



Speakers' Contributions

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



416DT10 Krakow, 5-6 May 2016



This series of seminars is organised with the financial support of the specific programme 'Fundamental Rights and Citizenship' JUST-2013-FRAC-AG of the European Commission.

The Rights of the Child in Practice

Exploring a multidisciplinary approach to child-friendly justice in European law

Kraków, 5-6 May 2016

Speakers' contributions 416DT10

Dariusz Mazur

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

Simona Florescu

- Furthering 'the best interest of the child' in European law
- Workshop I

Aisling Parkes

- The right to be heard: a general principle of the UN Convention on the Rights of the Child (CRC)

Aisling Parkes & Sylwia Jastrzemska

- Workshop II

Ankie Vandekerckhove

- The Council of Europe Guidelines on child-friendly justice
- Workshop III

Teresa Jaskiewicz-Obydzinska

- Best practices in communicating with children in legal proceedings



This publication has been produced with the financial support of the specific programme 'Fundamental Rights and Citizenship' JUST-2013-FRAC-AG of the European Commission. The contents of this publication are the sole responsibility of ERA and can in no way be taken to reflect the views of the European Commission.

Presentation of “Basic Principles and Tools for Protection of the Rights of the Child in Judicial Proceedings”

prepared by
Dariusz Mazur, Regional Court Judge
for Seminar No. 416DT10
“The Rights of the Child in
Practice: Multidisciplinary Approach to
Child-Friendly Justice in the EU Law”
organised by ERA and the National School of
Judiciary and Public Prosecution
Cracow, 5-6 May 2016

Motto

*Don't go in front of me, I may not follow.
Don't go behind me, I might not lead.
Just stay beside me and be my friend.*

Albert Camus

A child in judicial proceedings may appear in different roles:

- He/she may participate in various types of proceedings: criminal, civil and administrative;
- He/she may participate in proceedings before various authorities, not only of a judicial nature, in particular, for example, it may a court, an administrative body, a mediator, an expert witness, etc.;
- He/she may play various court roles in the proceedings, e.g. as a defendant, applicant, suspect, accused, victim, a witness or be the subject of proceedings in the family court.

Common “denominator”

In all qualitatively different situations, the objectives remain the same, i.e.:

- to adjust the justice system to children's needs in such a way as to provide them with access to courts and participation in the proceedings,
- to ensure that the situation, sensitivity, the level of development and the child's views be taken into account in the judicial proceedings,

however, as the survey performed by international organisations shows, children still do not have sufficient support in judicial proceedings,

Objective of the seminar

- Exchange of experience and good practice on the children-friendly justice system, recommendations for enhancements, building awareness of the complex nature of problems related to proceedings involving children

Objective of follow-up workshops

- To discuss the aspects of issues addressed on the basis of examples, to find out:
 - which of the rights of the child are of key significance for the case,
 - what entities should be involved in the case,
 - what provisions and instruments of international and regional law could support the decision-making process.

Introduction to the rights of the child - the concept of “childhood”

The concept of childhood is understood in different ways in various countries as related to the local cultural context, the legal context in the light of:

- A. **Limited autonomy:** a child does not have full, but limited autonomy; cultural differences are significant (*for example, pertaining to the possibility of getting married, leaving the family home, making a living independently*).
- B. **Pro-active approach** – there are two approaches in this context:
 - the child as a socially passive person who needs direction,
 - the child as a person holding an active role in society.*Various views may prevail in various countries pertaining to the scope of parental power and the parents' impact on the child's life.*
- C. **Development:** Childhood is a time of cognitive, mental and physical development. *Opinions on the ways in which a state should support a child's development differ from state to state.*

Unique nature of judicial proceedings

A tendency to treat a child as a passive object of complex criminal proceedings, which implies a lack of relevant information on rights and lack of support.

A major question that arises against such background:

What approach is consistent with the child's best interest?

Legal basis for analysis of the child's situation during the trial

- The UN Convention on the Rights of the Child of 20 November 1989,
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography of 25 May 2007.
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict of 25 May 2007.
- Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure of 25 May 2007.

Additional materials for interpretation of the scope of the Rights of the Child under the UN Convention

General comments of the UN Committee on the Rights of the Child:

- **General Comment No. 5** on general measures of implementation of the Convention on the Rights of the Child,
- **General Comment No. 10** on children's rights in juvenile justice,
- **General Comment No. 12** on the right of the child to be heard,
- **General Comment No. 14** on the right of the child to have his or her best interests taken as a primary consideration

General information on the UN Convention on the Rights of the Child

- This convention constitutes the most commonly accepted international instrument of children's rights protection,
- The Convention governs all civil, political, economic, social and cultural rights, as well as the right to protection,
- A child is treated as an actor having rights, not just as a passive object of proceedings,
- Apart from general rights, the Convention grants children specific inherent rights (to development, education, special labour rights)

Entities responsible for compliance with the Convention

- **The UN Committee on the Rights of the Child** consists of experts monitoring implementation of the Convention; it also prepares guidelines on compliance with the Convention (so-called Comments).
- **Individual states** are to submit periodical reports on compliance with the provisions of the Convention at the national level to the Committee on the Rights of the Child.
- **Non-governmental organisations and other stakeholders** prepare shadow reports,
The specified materials are used as evidence in proceedings before courts.

