."

Administration of juvenile justice: Art. 40

2. "To this end, and having regard to the relevant provisions of international instruments States Parties shall, in particular, ensure that...

- Every child alleged as or accused of having infringed the penal law has at least the following guarantees...
 - To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance...;

Administration of juvenile justice: Article 40

- To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and...in particular, taking into account his or her age or situation, his or her parents or legal guardians;
- Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality...
- To have the free assistance of an interpreter if the child cannot understand or speak the language used;
- To have his or her privacy fully respected at all stages of the proceedings."

Administration of juvenile justice: Article 40

3. "States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular...
- whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected."

Administration of juvenile justice: Article 40

4. "A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence."

Other international standards

- UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) - cover children's interaction with the legal system from first contact with law enforcement through to adjudication and disposition

Other international standards

- UN Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) - among other measures, States are asked to enact laws that promote and protect the rights and well-being of children and to support mechanisms and advocacy services that ensure the status, rights and interests of children in conflict with the law are upheld.

Other international standards

- UN Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules) - standards of reference to professionals involved in the management of the juvenile justice system from arrest through to release. They seek to uphold the safety and well-being of children in conflict with the law, emphasising in particular that deprivation of liberty should be a last resort in exceptional cases for the minimum necessary time.

Other international standards

- UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime - aim to assist States in designing and implementing legislation, policy, programmes and practices to ensure full respect for child victims and witnesses.

Other international standards

- Guidelines for Action on Children in the Criminal Justice System - they address children who become involved in the criminal justice system in any capacity, whether as offenders, victims or witnesses, and encourage the full implementation of children's rights in the administration of justice.

Other international standards

- UNODC-UNICEF Model Law on Justice in Matters involving Child Victims and Witnesses of Crime - sets out provisions for the protection of child victims and witnesses in accordance with existing international human rights instruments, calling on national governments and justice professionals to create systems that improve the treatment of child victims and witnesses.

Other international standards

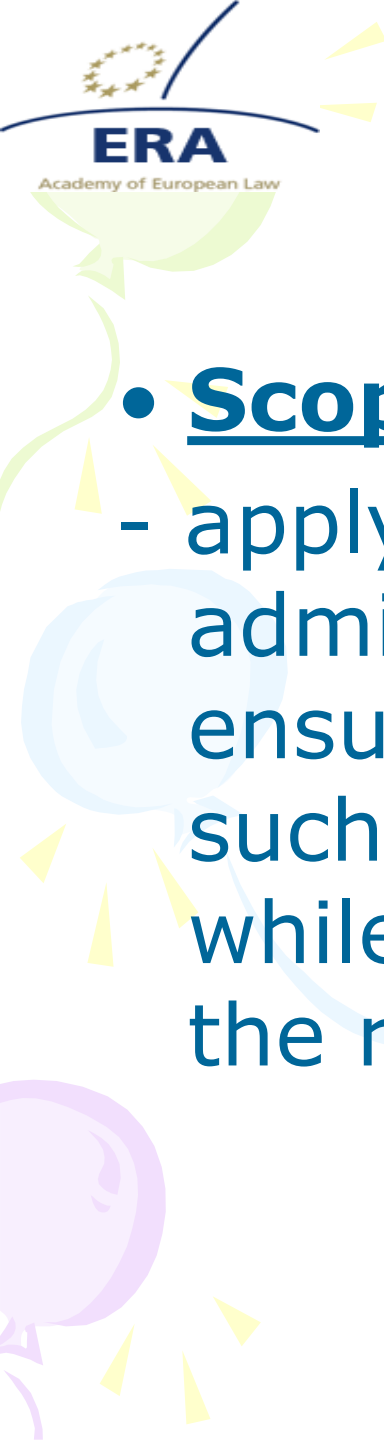
- Guidance Note of the Secretary-General: UN Approach to Justice for Children - States should embrace a stronger rule of law for children by empowering justice institutions and adopting strategies that specifically guarantee respect for children's rights

Other international standards

- UN Human Rights Council Resolution on Human Rights in the Administration of Justice, in particular Juvenile Justice - Rehabilitation, reintegration and monitoring are stressed, and the Resolution recognises that children in conflict with the law must be treated in a manner consistent with their rights, dignity and needs. States are advised to allocate resources for legal aid in a way that promotes these rights.

Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice

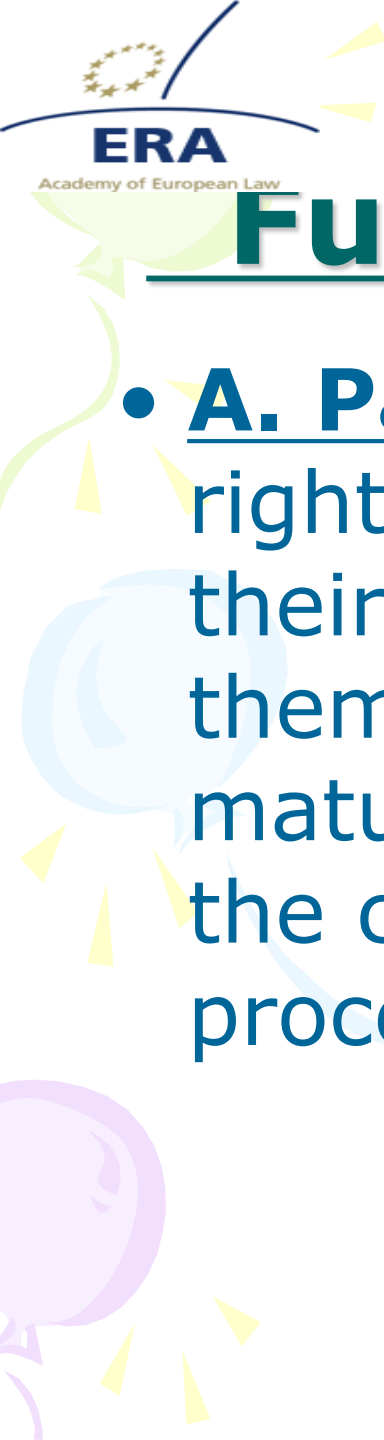
- **1098 Meeting, 17 November 2010**
- are the Council of Europe's direct response to Resolution No. 2 on child-friendly justice adopted at the 28th Council of Europe Conference of the Ministers of Justice (Lanzarote, 25-26 October 2007), which requested concrete guidance for the member states in this field



Guidelines C.E.

- **Scope and purpose**

- apply to criminal, civil or administrative law, and aim to ensure that all rights of children in such proceedings are fully respected, while striking the right balance with the rights of other parties involved.