Provisions of the UN Convention on the Rights of the Child

Provisions of the Convention may be broken down by subject into 8 groups:

- 1) **Definition** – “**a child**” means “every human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier” (Article 1 of the Convention).
- National legislation, using the age criterion, governs the ability of minors to undertake specific actions (e.g. indicating the age enabling commencement of sexual life, getting married).
- Notwithstanding the applicable legislation on the ability to undertake legal actions, children should take advantage of their rights, including those in judicial proceedings until they turn 18.

Evaluation of age may be a very important issue in the case of children without documents, e.g. trafficked to Europe.

Provisions of the UN Convention on the Rights of the Child - continued

2) General provisions, being a starting point to application of the remaining rights:

- (a) Protection against discrimination (Article 2) – a duty to comply with and guarantee the rights arising from the Convention for the children within the jurisdiction of a given state, regardless of their status;
- (b) Protection of the child's best interest as a matter of priority (Article 3(2));
- (c) Respect for the child's views (Article 12);
- (d) The child's inherent right to live, as well as to survival and development (Article 6).

Provisions of the UN Convention on the Rights of the Child - continued

3) Civil liberties:

- Right to maintenance of the identity and registration of birth (Article 7, 8),
- Right to freedom of speech (Article 13),
- Freedom of thought, conscience and religion (Article 14)
- Freedom of association (Article 15),

Provisions of the UN Convention on the Rights of the Child - continued

4) Family and foster care:

- Non-separation of the child from the family (Article 9(1),
- Maintenance of personal contact with both parents being separated (Article 9(3)), including those who live in various countries (Article 10(2)),
- Parents' or legal guardian's responsibility for bringing up the child (Article 18),
- Right to foster care (Article 20(2), 20(3)),
- Adoption (Article 21)

Provisions of the UN Convention on the Rights of the Child - continued

5) **Access to health and social care:**

- Access of children to health care (Article 24),
- Benefitting from the social security system (Article 26)

6) **Access to education, leisure and participation in culture:**

- Right to education (Article 28),
- Right to rest and leisure (Article 31(1)),
- Right to participation in cultural and artistic life (Article 31(2)),

Provisions of the UN Convention on the Rights of the Child - continued

7) **Means of special protection** in emergency situations for refugees' children, the minors in judicial proceedings, minority groups:

- Separation of the child deprived of freedom from adults (Article 37(c)),
- Ban on participation in war conflicts, recruitment of persons who have not attained the age of fifteen years into the armed forces (Article 38),
- Facilitating recovery of victims of torture, armed conflicts (Article 39),
- Protection and humanitarian aid for child-refugees (Article 22),
- Special care for disabled children (Article 23),
- Respect for the language and religion of children from minority groups (Article 30)

Provisions of the UN Convention on the Rights of the Child - continued

8) **General actions aimed at implementing the provisions of the Convention.**

- States Parties are obligated to adopt legislation, generate principles and apply measures enabling enforcement of children's rights.
- including, inter alia, Article 44 of the Convention - an obligation to submit the reports to the Committee of the Rights of the Child
- Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure of 25 May 2007.

Objective of the Convention - protection and implementation of the “best interests of the child”

- **Article 3(1) of the Convention:** *“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”,*
- **“all actions”** - taking account of the best interests of the child in any matters that pertain to minors (the best interest of the child should be considered, while enacting legislation, developing policy, designing systems).
- **“Primary considerations”** - in general, the interest of the child is not the sole factor that needs to be taken into consideration; however, there are circumstances when it plays a key role (e.g. in cases pertaining to separation of a child from his/her parents - Article 9 of the Convention). In principle, it should be treated as a priority, unless there are any other important premises to acknowledge the prevalence of other elements.

The concept of “the best interest of the child” within the meaning of the General Comment No. 14

The concept of **the best interest of the child** features a threefold nature:

- It provides a basis for interpretation of other legal provisions applicable towards the child;
 - It requires ensuring specific process guarantees, protection of rights;
 - It has a major impact on a given case, as it itself may constitute a basis for making a decision.
- Broadly speaking, at every stage of judicial proceedings, a decision needs to be made what actions and what decisions will support the best interest of the minor child. General Comment No. 14: *“The flexibility of the concept of the child’s best interests allows it to be responsive to the situation of individual children and to allow knowledge about child development to evolve . However, it may also leave room for manipulation.”* At the same time: *“The full application of the concept of the child’s best interests requires the development of a rights-based approach, engaging all participants, to secure the holistic physical, psychological, moral and spiritual integrity of the child (...)”*.
 - In order to verify “the best interest” concept, a multidisciplinary approach is necessary, and professional expertise needs to be applied as well.

When determining “the best interest of the child” within the meaning of the General Comment No. 14, the following should be taken into account:

Views of the child – treated as an active participant in the proceedings,
Identity of the child

- Comment: *“Although children and young people share basic universal needs, the expression of those needs depends on a wide range of personal, physical, social and cultural aspects, including their evolving capacities. The right of the child to preserve his or her identity is guaranteed by the Convention (Art. 8), and must be respected and taken into consideration in the assessment of the child’s best interests.”*

Preservation of the family environment and maintaining relations

- Comment: *“The family is the fundamental unit of society and the natural environment for the growth and well-being of its members, particularly children”. Moreover: “(...) separation should only occur as a last resort measure, such as when the child is in danger of experiencing imminent harm or (...) when otherwise necessary; separation should not take place if less intrusive measures could protect the child”.*

Care, protection and safety of the child

- Comment: *“When assessing and determining the best interests of a child or children in general, (...) the obligation of the State to ensure the child such protection and care as is necessary for his or her well-being (Article 3(2)). The terms <protection and care> must also be read in a broad sense, since their objective is not stated in limited terms (...), but rather to the comprehensive ideal of ensuring the child’s <well-being> and development”.*

When determining “the best interest of the child” within the meaning of the General Comment No. 14, the following should be taken into account:

Situation of vulnerability

- Comment: “An important element to consider is the child's situation of vulnerability, such as disability, belonging to a minority group, being a refugee or asylum seeker, victim of abuse, living in a street situation, etc. The purpose of determining the best interests of a child or children in a vulnerable situation should not only be in relation to the full enjoyment of all the rights provided for in the Convention, but also with regard to other human rights norms related to these specific situations, such as those covered in the Convention on the Rights of Persons with Disabilities, the Convention relating to the Status of Refugees, among others.”

The child's right to health

- “The child's right to health (Art. 24) and his or her health condition are central in assessing the child's best interest”.

The child's right to education

- “It is in the best interests of the child to have access to quality education, including early childhood education, non-formal or informal education and related activities, free of charge”.

Right to be heard

Article 12 of the Convention: “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 the opportunity to be heard in any 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.”

Right to be heard - continued

- Recognition **of the right of the child to be heard** is a key achievement of the Convention: from the moment of its enforcement, children should be perceived as active participants in the proceedings.
- General Comment No. 12: *"This obligation requires that States parties, with respect to their particular judicial system, either directly guarantee this right, or adopt or revise laws so that the aforementioned right can be fully enjoyed by the child."*
- General Comment No. 12 contains guidelines pertaining to various aspects of this right within the ground of justice. It plays the role of a practical guide and contains analysis of various situations and aspects of justice. It states, inter alia, that: *"A child cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for her or his age."* Also: *"Particular attention needs to be paid to the provision and delivery of child-friendly information, adequate support for self-advocacy, appropriately trained staff, design of court rooms, clothing of judges and lawyers, sight screens and separate waiting rooms."*

Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice of 17 November 2010

- Guidelines of the Committee of Ministers on child-friendly justice contain detailed guidelines in this area (inter alia, the principles of a child's participation and well-being of the child, the significance of respect for the minor's dignity, protection against discrimination). The Guidelines state that *"The rule of law principle should apply fully to children as it does to adults"*. They show general aspects of child-friendly justice, including the principle of access to information and advice, protection of privacy and family life, safety, as well as the principles of application of the penalty of deprivation of liberty. It emphasises the role of interdisciplinary training for all professionals working with children and for children and the significance of the multidisciplinary approach. These principles will be discussed in more detail during subsequent sessions.

Entities engaged in exercising child-friendly justice

- “Classical” proceedings with the participation of adults involve several key entities involved directly with the case, such as lawyers or judges. In cases of proceedings involving children, there are additional entities that appear. Some of them are persons directly involved in the proceedings and having specific skills or professional expertise required for working with children, and some are persons knowing the situation of a specific child, and who could contribute to the evaluation of the best interest of the minor or optimum enforcement of the court's decision.

Entities engaged in exercising child-friendly justice - continued

In particular, these are entities that:

- provide information on the judicial procedure (e.g. NGOs giving information on access to justice);
- ensure support during the proceedings (family, a supporter or a legal guardian);
- ensure legal representation (ideally, this is a lawyer with expertise in children's rights);
- accompany children who make a deposition or representation in the environment adjusted to the minor's needs (trained persons who conduct the interrogation, social workers);
- are aware of the child's living situation and conditions (social workers, staff of educational or healthcare centres);
- have professional expertise on children (e.g. persons who may provide expertise on ritual female genital mutilation or clinical psychologists interpreting children's depositions).