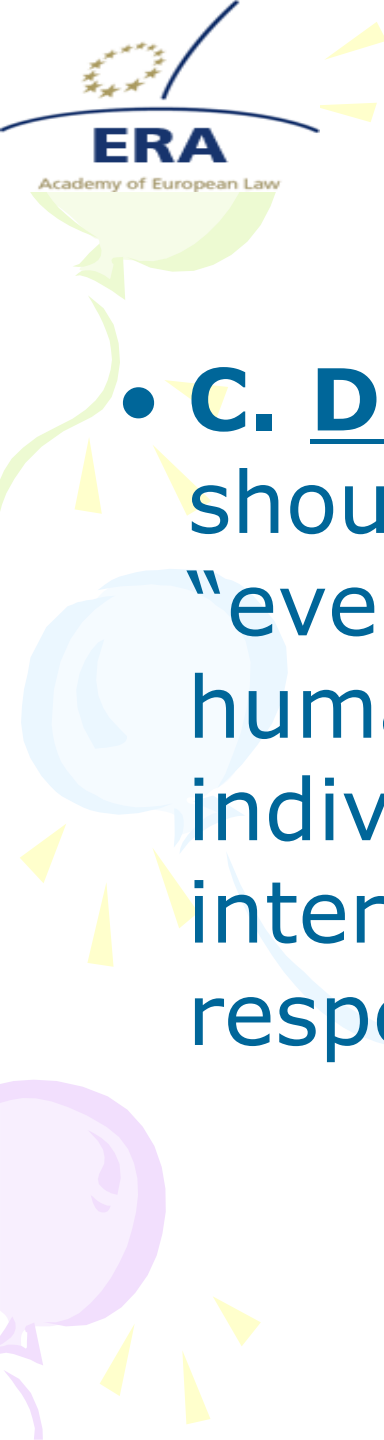


Fundamental principles

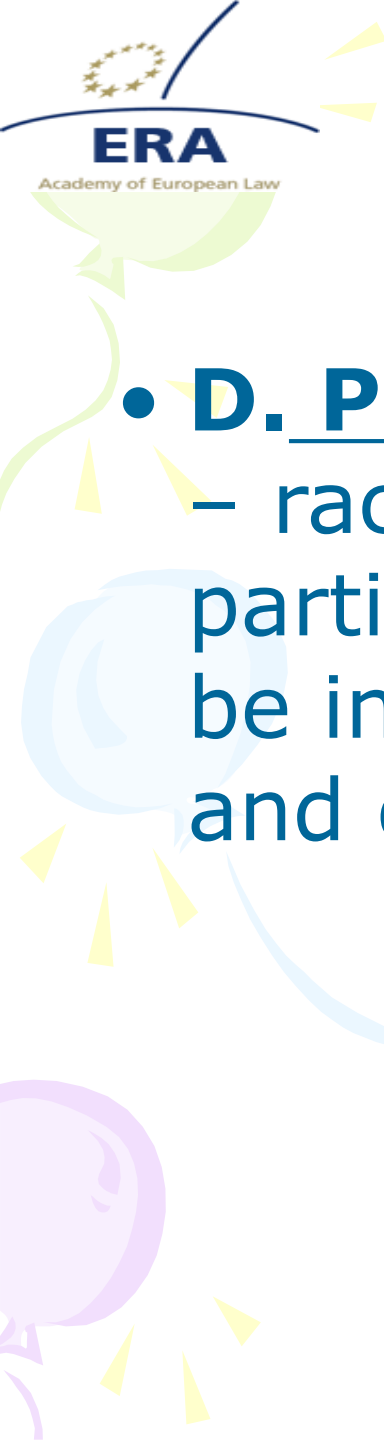
- **A. Participation** - children have the right to speak their mind and give their views in all matters that affect them, according to their age, maturity and the circumstances of the case, subject to national procedural law



- **B. Best interests of the child** - have always to be considered in combination with other children's rights, e.g. the right to be heard, the right to be protected from violence, the right not to be separated from parents, etc.



- **C. Dignity** - particular attention should be paid to its statement that “every child is a unique and valuable human being and as such his or her individual dignity, special needs, interests and privacy should be respected and protected.”



- **D. Protection from discrimination**
 - race, some categories of particularly vulnerable children may be in need of special protection, age and capacity



- **E. Rule of law** - establishes inter alia the fundamental principle that everyone is accountable to clearly established and publicised laws and has enforceable rights, including children - the right to presumption of innocence and right to a fair trial, including independent legal assistance, effective access to a lawyer or other institution or entity which according to national law is responsible for defending children's rights

Child-friendly justice before, during and after judicial proceedings

- relevant for all possible actors in or outside court proceedings and apply irrespective of the child's status, and apply also to specific groups of particularly vulnerable children.

1. Information and advice

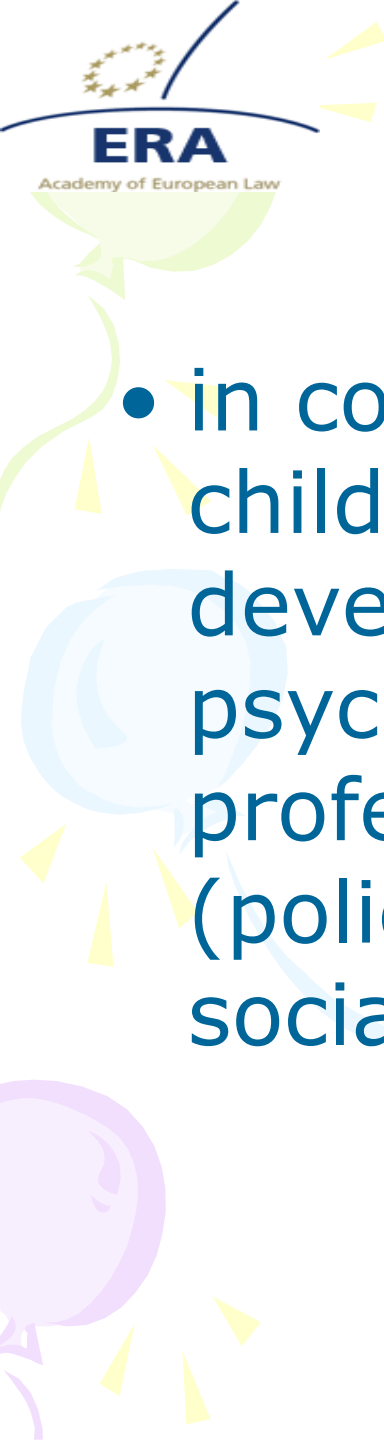
- all relevant and necessary information should be given to the child as soon as possible – rights and instruments they can use to actually exercise their rights or defend them where necessary.

2. Protection of private and family life

- Anonymity and protection of personal data in relation to the mass media and the general public - Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 108)

3. Safety (special preventive measures)

- safety of children, their families and witnesses on their behalf from intimidation, retaliation and repeated victimisation - should obviously respect the presumption of innocence, as well as the independence of justice

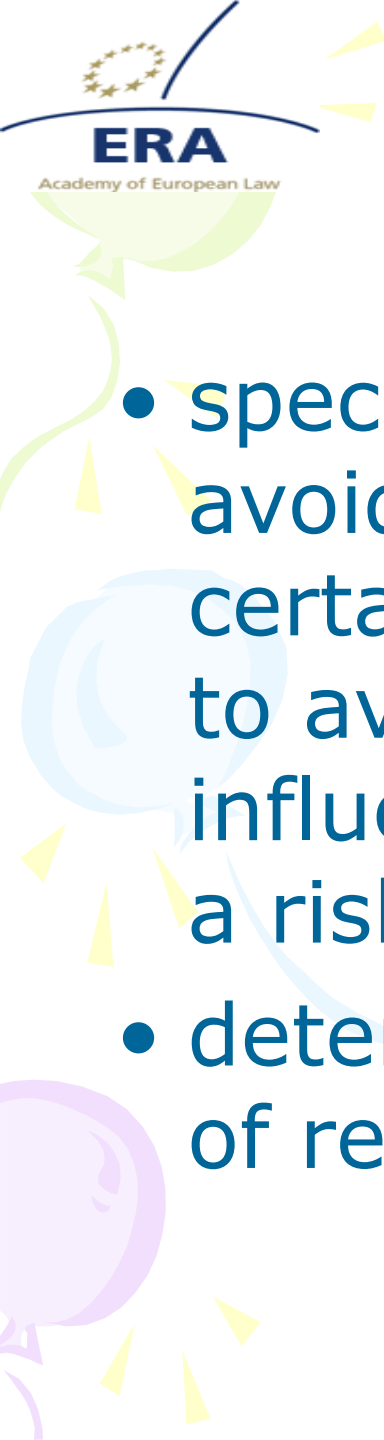


4. Training of professionals

- in communication skills, in using child-friendly language, as well as developing knowledge on child psychology, is necessary for all professionals working with children (police, lawyers, judges, mediators, social workers and other experts)

5. Multidisciplinary approach

- judges and other legal professionals should benefit from support and advice by other professionals of different disciplines - Professionals from social services, forensic medical experts; pediatricians, police and prosecutor's office work together, primarily in the initial stages of a police or social services investigation



6. Deprivation of liberty

- special efforts must be undertaken to avoid pre-trial detention - might in certain cases still be necessary, e.g. to avoid tampering with evidence, influence on witnesses, when there is a risk of collusion or flight, etc.
- detention does not diminish the risk of recidivism





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Thank you!

GUIDE TO INTERVIEWING MINORS

Turning law to reality

ARGUMENT

- adaptation of investigative methods to their level of intellectual and emotional development
- general guide to interviewing minors based on current research conducted in forensic psychology and its purpose is to clarify certain errors that are committed during interviews

Planning

- Preparation of questions and after how they were asked
- anticipating the problems
- useful to contact a child psychologist whose expertise could help considerably in getting essential information

Planning

- open-end questions (for example: “Where were you on Monday” rather than “On Monday, were you at home or at school?”)
- repeat the questions in a reformulated manner over the course of the interview - different chronological order, present the events in reverse order

Preparing the interviewing space

- avoid all interruptions or objects that may distract the child
- it is ideal to interview the child in a place that is comfortable and that does not intimidate the minor (the minor's house – if the situation allows this)

Informing the minor and their tutor about the interview

- It will be given information regarding the reason and the content of the interview
- the minor can be asked questions to verify whether they really understood what has been explained

Introduction

- The interviewer will present themselves (name, occupation, role in the investigation) and will talk to the minor about neutral issues - hobbies, friends
- It is important that they feel safe
- pay close attention to the nonverbal communication of the child

Introduction

- The introduction must refer to neutral or positive aspects of the minor's life
- it's important to get to the truth together
- ask if they are comfortable, if there is anything that scares them in the interviewing room, if they are too warm or too cold

Introduction

- ask the child to tell a neutral story (for ex., how they spent their Saturday or what they did last summer)
- minors, especially those who are very young, have a tendency to fill memory gaps with products of imagination - Gestalt theory

The Interview

- The minor will be asked to present everything they can remember related to the case, noting that they should do most of the talking during this interview
- verbal and nonverbal behavior will be observed and any changes will be noted

The Interview

- In cases of abuse where minor is a victim, some researchers advise the use of a mannequin so that the child can point to body parts where they were touched or hit – is contested because there is a significant possibility that the minor lies

The Interview

- Negative words will be avoided as much as possible (bad, hit, grounded etc)
- most essential questions will be repeated in reformulated formulas to clarify the information that was received
- At the end of the interview, the key aspects will be approached again at the very end and the conclusions will be presented to the minor so they can confirm what has been understood

Conclusion

- The child will be asked if they have any questions and they will be given an answer
- The interview will end with another discussion on a pleasant subject so that the minor leaves in a good emotional state

Special thanks for great support
to forensic psychologist
Oana Neaga

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A young boy with blonde hair, wearing a dark blue and grey jacket, is kneeling on a sandy beach. He is surrounded by numerous yellow star-shaped objects, which appear to be sea stars or starfish, scattered on the sand. The boy is looking down at one of the stars. In the background, the ocean waves are breaking on the shore under a blue sky with some clouds.

[illegible]

The role of the EU in child friendly justice

- **Why** should the EU be so concerned about securing children's access to justice?
- **What** has been achieved so far at EU level and is it effective in securing children's access to justice?
- **How** might we achieve better access to justice through EU measures?

Why should the EU be so concerned about securing children's access to justice?

- The fundamental right to **judicial process**
 - Article 6(1) ECHR;
 - Case 222/84 *Johnston* [1986] ECHR 1651
 - Charter of Fundamental Rights, Article 47
 - Treaty of Lisbon - Article 67(4) TFEU
- Child friendly justice is a central component of EU's broader **children's rights strategy**
 - Article 24 Charter
 - EU Agenda for the Rights of the Child 2011-14
 - 'Promoting child-friendly justice is at the centre of DG Justice actions...'

- Because **children are legal actors** in their own right
- Growing body of EU children's rights provision demands an effective method of **enforcement**
- EU children's rights **litigation informs** the development of EU and national law and policy
 - Ex. *Baumbast; Chen; Zambrano*
- EU measures provide a channel for more forceful national **implementation of the UNCRC**
 - Ex. *Dynamic Medien* (Article 17 CRC)

The ever-developing EU children's rights architecture

Constitutional building blocks

General Principles
EU Charter (7, 14, 24, 32)
TEU (3(3))
ECHR accession

Legislative building blocks

EU Free movement/C'ship
Cross-border family law
Consumer law
Criminal law/Child protection
Immigration and asylum
Health and Safety



Organisational building blocks

Children's rights co-ordinator
EU Parliament Children's Rights Champions
EU Fundamental Rights Agency

Policy building blocks

EU Agenda (2011)
Immigration and asylum
Poverty and social inclusion
External Action
Online safety
Education and training
Health and well-being
Child friendly justice

What has the EU achieved in facilitating child friendly justice?

- Concrete EU legislation that supports child friendly justice
 - EU Victims Directive (2012/29/EU) - **numerous children's rights measures**
 - EU Trafficking Directive (2011/36/EU)
 - EU Sexual Exploitation Directive (Directive 2011/93/EU)
 - EU immigration and asylum law
 - EU family law (Regulation 2201/2003)

Best interests of the Child and EU Law

- EU Victims Directive (2012/29/EU)

[i]n applying this Directive, children's **best interests** must be a **primary consideration**, in accordance with the ... **United Nations Convention on the Rights of the Child**. ... Child victims should be considered and treated as the **full bearers of rights** set out in this Directive and should be entitled to exercise those rights in a manner that **takes into account their capacity to form their own views** (Para. 14, Preamble)

Includes **explicit obligations** to uphold the best interests of the child and the right to be heard by **adapting procedures** (ex. Art 24).

- **EU Trafficking Directive 2011/36**
 - Best interests principle underpins the Directive (*para 8 preamble*);
 - Requires States to provide specific assistance to child victims in accordance with the CRC (*para 22 preamble*)
 - Encourages States to adopt a 'Child rights' approach to tackling trafficking (*para 25 preamble*).
 - Dedicated children's rights provisions (Arts 13,14,15 and 16)

- **Brussels IIbis Regulation (cross-border family law/child abduction)**
- Best interests underpins decisions relating to:
 - Jurisdiction
 - Recognition
 - Exceptions to principle of automatic return of abducted child
- But...
 - No substantive scrutiny of best interests - mutual recognition and respect of other Member States' decisions prevails

The limitations of EU child friendly justice measures

- Limited competence at EU level to adjudicate on children's rights issues
- Information deficit
- Resources deficit
- EU measures are only effective if national laws, structures and processes can accommodate them



The difficulty of enforcing EU children's rights

- Limited effectiveness of the CJEU



- 28 judges (5 with some expertise in human rights. None with expertise in children's rights)
- 9 advocates general (none with expertise in children's rights)
- 2/3 cases are preliminary references from national courts (Art 267 TFEU)

Children's rights case law before the CJEU

- Almost all Preliminary References (approx 50)
- Only 7 judgments that refer explicitly to CRC
- About 10-15 judgments that refer explicitly to Art 24 Charter
- EU Free Movement/Citizenship
- Cross-border family law/child abduction
- Immigration and asylum
- Consumer Protection
- Social Policy

Reluctant Children's 'Rights' Champion

- Children's (EU) 'Citizenship' as opposed to children's 'rights'
 - Citizenship is a 'fundamental status', but is it a fundamental right?: **Baumbast (2002)**; **Garcia Avello (2003)**; **Chen (2004)**
- 'Family rights' as opposed to 'children's rights'
 - **Case C-256/11 Dereci** – *right to family life considered and rejected – no reference to the rights of the child.*
- Children's rights flow from parents, not the other way around
 - **Case C-40/11 Iida** – *on 'dependency'*
 - **Case C-149/10 Chatzi** – *on parental leave*

Tokenistic allegiance to children's rights

- Only one case in which the CRC has been determinative:
 - **C-244/06 *Dynamic Medien*** – *free movement of goods can be restricted in the interests of upholding the child's Article 17 CRC rights.*
- Otherwise, principles such as 'best interests' routinely used as a slogan with little substance:
 - **Case C-79/13 *Saciri*** concerning Dir 2003/9/EC (reception support for asylum seekers): "The financial allowances must be sufficient to preserve family unity and the best interests of the child..." (para 41).

Procedural rather than substantive respect for children's rights

- Accelerated procedure (particularly in child abduction cases)
 - **Case C-195/08 PPU *Rinau***
- Supports expedited asylum process involving unaccompanied minors:
 - **Case C-648/11, *MA, BT and DA v Sec of State for the Home Dept*, 6 June 2013: “...it is important.. to ensure that unaccompanied minors have prompt access to the procedures for determining refugee status.” [para 64]**

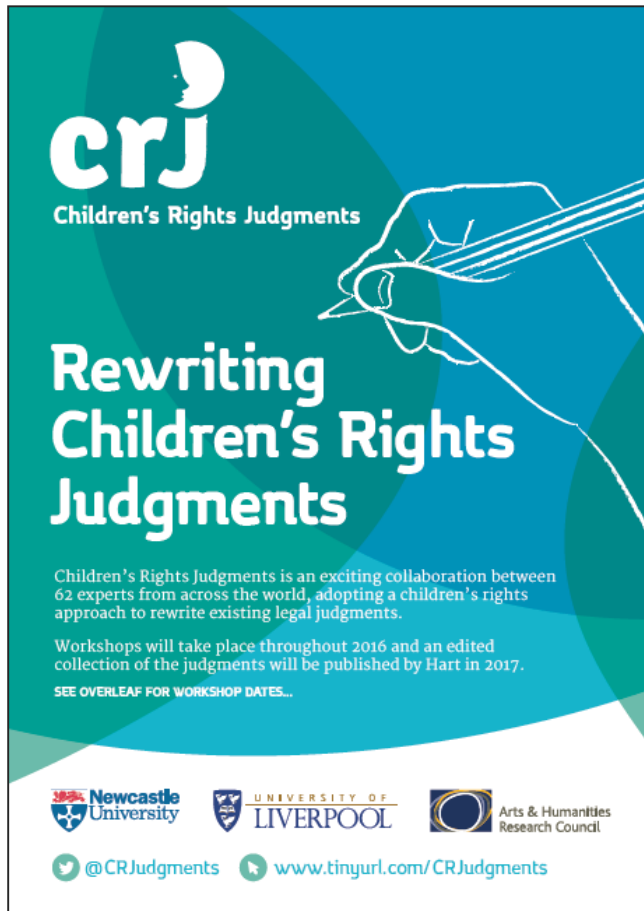
Has the Court made a difference ?