Entities engaged in exercising child-friendly justice - continued

- General Comment No. 14 to the Convention: *"In case of separation, the State must guarantee that the situation of the child and his or her family has been assessed, where possible, by a multidisciplinary team of well-trained professionals with appropriate judicial involvement, in conformity with Article 9 of the Convention, ensuring that no other option can fulfil the child's best interests."*
- Justification for the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice: *"A multidisciplinary approach to children in conflict with the law is particularly necessary. The existing and growing understanding of children's psychology, needs, behaviour and development is not always sufficiently shared with professionals in the law enforcement fields."*

Entities engaged in exercising child-friendly justice - continued

Legal empowerment, qualifications, skills, and tools, thus, what should be available

- Sometimes entities engaged in proceedings involving children need to have authorisations for undertaking specifications,
- Sometimes, it is necessary to obtain the assistance of a person with professional expertise in a given area, e.g. a children's clinical psychologist,
- Special skills and an appropriate approach to the child's situation is required from persons engaged in proceedings involving minors. For example, asylum officers who must acquire and interpret information provided by minor victims need to be trained.
- Sometimes engaged entities need to use professional tools enabling them to act according to the procedures in cases involving children; materials have been developed for some cases, e.g. checklists of issues that need to be addressed, or guidelines on interviewing children in civil cases.

Entities engaged in exercising child-friendly justice - continued

Multi-disciplinary, inter-agency cooperation

- Often achievement of goals in cases involving children requires cooperation between engaged entities and decision-makers.
- Cooperation should be conducted with respect to the other obligations of each of the engaged entities and the confidentiality principle; forms of cooperation should be established in relevant protocols or other formal measures.

Benefits arising from such cooperation include, among others:

- *Simplification of procedures;*
- *Making views more cohesive;*
- *Prevention of fragmentation of information;*
- *Reinforcement of specialisation;*
- *Simplified communication with children and acquisition of information.*

Entities engaged in exercising child-friendly justice - continued

Examples of cooperation between various entities in the Report of the EU Agency for Fundamental Rights:

- Cooperation of involved entities in handling cases: Effective involvement of relevant persons, appropriate relations with children. Cooperation should be planned from the very beginning of the proceedings. Subject to the type of proceedings, the main role may be played by a judge, lawyers, a legal guardian, a prosecutor or any other involved persons.
- Protocols in judicial proceedings and dissemination of the practice of mutual sharing of information in the UK between a Family Court and the Immigration and Asylum Tribunal, as well as between the courts hearing criminal cases and the Family Court.
- Locating services such as law enforcement, prosecution, health care employees, psychologists, social workers in one place to handle cases involving minor victims (Scandinavian "Children's Homes") more efficiently.
- Joint training of professionals from various areas, e.g. law and social care.

Final conclusions

Recapitulating, judicial proceedings pertaining to children need to be adjusted to their needs in order to enable them to file their claims, make depositions, express views and, also, to ensure that their rights are considered while hearing, taking into account that:

- 1. Rights are of a universal nature; they impose specific obligations on the responsible entities granting, at the same time, powers to children as holders of rights. This approach differs from the classical model where determining the child's needs is a starting point for the provision of assistance to the child. This principle also pertains to children with impeded access to justice (e.g. disabled children).
- 2. The concept of duties and powers requires that the provisions of the UN Convention of the Rights of the Child should be taken into consideration in each and every situation. It may have an impact on the necessity to ensure process guarantees, as well as a need to assess the information and combine the rights of the child with other legal regulations while making a decision.
- 3. Involvement of competent persons, having the rights, skills and tools to build child-friendly justice is of major significance.
- International courts, with increasing frequency, blame national systems for a lack of compliance with the rights of children. The expression "child-friendly justice" does not mean that adaptation of judicial procedures to the needs of children is just a discretionary issue.

**Thank you for your attention
and patience**

Furthering the best interests of the child in European law

S. Florescu, LL.M.
a.s.florescu@law.leidenuniv.nl

5 May 2016



Universiteit Leiden
The Netherlands

Leiden University. The university to discover.

Outline

- ❖ Scope of CFJ & CBI
- ❖ The EU & the CBI
 - ❖ Competence of the EU in children's rights
 - ❖ Key legal instruments of the EU
 - ❖ EU policy and practical measures of support
- ❖ Case –law of the European Courts
- ❖ Practical tools and available resources

Leiden University. The university to discover.

CFJ & CBI

CFJ is

- ✓ Accessible
- ✓ Age appropriate ('age and maturity')
- ✓ Speedy and diligent
- ✓ Adapted to and focused on needs and rights of child
- ✓ Respecting rights, incl. due process, participation, understanding, respect for private and family life, integrity, dignity
- ✓ Not discriminatory (!)

CFJ & CBI

CBI assessment includes

- a. their views and opinions should be given due weight;
- b. all other rights of the child, such as the right to dignity, liberty and equal treatment should be respected at all times;
- c. psychological and physical well-being and legal, social and economic interests of the child.

Separate analysis of all CBI in view of reconciling conflicting interests

Multidisciplinary approaches with the objective of assessing the best interests of children in procedures involving them.