- Generated inconsistency and uncertainty?
 - Ex. Currency of Children's EU Citizenship
- Created cleavages between the CJEU and the ECtHR?
 - ***X v Latvia* (Application no. 27853/09, Grand Chamber ECtHR, 26 Nov 2013)** : Article 8 ECHR and Hague Convention 1980 are to be “interpreted in the light of the individual best interests of the child.” (para. 93). The ECtHR ‘supervises’ national courts to ensure that assessment has been conducted properly.
 - Compare with ***Zarraga*** (CJEU : *strict adherence to Mutual trust in spite of strong objections by child to return*).
- Perpetuated children's rights breaches at domestic level?

Substantive children's rights considerations devolved to national courts



Bringing children's rights to bear on legal decision-making



www.tinyurl.com/CRJudgments

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ERA Project: “The rights of the child in practice: furthering child-friendly justice in European law”.

Outline of materials on:

General principles and basic instruments on protecting child’s rights in the international and European context in justice settings

WORKSHOP

Case Scenario:

A child from Vietnam, was trafficked into the EU to be criminally exploited within a cannabis farm.

Law enforcement encountered this young person of foreign origin but without documentation such as a passport or ID working on the cannabis farm, with several other young persons.

Prosecuted and found guilty of crime related to cannabis cultivation. No consideration of how the farm was run and whether the person had been trafficked was contained in this original proceedings.

Young person had no guardian, had a lawyer.

Social services subsequently assessed the person to be 16 and he was sent to a young offender’s institution to serve his sentence.

While in the institution, he was advised by an NGO to appeal.

In the proceeding before Criminal Appeal Court, young person’s lawyer argues that the individual is a child; that the child was smuggled into the country; he were exploited to pay back debt and his involvement in cannabis farm arose out of this exploitation and consequently he should not have been prosecuted or punished.

Prosecutor’s office concedes that, on evidence now available including evidence of Vietnamese debt bondage and cannabis farming activities, it is likely that other persons directed and controlled the young person’s activity.

TO BE EXPLORED IN WORKSHOP

A. What legal issues arose in these proceedings that should have been addressed better in the original proceedings or should be addressed by the appeal? What sources of law are relevant to resolve the case? What child rights were involved in this situation?

B. What practical challenges arise for the justice system in situations of these kind? What actors are/should be Involved in addressing the child’s situation? Exchange of perspectives between different professionals and different national systems.

Part 2:

ENSURING EFFECTIVE PARTICIPATION: THE CHILDREN'S RIGHT TO BE HEARD

Dr Aisling Parkes
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Ireland

“There is a growing understanding of the importance of listening to the children involved in children’s cases. It is the child, more than anyone else, who will have to live with what the court decides. Those who do listen to children understand that they often have a point of view which is quite distinct from that of the person looking after them. They are quite capable of being moral actors in their own right. Just as adults may have to do what the court decides whether they like it or not, so may the child. But that is no more reason for failing to hear what the child has to say than it is refusing to hear the parents’ views”

(Lady Hale, Re D)

Aims of part two:

- Conceptual Background to Article 12 of the UN Convention on the Rights of the Child 1989 (CRC)
- Why Listen to Children?
- Nature and Scope of Article 12 CRC
- Article 12 in Practice
 - Family law proceedings
 - Criminal Law proceedings
 - Administrative proceedings
- Common Barriers to Participation in practice
- Sharing experiences about how to implement Article 12 in practice.

Why should children have a voice in decisions affecting them?

- Values and Benefits Generally
 - Informed decision-making
- Values and benefits for children of direct communication
 - Reassurance for the child around mixed messages/inaccurate presentation of views
 - Development point of view
- The child not only has the right to a voice, but they need it – a channel through which they can communicate their views to the decision-maker.

Nature and Scope of Article 12

Four General Principles

- Article 2 – non-discrimination
- Article 3 – Best Interests principle
- Article 6 – Right to life, survival and development
- **Article 12 – Right of the Child to be Heard**

Article 12: A Literal Interpretation

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.

For this purpose, the child shall in particular, be provided with the opportunity to be heard in all judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 12(1)

- There are two distinct parts to Article 12(1)
 1. The views of the child should be heard
 2. Once expressed, the views of children should be given due weight by the decision maker in accordance with the age and maturity of the child

Article 12 (1): A Literal and Legal Analysis

- Shall **Assure** – no room for states parties discretion
- Capable of **forming** views (NOT capable of **expressing** views) – presumption that all children are capable of forming views, not up to the child to prove capacity (Article 13 - freedom of expression is important in this context)
- Right to express views **freely** – no external pressure, child should be able to choose whether or not to be involved, use of an appropriate environment
- **All matters** affecting the child – all matters which affect a child directly/indirectly
- **Due Weight** in accordance with **Age and Maturity** –
 - Due Weight - listening to children is not enough, views should be seriously considered
 - Age and Maturity – dual criteria, children are not a homogenous group – case by case assessment required

Article 12 (2) in Practice

- Article 12(2) reinforces Article 12(1) in Judicial and Administrative Proceedings
- Envisages Direct and Indirect Participation
 - Direct: Judicial Interview/ Open Court/Letter to Judge
 - Indirect: Legal/ Other appropriate Representative

Child Participation under the CRC: A Holistic Approach

- Article 3 – best interests
- Article 13 – Freedom of expression – alternative forms of expression
- Articles 13 and 17 – right to information

Committee Guidance: Implementing Article 12 in Legal Proceedings

1. Preparation
2. The Hearing
3. Assessment of the Capacity of the Child
4. Information and Feedback to the child
5. Complaint's, Remedies, Redress

Judicial Proceedings

- Family Law cases
 - Custody and Access
 - Adoption
 - Child Care proceedings
- Criminal Law Cases
 - ECHR – European Court of Human Rights 1950 – Articles 6 & 8
 - T v UK; V v. UK (1999)
 - SC V. UK (2004)
- Proceedings involving children as victims or witnesses
 - Un Economic and Social Council Resolution 2005/20



CRC: Two Alternative Forms of Participation

- Direct Participation
 - Direct Evidence
 - Letters to the Judge
 - Judicial Interview
- Indirect Participation
 - Court Reports
 - Not limited to legal representation
 - Appropriate bodies
 - Dual representation

Direct Participation



Indirect Participation – Lawyer for the Child



Indirect Participation – Court Reports



2009 GENERAL COMMENT ON ARTICLE 12 CRC

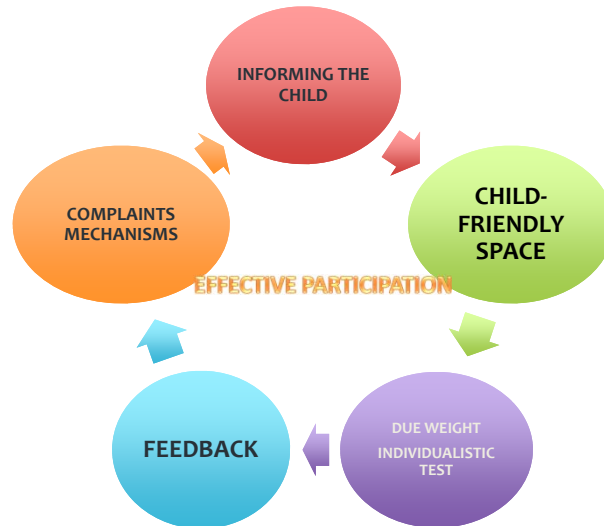
Pre 2009 - Lack of Comprehensive Guidance from the Committee on the Rights of the Child

HOW AND WHEN CHILDREN SHOULD PARTICIPATE IN FAMILY LAW PROCEEDINGS

General Comment on Article 12 CRC Family Law Proceedings

- Adopt Laws to specifically protect this right, or adopt or revise existing laws
- It's a choice for the child, not an obligation
- Provision of child-friendly information essential
- Child-friendly space
- 12(2) – judicial proceedings includes alternative dispute resolution mechanisms such as mediation processes for example
- Specific reference to legislation on separation and divorce to include the right of the child to be heard by decision makers and in mediation processes.
- Individual assessment of child's capacity

Requirements for Effective Participation



Common Barriers to Implementation of Article 12(1)

- Age Limits
 - Custody and Access: Ages range from 7-15 years
 - Adoption: Ages range from 7 to 15 years
 - The Solution? Case-by-Case Assessment
- Cultural Family Traditions
 - Solution? Awareness-raising, Training and Education

Common Challenges

- Adult Gatekeepers
- Lack of Skills and Professional Training
- Skills of the Listener
- Resources

Other Barriers

- Judicial Discretion
- Lack of Political Will and Enforcement
- Lack of Guidance up until relatively recently

The Five Steps...