The EU: competence

Exclusive:	(a) customs union;
	(b) competition rules – internal market;
	(c) monetary policy Eurozone;
	(d) marine biological resources under the common policy;
fisheries	(e) common commercial policy.
Shared:	(a) internal market;
	(b) social policy, for the aspects defined in this Treaty;
	(c) economic, social and territorial cohesion;
	(d) agriculture and fisheries, excluding the marine biological resources;
conservation of	(e) environment;
	(f) consumer protection;
	(g) transport;(h) trans-European networks;(i) energy;
	(j) area of freedom, security and justice;
	(k) common safety concerns in public health matters, the aspects defined in this Treaty.
for	

Leiden University. The university to discover.

The EU Charter

Article 24

The rights of the child

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

2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

! Note: subject to Article 51 & 52

Leiden University. The university to discover.

The EU: competence

Areas (relevant for children) where the EU has legislated:

(i) data and consumer protection

Directives on toy safety; audiovisual media services directive; foodstuffs directive, etc

(ii) asylum and migration

Directives on reception conditions, return, asylum procedures, qualification, Dublin III, etc

(iii) cooperation in civil and criminal matters

Brussels II bis Regulation; directives on sexual abuse, anti-trafficking; juvenile offenders (draft)

Child friendly provisions in EU instruments

(A) Child best interests

e.g. Article 23 of the Reception Conditions Directive

In assessing the best interests of the child, Member States shall in particular take due account of the following factors:

- (a) family reunification possibilities;
- (b) the minor's well-being and social development, taking into particular consideration the minor's background;
- (c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking;
- (d) the views of the minor in accordance with his or her age and maturity.

Also Dublin III Regulation, Article 6 (3)

Child friendly provisions of EU instruments

Outcomes specifically relevant for children
Eg: Anti-trafficking Directive (recital 23)

A decision on the future of each unaccompanied child victim should be taken within the shortest possible period of time with a view to finding durable solutions based on an individual assessment of the best interests of the child, which should be a primary consideration. A durable solution could be return and reintegration into the country of origin or the country of return, integration into the host society, granting of international protection status or granting of other status in accordance with national law of the Member States.

Child friendly provisions of EU instruments

(B) Participation includes

(i) access to procedures

Eg: right to make an asylum application (Procedures Directive)

(ii) right to information

In a manner that the child understands, eg. Information leaflet Dublin Regulation

(iii) right to be heard

Criminal context (draft Juvenile Offender directive); abduction context (Bxl II bis), Trafficking Directive; Sexual abuse directive; migration package

(iv) right to compensation

Victim's directive

(v) right to a lawyer (criminal & asylum procedure context)

(vi) right to a legal guardian

Child friendly provisions of EU instruments

(C) Other rights of children:

(i) Privacy

Private hearings (Anti-trafficking directive); secrecy of information (Victim's Directive)

(ii) Dignity

Separation from adults when imprisoned (Juvenile Offenders Directive)

Prohibition on distribution of specific games (Omega case)

(iii) Access to Education

Migration package

EU policy and practical measures of support

Policy level:

- ❖ Stockholm Programme
- ❖ Lisbon Treaty (objectives)
- ❖ EU agenda on the rights of the child

Practical measures of support

- ❖ Research & Training (eg FRA, EASO, Frontex)
- ❖ Action Plans (see http://ec.europa.eu/justice/fundamental-rights/rights-child/eu-agenda/index_en.htm)
- ❖ Project Funding (CONNECT, DAPHNE)

CASE – LAW - CJEU

CJEU CASE C-648/11 - 6 June 2013

FACTS:

Unaccompanied minors facing expulsion from the UK

QUESTIONS:

Interpretation of Article 6 of Bxl II bis

REASONS AND RULING:

Where the applicant for asylum is an **unaccompanied minor**, the Member State responsible for examining the application shall be that where a **member of his or her family is legally present**, provided that this is in the best interest of the minor.

In the **absence of a family member**, the Member State responsible for examining the application shall be that **where** the minor **has lodged his or her application** for asylum.

CASE – LAW - CJEU

Article 6 (2) DR cannot be interpreted in such a way that it disregards fundamental rights

Although express mention of the best interest of the minor is made only in the first paragraph of Article 6, the effect of Article 24(2) of the Charter, in conjunction with Article 51(1) thereof, is that the child's best interests must also be a primary consideration in all decisions adopted by the Member States on the basis of the second paragraph of Article 6 of Regulation No 343/2003.

CASE LAW ECtHR

Rahimi v. Greece - 5 April 2011

FACTS:

19 July 2007 the applicant enters Greece; he is arrested on the same date

20 July 2007 the police orders the expulsion of N.M. and of the applicant.

21 July 2007: the expulsion order was notified to N.M. Both him and the applicant had to leave the Greek territory within 30 days

27 July 2007: the applicant lodged an asylum request

31 July 2007: he was offered shelter with the help of an NGO

4 September 2007: the Greek authorities dismissed the applicant's asylum request. His appeal is still pending before the Greek authorities

COMPLAINTS:

Total lack of measures designed for him as an (unaccompanied) minor;

Conditions of detention (2 days of detention);

He was detained together with adults;

Leiden University. The university to discover.

CASE LAW ECtHR

REASONING: ARTICLE 3

Inhuman and degrading treatment: threshold

minors are vulnerable human beings, therefore the authorities have to take reasonable measures to prevent maltreatment.

Leiden University. The university to discover.

CASE LAW ECtHR

Analysis Article 3:

- Was the applicant accompanied?
 - Standard of proof
 - Two periods to take into consideration
- Exhaustion of domestic remedies
- Merits (conditions of detention):
 - Overcrowding
 - Sanitary
 - Recreation
- Merits (period after his release)
 - Guardianship
 - Shelter

CASE LAW ECtHR

Article 5 ECHR

Applicant's complaints:

lack of consideration to his status as unaccompanied minor

lack of information of the reasons for detention and appeal possibilities

Practical tools and available resources

- TO ADD

Thank you!

Simona Florescu
PhD Fellow, Children's Rights

Leiden University
Leiden Law School, Department of Child Law
Steenschuur 25
2311 ES LEIDEN
The Netherlands
+31 (0)71 527 7231
a.s.florescu@law.leidenuniv.nl

Website:
<http://law.leiden.edu/organisation/private-law/child-law>

WORKSHOP

Case Scenario:

A young person from Vietnam was trafficked into the EU with a view to criminal exploitation on 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 these original proceedings.

Young person had no guardian, had a court-appointed 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 the Criminal Appeal Court, the young person's lawyer argued that the individual is a child; that the child was smuggled into the country; he was exploited to pay back debt and his involvement in the cannabis farm arose out of this exploitation and consequently he should not have been prosecuted or punished.

Prosecutor's office conceded 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 on appeal? What sources of law are relevant to resolve the case? Which child rights were involved in this situation?

B. What practical challenges arise for the justice system in situations of this 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
School of Law,
University College Cork
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

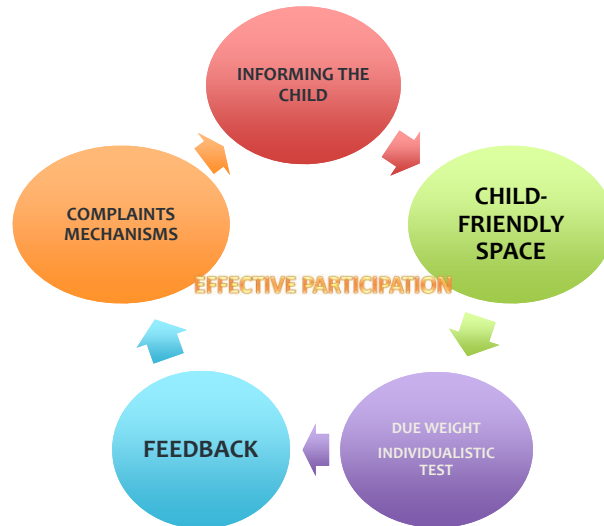
Pre 2009 - Lack of Comprehensive Guidance from the Committee on the Rights of the Child

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

Krakow, May 5 – 6 2016



- "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)

www.coe.int/
childjustice

- 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)



Fundamental principles


www.coe.int/
childjustice

- Participation
 - Best interest
 - Dignity
 - Protection from discrimination
 - Rule of law
- And no age limits




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



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



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



Their requests?

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



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.)

Guidelines for Communicating with Children in Judicial Proceedings

Teresa Jaśkiewicz-Obydzińska
Instytut Ekspertyz Sądowych
(Institute of Forensic Research)
Kraków, Poland



Situations with potential participation of children

- Witness –victim in cases against family members and strangers
- Crime witness
- Child hearing in civil proceedings
- Juvenile perpetrator of an offence



Child development stages

1. Infancy – end of year one
2. Early childhood – 2 years old
3. Kindergarten age – 3/4 – 6/7 years old
4. School age – 6/7 – 10/12 years old
5. Adolescence – 10/12 – 18/20 years old

(Brzezińska, 2005)



Assessment of child competences as a witness or a person being heard

Psychological evaluation criteria:

- development age - 4 years old - the age at which a child may be a witness under certain conditions
- personal characteristics
 - level of cognitive, emotional, social development
 - susceptibility to suggestions
 - relation to a perpetrator and circumstances



Developmental changes significant for conducting an interview/hearing



Kindergarten age

Dynamic changes in motor skills and in behaviour, intensive cognitive development, mastering speaking skills.
Ability to focus briefly on a specific task.
Ability to classify events in order of their appearance, but inability to precisely determine the time.



Kindergarten age

Ability to classify, group, e.g. on the basis of similarity.

The beginnings of recognising own emotions and ability to speak about them.

Learning to control emotions of anger, fear.

Reacting with concern and understanding to the feelings of other people, which may be the basis for manipulation of children.