- Informed in child-appropriate language
- Encouragement and Facilitation, Skills of Listener
- Case by Case assessment
- Feedback
- Legislation: Complaints mechanisms

Case study 1: Family Law Proceedings

Tom and Julie have been married for 15 years and in the past few months have decided that their marriage is no longer working out and they wish to separate. They cannot agree on contact and living arrangements concerning the children so they decide to go to court. Tom and Julie have three children: Jenny (3 ½), Bell (6) and Martin (12). Julie has explained to the children that she and Tom no longer intend living together and that the court is going to make a decision about their living arrangements. She tells the children that she wants them to make their views known to the court.

Jenny asks if she can say hello to the Judge. Bell states that she does not want to talk to anyone about living arrangements – she wants things to stay the way they are. Anyway, she thinks court is for bad people and she doesn't know what she did wrong. Martin writes a letter to the Judge, which reads:

Dear Judge,

Please don't make me choose. ☹

Martin

Questions for Consideration

1. Share your experiences of how this issue would be addressed in each of your own jurisdictions? Choose the most Article 12 CRC compliant with a view to reporting back to the group.
2. If you were a professional involved in this particular case, what steps would you take to ensure that the rights of these children under Article 12 and the CRC are protected under the circumstances?

Case study 2: Administrative Proceedings

Tristan (8) boy has recently been subject to a physical attack from John (9) in the school playground. When he comes home one day with a black eye and a broken nose, his mother goes into the school principal and demands that some form of disciplinary action be taken against John. This is not the first time that John has attacked Tristan physically and he regularly taunts him in class when the teacher is not looking.

Unbeknownst to most, Tristan has been sending social media messages in the evenings to John which has caused him much hurt and upset which is why he lashes out each time he sees Tristan.

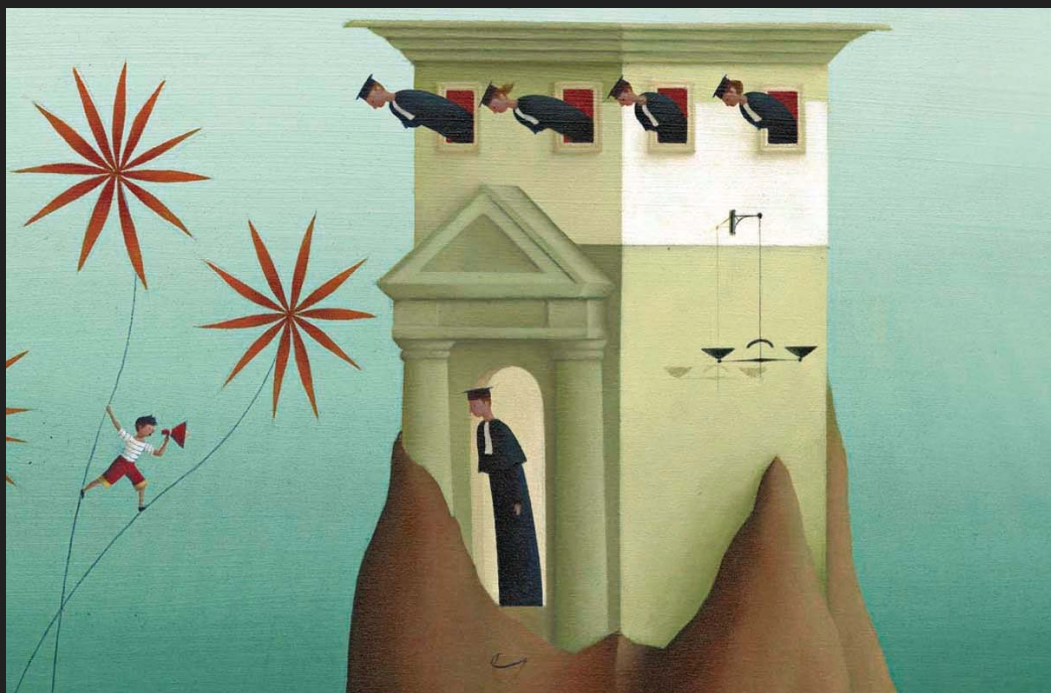
The Principal of the School calls John's parents into the school to tell them that the School is suspending John pending further investigation. John's parents demand to know if Tristan is also being suspended but the principal asserts that there is no evidence to support such action.

Questions for consideration:

1. How do you think this issue would be addressed from the point of view of ensuring the boys views are considered in your respective jurisdictions? Share your experiences and choose one experience which you think is the most Article 12 compliant – explain why.
 2. From an Article 12 CRC perspective, what are the appropriate actions to be taken here by the School Principal as decision-maker?
-

Best practice guidelines for interacting with children in legal situations – Part 1

Bucharest, December 7-8 2015



- "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."

Unicef Brussels 2002, young people's report to the CRC committee



INTRODUCTION

- Importance of art. 12 CRC: what do practitioners need?
- Main paradox: children are not aliens but...
- CRC, art. 12: not only a right, but a way to get better results or decisions



The Child Friendly Justice Guidelines (2010)

- Background
- Close the gap between theory and practice
- In all proceedings and respecting children's rights

"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." (CFJ Memorandum, par. 83)

www.coe.int/childjustice

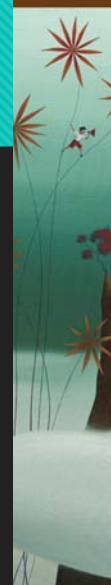


Fundamental principles


- Participation
- Best interest
- Dignity
- Protection from discrimination
- Rule of law

And no age limits


www.coe.int/childjustice




GENERAL ELEMENTS	Information and advice Protection of private and family life Safety Training of professionals Multidisciplinary approach Deprivation of liberty
BEFORE PROCEEDINGS	MACR, informed choice between alternatives and proceedings, legal safeguards
POLICE	Information, legal counsel, parents, custody separate from adults
DURING PROCEEDINGS	Access to justice 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
AFTER PROCEEDINGS	Information, guidance, support, remedies, damages, constructive responses



www.coe.int/
childjustice



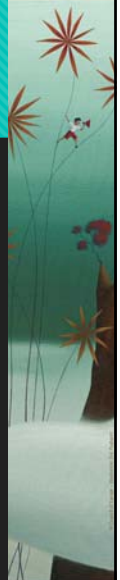
“A child cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for his or her age”
(GC nr 12, par. 34)



CF Environment and language (1)

- Victim, third party, suspect...they are children first
- Weak legal status
- Respect for their age, special needs, maturity and level of understanding

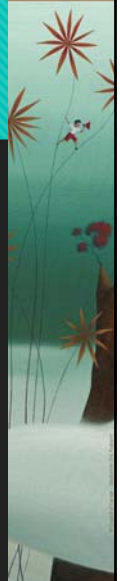
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CF Environment and language (2)

- Non-intimidating and CF settings
- Familiarised with court layout and roles
- Language appropriate to age and level of understanding
- Respect and sensitivity
- Person(s) of trust
- Video- and audio recording
- Time and attention span
- CF rooms
- Specialist courts and institutions

www.coe.int/childjustice



Evidence and statements by children

- Trained professionals
- Audio-visual statements
- Same interviewers, as little interviews as possible/needed
- Evidence rules and validity
- Adapted interview protocols

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Their requests?