Kindergarten age

Essential for interview and diagnosis

Use simple vocabulary, understandable for children.

Place events in the context of activities known to the child, instead of asking for time.

Do not ask how many times the event has taken place (children understand only more or less)

Ask specific questions about environment, people and body parts.

Use short sentences.

Do not repeat questions.

Toys can be used as an aid in communication with the child.



School age

Cognitive child's activity is selective, systematic and arbitrary.

Development of intentional memory.

Ability to evaluate behaviour in moral terms referring to orders and prohibitions of carers and peers.

Growing importance of peer relations that affect the self-image.

Traumatic experiences related to crime affect what a child thinks about its role in the incident.



School age

Essential for interview and diagnosis

Use open-ended questions that allow free account of the incident.

Beware of legal terms. Psychological examination should be aimed at establishing motivation to testify.



Adolescence

Difficult period of development due to biological and emotional changes.

Development of a cognitive sphere overtakes social and emotional maturation.

Logical, abstract thinking, less self-centred thinking.

Development of deductive and inductive thinking.

High vulnerability.

Identity shaping.

Quest for self-reliance and independence from adults.

Growing importance of peer groups.



Adolescence

Essential for interview and diagnosis

Specific risk of secondary victimisation.

Diagnosis: identification of emotional factors that disturb the contact with an examiner and an interviewer.

Determining motivation to testify, potential reasons for unfairly incriminating the perpetrator.



PREPARING A CHILD FOR THE ROLE OF WITNESS IN COURT



Child concerns related to testifying

- Perpetrator - threats, loss of acceptance,
- Punishment - child feels guilty of being an accomplice, co-responsible for participation in the incident and for family problems arising from the disclosure,
- Difficult situations during the interview - child's fear that it will not understand something, that it will want to cry, go to the toilet, that other people will despise it and have a bad opinion of the child
- Forgetting or confusing facts, failing to meet expectations of adults
- Deterioration of a family situation - family breakdown, loss of love, care, the child can think that it has contributed to the nervousness, sadness, anger of its parents



Objectives of preparation

- Increasing child's competence as a witness, (ability to give comprehensive, precise and true answers)
- Minimising the potential negative effects of the child's participation in the proceedings.



What does child preparation mean

- It does not mean that the child should be taught the interview scenario, or trained what it should say
- It means helping the child in achieving readiness (mental, emotional) for the experiences of the testimony



Practical ways

- Education
 - Who: roles and responsibilities of all participants in the process
 - What: expected course of events, judicial procedures (questions from the prosecution, defence, judge)
 - When: it is preferable to take into account the child's biological clock, its daily rhythm, important events in the child's life



BASIC RULES FOR INTERROGATING CHILDREN



Rules for contact with the victim

- Creating suitable conditions to convince the victim that we want to help, not blame
- Highlighting the fact that the child is a victim of an act of violence, without emphasising the incident's sexual aspect
- Assuring the victim that it is not guilty of the incident even if it had an opportunity to call for help, escape, etc.
- Relieving the child of responsibility for the outcome of the proceeding: it must tell the truth, and the rest belongs to adults
- Strengthening the sense of its own competence - "It may be difficult, but I can handle it"



Place and conditions for the interview

- Neutral, quiet, safe place, free from distraction (preferably the "friendly room")
- Furniture and equipment adjusted to the needs of the child (size of furniture, drawing materials)
- Providing isolation for the child from the perpetrator
- Providing the child with access to its guardian
- Reducing the number of persons attending to a minimum
- Excluding the participation of a parent or other person close to the child



INTERVIEW STAGES AND METHOD



Self-preparation of the interviewer for his/her function

"Anything you can do before - do it!"

(R. Bull, 2010)

- Knowing the event well
- Talking to the guardians of the child and/or requesting psychological tests to collect basic information about the child's current state
- Drawing up the interview plan while taking into account the information held



Self-preparation of the interviewer for his/her function

- Prepare several topics for the interview, adjusted for the child's age (you should earlier imagine such a situation)
- In cases of contact with victims of sexual crimes - practise talking about sex
- Check the recording equipment, camera view, etc.
- Prepare a place for the guardian



Desirable characteristics of an interviewer

- Ability to establish a friendly relationship with the child, based on trust
- Empathy, high sensitivity to the needs of the child and the knowledge of its correct development
- Flexibility in working with the child
- Impartiality



Greeting and personalisation of the interview

- Before starting the interview, the interviewer should win the child's trust and create the background for good communication.
- Remember that you are a stranger to the child and it may feel uncomfortable.
- To reduce tension and insecurity you must present yourself and greet the child using its name.