- To be treated with respect
- To be listened to
- To get information that they can understand
- To get information on their rights

www.coe.int/childjustice



Thank you

[www.coe.int/
childjustice](http://www.coe.int/childjustice)



Jamal, 13, fled Syria, with his dad, a journalist who is being chased by the Assad regime. They first arrived in a closed centre in Pireaus, Greece, where his father died. Jamal could then get away to Belgium, where he is now staying in a center for unaccompanied minors. He needs to go back to Greece to file his asylum request (Dublin regulations). Greece is known for its inhumane treatment of asylum seekers. His guardian (an administrative guardianship, provided in Belgian law for all unaccompanied minors) contacts a lawyer.

Issues that may be discussed:

CRC, art. 3, 12, 19

The Dublin regulations (in the context of the refugee crisis) and how these (should or could) relate to the binding CRC norm

(Non) existing systems of guardians for under-age refugees

Youth care systems and responsibilities

Possibility to access a judge

Bianca, 17, entered an independent living program after a life of living in residential and foster care. She hardly has any contact with her family and is in a lot of financial trouble. She wants to apply for an additional social welfare allowance but gets refused. She calls the registrar at the juvenile court.

Issues that may be discussed:

CRC art. 3, 12, 27

Youth care system, social security system and responsibilities

Liability, (financial) responsibility of parents

Legal aid for minors, practical information for minors

Access to court or other remedy

After their respective parents got divorced, **Helena and Cathy**, both 13y old, have been living together in a newly composed family with Helena's mom and Cathy's dad. Through the years they have become best friends. Again, the couple separates and doesn't want any more contact, they are no longer on speaking terms and live separately with not contact at all. There is no procedure needed as they were not married. But the girls do want to stay in touch. What could they do?

Issues that may be discussed:

CRC art. 3, 9, 12

Legal context on right to contact with non-family members

Issues of parental authority and the age/maturity of children

Definition of 'Family' in the law

Access to court or other remedy

Workshop: role-play

May-Li and San-ho, 9 y old twins, are caught in the middle in their parents' divorce for 2 years already. Their mom will be moving to another town, some 50 km away, with her new partner and the parents enroll them in 2 schools, so that they have to switch weekly as they live alternatively with mom and dad.

(some background info:

- May-Li is very outspoken on this whole settlement and she wants to live with her dad as she does not like her mom's new partner.
- San-ho has become very quiet throughout the whole family breakup and simply wants his parents to get together again
- The mother would do anything to make her new relationship work.
- The father is still a little depressed about the whole breakup but does not want to give up the fight immediately.)

Tim, 16, drug user, mostly cannabis. Stands trial in juvenile court where he gets the choice: juvenile detention for 4 months or drug rehab programme. He prefers the detention and his lawyer wants to plead for the rehab.

(some background info:

- Tim has been in and out of youth care most of his life and has seen it all. He is not very impressed by the whole system and thinks that a couple of months in youth detention will be easier than rehab. He does not want to quit using drugs.
- Tim's lawyer has known Tim for quite some time and wants him to get out of his circle of drug using friends. He is very committed to Tim's case and is one of the few people Tim still trusts.)

Julie, 16, was offered a modelling contract. She would like to get into this line of work but her parents object.

(Some background info:

- Julie is the only child of a quite rich couple and does very well in school
- Both parents are professionally very successful people.)



Best practices
for
communicating
with children in
judicial cases

**Ph.D. University Lecturer
Simona Maria Vladica**

Psychological perspective on the stages of the child's hearing

1. Preliminary hearing in juvenile court

A. Role play-magistrates

Creating a state of psychological comfort-by building a relationship of trust between the minor and the magistrat (breaking down the barriers of communication, creating a climate of trust, to determine the child to tell everything);

The place where the minor is interviewed

Previously, the place where the child is interviewed needs to be individualized. This requirement imposes a special arrangement of some spaces suitable for hearing the child.

According to article 11, paragraph 30, subparagraph d and paragraph 31, subparagraph b from the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime 33, courts must be equipped with separate rooms for children and with private landscaped spaces for interviews; the configuration of the courts must also take in account the child.

Psychological perspective on the stages of the child's hearing

B. Relationship-building methods:

- using the first name of the child, identifying common hobbies, compliments (eg "you are a very beautiful and smart girl, I'm glad I have the chance to talk to you"), inviting the child to reveal impressions, feelings about the activities that enjoys, naming the dearest friend, the favourite film / story etc.
- visible concern of the magistrat over the child's activities

C. The content of the relationship:

- gradually is made the transition towards the real situation because of which the child and the magistrate are together;
- the magistrate, while using an suitable language to the age of the minor, will present the order of the hearing, the conduct of the hearing and the importance of the discussions that will take place.

Psychological perspective on the stages of the child's hearing

D. Means of implementation:

- introductory questions = designed to orient the discussion toward the problem of the child;
- **The gradual introduction of the magistrate in a role-playing game in which is shaped the idea of a TEAM.**

For example: "Do you have any idea why you came to visit me today?", "Do you go and visits your friends?", "what do you do the first time you go to visit a friend?", the magistrate: "I, when I go to visit a friend, first time I ask him about the collection that we do ... ", "did someone told you why you came to visit me? ".

It is possible that, although they were informed by the parent, they did not know, or did not understand the reason for their visit to the judge.

Some minors may say that the "reason" of the meeting is "to say why I want to stay with my mother?", "to say what Dad does to us?" etc.

Psychological perspective on the stages of the child's hearing

- Whatever the answer is, the judge will continue, "don't you worry about that, let's see " - he will initiate a game/proposal to be friends, sharing a pack of crackers or a bowl with a few candies.
- The tone of the magistrate-kind, friendly, mild;

E. The difference between truth and falsehood:

- **establishing the minor's capacity to make the difference between truth and error, identification of consequences that occur when telling a lie and obtain commitment on the part of the child to tell the truth** during the hearing, because "now we're friends and we can have secrets"
- if you sense a kind of resistance on the part of the juvenile to say nothing that he was thought, you should make sure to tell him that you will not write on paper what he will tell you.

Psychological perspective on the stages of the child's hearing

Discussion-adapting depending on the age of the child:

Psychological stages of development:

0-1 year old- the baby- emotional addiction/in all plans by the parent who takes care of him - don't even mention it!

1-3 years - early childhood – he memorizes what he likes, what interests him. Some memories touches him. The child has an unstable attention. At the age 2-3 years it installs the negativism "no". At this stage, the hearing of the minor is impossible (under-developed language, short term memory, thinking, attention);

3-6/7 years-preschool; the 3-year-old child has difficulty to find a place in the surrounding space, confuses the concepts of: today, yesterday, tomorrow, later, etc. The attention can't be kept awake for 5 to 7 minutes; looming feelings of guilt towards a deed - blushes; we cannot speak of lying but fables;

Psychological perspective on the stages of the child's hearing

- **Middle preschool - 4 years:** the child slowly develops a voluntary memory. The 4-year-old memory is involuntary and mechanic. It is the age at which he begins to understand and can memorize a short poem. Attention can be kept for 20-25 minutes. Begin to sketch "pride". Reflexes lies appear – they deny their deed thinking that can be canceled;
- Large preschool 5-6/7 years: he retain volunteer information; the amount of information that he can play is small but does not lack accuracy; from the age of 5 years the amount of information raises quickly and proportionally increase with age; appears well-intentioned lies;
- Since the age of 6 years, the accuracy of the information provided is comparable to that offered by a child of 10 years;
- At the age of 6 – the prestige crisis occurs- the child suffers if it is scolded in public;
- Full understanding of moral obligation to tell the truth emerges around the age of 9-10 years;

Psychological perspective on the stages of the child's hearing

- We can relate to events in the life of the child through its location after breakfast or before dinner.
- The child remembers what it has marked him positively or negatively. It is easier to memorize information provided through visual materials.
- Suggestibility is high at this age-attention to the questions that contain an answer= the minor will respond in that sense! The fear of parents authority changes their perception of reality immediatly!
- The concept of time begins to be assimilated at the age 6/7 years when the child can tell what time is it, while the perception of the day of the week is accomplished at 8 years old!
- Difficulties in indication of an event or exhibition in time, before or after another event.

Psychological perspective on the stages of the child's hearing

- The accuracy and amount of information that can be offered deteriorates over time at this age - age-the more time has elapsed since the incident the information provided by minor are irrelevant.
- Attention can be maintained approx . 40-45 min, not more;
- Increased emotional instability - goes from joy to negative feelings , cries quickly , gets upset , is afraid

6/7-10 years – young child: voluntary attention to the requirements at the school. Pronounced physical and mental development visibly improves perception of space and time. May fit events unfolded in the three temporal dimensions: past, present and future. Appear first traits of character. Affection is no longer characterized by emotional instability as in the previous stage. Develops continuously the ability to memorize and play some facts and events. Prevails mechanical memory - reaches its peak at 8 years of age-involuntary and short-term.

Psychological perspective on the stages of the child's hearing

- After 7 years the child things that impressed him more, retains easily details and preformance issues. Increases the reproductive capacity of facts and things learned; increase volume memory; distinguish between truth and falsehood; the increased level of susceptibility is maintained; the child exaggerates in order to give himself importance because it begins to develop his personality; lies with eyes; can be easily influenced by people in whom he trusts; for relevancy to those told by the minor, it is recommended the involvement of a psychologist opposite the magistrate. The child wants to be treated as an equal of the adult; the magistrate will create the impression that everything the minor say is extremely important for him; the magistrate will draw the child's attention not to lie, because it's not nice and not to be afraid because the magistrate is a friend who won't tell to others what they discussed. Repeating the detailed questions must be avoided-the minor will think that his answer is wrong and will rephrase the answers, and say something entirely different;
- Full understanding of the child's moral obligation to tell the truth appears around the age of 9-10 years;

Psychological perspective on the stages of the child's hearing

10-14 years-puberty is developing the spirit of observation, spatial and temporal orientation; the ability to grow the verbalization and feelings; memory develops qualitative and quantitative; the susceptibility decreases in favor of suggestibility; -minor becomes sensitive, has an adversarial conduct, wants to impose socially, tends to exaggerate;

Develops discernment; also may occur moral feelings; aggressive behaviours may occur; are easy influential; want to seem brave and to share with others exceptionally things that happened to them; change impressions and information with ease and with anyone who's willing to listen;

These minors must be taken by surprise with questions that they did not expect and have already prepared an answer;

Detailed account may also be induced by a person with whom the child is in a relationship of trust.

Psychological perspective on the stages of the child's hearing

14-18 years-age a difficult adolescence = varies between extremes, exuberance and apathy, cruelty and tenderness;

Teenager: aspires to independence; the erotism develops; mental activity is interiorizes; reproduction of the events lived are made after they have been passed through the filter of their own personality; suggestibility decreases very much; memory becomes one logic; is influenced by the entourage at a rate of 85%; imitates the people they admire (the followed model can be negative or positive); discernment is pregnant; the court hearing the of the adolescent does not differ much from the court hearing of adults – only life experience separate them;

Psychological perspective on the stages of the child's hearing

F. The relativity of the results obtained:

The manifested commitment of the child to tell the truth - **it is not an absolute guarantee that the child will report faithfully and completely clear the events** = a willingness on its part to collaborate with the magistrate and tell what he knows.

G. The management of emotions of the minor in the hearing procedure

The minor may be under the influence of some powerful emotions, due to the situation faced, fear, threats, whether it is possible to have mental health problems. In these situations it is advisable to turn to a specialist: psychologist/psychologist expert

The child must be assured that what it's discussed is confidential, in situations where the mental pressure on the child is huge!

Psychological perspective on the stages of the child's hearing

H. ACTIVE LISTENING:

- a communication skill
- useful in phase of reporting the facts.
- Involves a range of attitudes and behaviours designed to support open communication, to encourage the listener to communicate, allows finding out how many more information is needed, does not cause negative feelings and sensations, facilitate a good understanding of those with whom it comes into contact, improves the climate discussion and reduces difficulties of understanding. "ok...and, etc. ..? ... and? "

Double attitude = body motions and gestures of empathy

Empathy

- an important feature of the communication between the judge and the minor. The three basic functions of empathy are:
 - to listen to the other carefully, repeating what we understand (recast), possibly ask clarification, information or confirmation. Emphasis is also put on the size of cognitive empathy.
- *empathic people* are characterized by the presence of an optimistic attitude, warmth, sensibility, selflessness, generosity, flexibility, extraversion, well developed prosocial behaviour, interpersonal skills, manifest reasons for choosing the profession of Medical profession;
- *not so empathic people appear to be more rigid, withdrawn, intolerant, adoption;*
- egocentric views, solitary, protest, centered on himself, introverted, don't pay attention to the feelings of others.

Empathy

According to researcher S. Marcus (1997), "empathy is a way of coping, of any individual in relationship with others and different from one person to another".

- the author mentioned above considers empathy as common personality trait.

C. Rogers (1959), considered the most influential theorist of empathy in psychotherapy, considers that "being empathic means to perceive accurately the internal frame of reference of another, with all its emotional components and meanings which belong to him" as if "you be the other person, but without losing condition" as if ".

Perceiving this internal frame of reference of another implies a comprehensive process of cognitive, emotional, motivational, and vegetative reactions as profound.

Empathy

Rogers believed that a few conditions are necessary for understanding empathy:

1. The magistrate must manifest an unconditional positive consideration of the minor, so the listening to have higher chances of success;
2. The magistrate must appreciate entirely the minor, to have positive feelings towards him which they manage without reserves, it's not judgemental
3. If the magistrate "guesses" the feelings and personal reactions attempted by the minor in each moment, if he knows those "from the inside", as they appear to the minor and if the minor succeeds to communicate this understanding, then the condition will be fulfilled.

Psychological perspective on the stages of your child's hearing

I. **Ways of realization of active listening:**

- listen to the entire exposure even if you have the intention of refuse;
- be patient when you listen;
- repeat the main ideas of child exposure;
- be flexible and objective, don't criticize or launch into useless arguments;
- do not hurry to give advice;
- be empathetic.

Psychological perspective on the stages of the child's hearing

J. This presence / involvement of a psychologist:

The presence of the psychologist is useful because the psychologist can explain to the magistrate how far can the exploring go, what, how and when to ask certain things and when a brake is necessary. In this way it prevents the risk of traumatisation. The principle: first of all: don't do bad! This should have priority in such hearings.

-The magistrat can call on the expertise of a psychologist = a research with scientific character, made by an expert psychologist, recognized and certified in the field, at the request of a judicial body or parts, completed by a report containing the opinions of the expert with regard to one or more psychological problems, which depend on the settlement of the case.

Psychological perspective on the stages of the child's hearing

2. The hearing itself:

- **Free report:** this stage involves a free and seamless statement of the child on the event with its own language and spontaneously.
- **Expression of interest towards the child's statement:**
- The attitude of the magistrate must show interest in the child's allegations, including through non-verbal communication: keeping visual contact with the child without giving him the sensation that he is staring, to create a child's feeling of confidence.
- Influencing factors of information:

In the situation of children used as instruments of blackmail or currency exchange it is possible that they may have been threatened, may have made secret agreements or could be victims of Stockholm syndrome installation.

INSTALLATION OF STOCKHOLM SYNDROME IN CHILDREN!

-through thoughts, actions and manners of verbal or non-verbal, to the child is being induced certain ideas, in order to make him believe that the other parent is the enemy;

Stockholm syndrome = a defensive mechanism, out of fear of violence

- The victim becomes hyper-vigilant = respecting the needs of his kidnapper and not knowing their own needs.
- separation of ravishing becomes increasingly hard for the victim because it would lose the only positive relationship formed – the one with the kidnapper

WHY THIS SYNDROME DEVELOPS in CHILDREN through PARENTAL ALIENATION by one of the parents?

-people generally can't stand being unhappy for long periods of time, so either they are unhappy for all that period of time and end up either in the pathological sphere, either they come to love the kidnappers and start to identify with them (dissonance theory) as a defense mechanism.

Psychological perspective on the stages of the child's hearing

Addressing the questions;

1. The language must be simple and adapted to the level of understanding of the child;
2. Questions should be addressed on a supportive tone, with a proper tone (avoiding critical tone or reflecting distrust, etc.)
3. The pace of formulating the questions should enable the child to understand what is required and must be given the time necessary to recover information from memory and to formulate the response;
4. Every question must have a purpose and relevance;
5. Questions should be short, clear, avoiding the insertion of two questions in one sentence or in a complex construction grammar;
6. Avoiding a professional language that can create misunderstandings or confusion;
7. Addressing questions must not have the effect of traumatizing again the child.

Psychological perspective on the stages of the child's hearing

Open questions have as purpose to obtain precise information on the part of the child through free reminder, diminishing the possibility of subjective interpretations.

Examples: "do you think you can tell me more about ...?; Can you explain to me what exactly ...?; You said ... you may remember something about that event? "

Types of lies used by children

1. Defense lie

Defense lie is produced out of the fear that the child will be punished. Those who lie to avoid punishment do it without taking into consideration the moral aspect: whether they must lie or not.