Greeting, first contact

- Show the child where its guardians will be waiting
- Take a place next to the child, keeping good eye contact
- Explain the purpose of the meeting, your own role and the role of other persons present



Building contact with the child

- Create a relaxed atmosphere, the child should feel safe and confident, it must trust you
- A way to achieve this state of affairs: ask several questions to which the answer must be positive, which will create a positive mood



Building contact with the child

- **Examples:**
 - favourite pets, games, interest, subjects in school, friends
 - it is important that these questions should not have the character of a "street survey"

e.g. *"What is your favourite TV programme," "You are a pupil, aren't you? Which grade are you?"*



Building contact with the child

- It is a good idea to talk about yourself, e.g. if the child speaks about its pet, and the interviewer also has one of his/her own, he/she can talk about it, describing his/her experiences
- Ask open-ended questions. Good preparation for the interview is to encourage the child to talk incessantly about a familiar event, e.g. its favourite game



Building contact with the child

- Comments like:
"I think it's great fun. Tell me how to play with it",
"I haven't heard about this game, tell me more about it" - have a dual role: they help to build a connection and prepare the child to provide detailed and elaborated answers
- If the child is still upset, you should continue the building contact phase until it calms down



General structure of the interview

- Free narrative.
- Questioning phase.
Ask the child if it remembers any more.
- Close the meeting, thanking the child for its cooperation.



Guidelines for the interviewer's behaviour

- Sit easily, with your head toward the child
- Show your friendship and support
- Often use eye contact, but do not stare at the child
- Speak slowly, using short sentences, with pauses in between sentences



Guidelines for the interviewer's behaviour

- often show your attention and interest by nodding, m-hmm, etc., but do not use evaluating expressions such as "good" or "yes"
- praise the child for his/her effort
- avoid sudden movements or chaotic style of speech
- do not interrupt
- allow breaks, show patience (you must practice breaks before the interview, it is usually a very uncomfortable situation for the interviewer)



Explain the purpose of the interview

- Explain to the child that you were not present at the event, so you don't know what happened.

E.g. *"I was not in so I don't know what happened."*

- You should indicate that the task will not be easy and will require a lot of concentration.

E.g. *"Try as best you can, really think about it ... because it can be difficult."*



Collecting information

- Observe the child's emotional reactions and react to them
- Do not emphasise stress in order to focus upon it
- Taking into account the fact that children have a short concentration span - take frequent breaks, instead of creating a situation of total distraction



Collecting information

- Find out whether the child knows why it is here, whether it has been previously advised
- Find out whether it can distinguish between truth and lies
- Establish names of people, body parts, actions
- Explain that you are interested only in true information that the child has the right not to remember and not to know
- Warn the child that the interview may also refer to secrets



Collecting information

- Teach the child that saying "**I do not know**" is not bad, it does not mean that the child does not know anything (contrary to school situations)
- Practise saying "I do not know" - e.g. "*What is the name of your dog?*", be sure that the child does not guess
- Warn the child that it has the right to fail to understand something, that something was unclear, complicated; in such case, it should be able to say "*I do not know what you mean*"



Collecting information

- use clear language and simple grammatical structures
- avoid using personal pronouns, personal names (Uncle Adam, Mr Kowalski)
- explain any unintelligible terms and phrases
- allow the child to draw things that cannot be precisely defined
- adjust the rate of the interview to the child's abilities and pace of "opening up"



Collecting information

- Control your emotions, tone of voice, facial expressions - do not show particular interest, or horror (regardless of the content of the child's utterances).
- Take down the child's utterances literally.
- Avoid correcting the child's utterances, praising the child and promising rewards for the information, forcing a response, assessing, urging, showing impatience, making promises you cannot keep.



Questioning phase.

E.g.

"In a moment I will ask you questions. Perhaps you will not be able to answer some of them. That's all right, no one can remember everything. If you don't know the answer to a question, say 'I don't know', but don't guess and don't make it up. It's vital that you say only what you really remember, only what has really happened."

- It is worth reminding the child that this can be a daunting task requiring a lot of concentration.



Types of questions

- Questions that are used to **collect** information **rather than confirm** previously acquired information
- **Open-ended** questions that do not contain any moral-ethical evaluations
- Emphasise that you are interested in everything that the child remembers about the event.



Types of questions

Questions for younger children should be more specific, guiding, **focusing** the child's attention on the subject (concerning specific people, places, parts of the body, the circumstances of the act)

e.g. I've heard that you had to go to the doctor, do you know why? Can you tell me about it?



Types of questions

Tell me everything that happened in ...?

I've heard something about the bedroom.

What happened then? Tell me more. What was next?

For multiple events

Did it happen once again?

Tell me all about what happened on the occasion that you best remember.

Tell me about the occasion when it happened the first time.



Types of questions

- It is best to use closed and more open questions interchangeably
 - *What do you do when you stay with dad?*
 - *Are there things that dad does, but you don't like?*
 - *What games did you play with Mr Smith?*
 - *Are there games that Mr Smith forbade you to speak about?*
 - *Can you describe these games?*
- It is not advisable to ask misleading questions, promise rewards or punishment for the perpetrator



End of the interview

- Conversation about neutral topics
- Permit the child to ask questions
- Words of thanks, giving **recognition for effort and not for providing specific information**, especially if the perpetrator is a close relative