2. Lie of compensation

The lie of compensation is supplied from the child's desire to escape from a situation, or a bad state, traumatizing.

3. Lie of seduction

The child's lies because he wants to make a good impression and attract affection at any cost.

This kind of lying is commonly into separate families, divorced where child plays the role of a "double agent" between the two dorns with each parent, but compelling facts invented not flattering about the other parent, to prove his love and fidelity.

4. The lie of aggression

The lie of aggression intended to polarize to itself the parental attention and affection.

Psychological perspective on the stages of children hearing

- The completion of the hearing
- Addressing thanks to the child for the account given underlining her character important in solving the problem which required an explanation and, at the request of the child, the next steps in conducting civil proceedings in which he was involved.

The hearing of the minor-essential elements:

The hearing of the minor-essential elements:

While listening:

At the time of determining the date and time of obedience, must be taken into account the child's school schedule.

In any case, we must take account of the child's daily routine, not recommended to disrupt the daily program of rest and nourishment.

Shall be taken in account the specific needs of each child.

Maximum session duration: 40 min

The presence of other people at the time of the examination:

Providing a suitable climate for the child at the time of his statement in civil proceedings requires the determination of persons whose presence is claimed by legal provisions or desirable at the time of examination of the child.

Hearing of the minor:

A) Single with the magistrate/with the magistrate and with the psychologist

B) B) presence / absence of parents together and / or separately

QUALITIES OF MAGISTRATES:

Training of magistrates

- A) Obtaining the relevant information for the hearing: getting relevant information shall be carried out as a rule, studying documents and proceedings of the dossier and focuses on the first and last name, age of the child and the practical situation in which it is located
- B) Psychological preparation of the magistrate himself for listening: Although the juvenile magistrate is a person that is in the process of designation he responded to certain special requirements for this job like: in-depth knowledge of legal, sociological and psychological, psycho-intellectual, clear, rigorous thinking, mood-affective and tact, patience, tolerance.
- C) The awareness that every child is unique.

QUALITIES OF MAGISTRATES:

The magistrate be aware of the fact that a child called before him faces significant sources of stress: first, the stress of the situation caused by the interviewing, trying to track and understand the magistrate, its concentration to expose his opinion, as well as the effort determined by the confession in front of strangers.

The magistrate will have to establish a support for the children. He will need to encourage the child to express his opinion or testimony in his words, avoiding a strict control over the behaviour of the child. Likewise, the magistrate will have to permit deviation from the topic and formulate questions using activities/words/objects familiar to the child;

QUALITIES OF MAGISTRATES:

The magistrate

- to anticipate the child's reactions and be prepared to manage any crisis situations which can arise: the outbreak of unexpected tears, the refusal of the minor to say something, etc.
- to help the minor;
- to build a dialogue with the child;
- the goal of the magistrate – to find the truth in a manner non-traumatizing for the child in contact by addressing certain technical processes adapted to the conditions of the hearing by all actors involved in judicial proceedings, which requires a child's hearing: magistrates, prosecutors, lawyers and other specialists depending on the particularity of the case.

QUALITIES OF MAGISTRATES:

Attitude of the magistrate

In order to avoid fatigue the child, it is necessary to make pauses during the hearing. Art. 28, subparagraph h from Model Regulations of resolution 2005/20, the Economic and Social Council requires that during the hearing of the child to be made when necessary, breaks, as it serves as the best interest.

- **Magistrate:**
- a high degree of emotional intelligence = a mix between consciousness and self control, motivation, empathy, open mind, tact and diplomacy.
- Emotional intelligence = the quality of winners, of success in personal life and career.
- Emotional intelligence encourages creativity, productivity and flexibility.
- the ability to feel emotions (fear, joy, anger, sadness) and body sensations (tension, freshness, warmth, color, noise, skin contact, etc.), to be aware of all these sensations and feelings; to express them; to identify them; they communicate to someone; to control impulses and delay for a greater benefits; to recognize what is dependent on each other and belonging; to integrate the needs into consistent behaviour adapting them to external reality; to observe and guess the feelings and needs of others (intuition) to develop more harmonious relationships based on mutual recognition.

QUALITIES OF MAGISTRATES:

- perceiving and expressing the emotions = as long as we can read and understand the emotions of others we can anticipate what will be their behaviour.
- the ability to access and generate emotions and thinking to the benefit of solving problems in life = there are times when we're put in the situation to make a decision and we wonder why we feel about this, what should we do, which is the road that we have to follow. Having the ability to access our emotions from that point on the issue or anticipate what Iwemight feel in the future, we will receive information that will be helpful in the making of the decision.
- understanding emotions and emotional meanings = important to understand why we feel what we feel because we often make incorrect assignments for our emotions which cause us to draw wrong conclusions.
- adjustment of the emotions-the ability to manage and regulate emotions adequately. It means to find the middle path between controlling our emotions and letting them "free". Strict control of emotions is totally unhealthy but equally unhealthy is to let over emotions completely free.

By using the emotional intelligence and other components are contributing to the development of professional skills and improve the whole system.

Mastery of the magistrate may be given by pedagogical tact

- **Tact** = an essential and defining element. The activity of hearing must comply with the measure: in attitude and gestures in words and tone, etc. However, this involves the tact, the sense of measure. The tact requires self-control, empathy, self-control, sense of differentiation, power of discernment, the ability to retain accurate information relating to the activity and the personality of each child, to "decipher" the real motives of the behaviour of children and to adopt proper attitude related to all of them. The tact requires a certain psychological suppleness, the ability to see every child a unique personality, and every situation is something new and different. For these reasons, the tact has always a creator character and is the opposite of routine, and seclusion.

The tact is achieved through a continuous experience.

All those issues which relate to the qualities, skills and professional skills of magistrates, are subject to a thorough and serious preparation of the future magistrates and their continuous improvement to cope with the new demands of the legal system.



The hearing of the minor-essential elements:

The hearing of a child constitutes a procedural act, which transposes into the practice, the fundamental right of the child to be involved and expressing opinion in any decision-making that relates to his person.


This causes at the same time, obtaining information relevant to the fair assessment of the measure will be taken against a child in the concrete situation, thus ensuring full compliance with and implementation of all other rights of the child.

The ability of the magistrates to communicate

Like any skill, to communicate is at a human level caused by an innate and an acquired one through education and training.

For example, the use of body language in the family may take many forms, useful for the growth and education of the person:

1. the parent who follows his child's body language can see beyond its words. Mark Knapp and Ray Birdwhistell (in Gamble, 1993) have noticed that the image occupies only a proportion of 35% of total communication, the remaining 65% being dominated by nonverbal channel.
2. the child who learns (from his father) to decipher the body language from those around you will have a chance to be more persuasive communication and its success in life will increase. Studies show that at the time when verbal and nonverbal communication enter in contradiction, our listener tends to believe what he understood the strain in the channel of nonverbal communication and ignoring words.



In Romania, the legislation art. 29 para. 2 of law No. 272/2004 on the protection and promotion of the rights of the Child, republished stipulates that: "In any judicial or administrative procedure which relates, the child has the right to be heard. Is obligatory the hearing of a child who has reached the age of 10 years. However, it can be heard also the child who has not reached the age of 10 years, if the competent authority considers that it is necessary for the hearing of the matter. "

General principles on the hearing of the children

1. The principle of the best interests of the child

The hearing of a child must stand for the best interests of the child, both from the technical point of view, the judiciary point of view, to ensure the best materials, technical conditions, the purpose of the hearing, but also from logistical point of view.

The principle of the specialisation of the magistrate

The principle of specialisation of magistrates may be defined as that fundamental rule that notice that a child's hearing, irrespective of the nature of the proceeding in which it participates and regardless of its actual legal proceedings, must be carried out by specialized magistrates with aptitudes and training in the field.


General principles on the hearing of the children

3. The principle of differentiated hearing

Children should be treated in the course of hearing in a sensitive manner "and characterized by care, taking into account their personal situation and immediate needs, age, gender, disability and level of maturity, being fully complied with, the integrity of their physical, mental and moral development. Every child should be treated individually, with its own needs, wishes and feelings ".

- 4. The principle of prior training of magistrates, in terms of the interrelation with children

In the field of juvenile justice and especially at the time of making contact with the children, the magistrate must present himself even in the short time of the conversation with the child; the magistrate is a positive social model for the child, the magistrate must be suitable to offer to the child a feeling of safety, hope and confidence in its possibilities of affirmation in the future.



**Thank you for your
attention!**