



Can anyone hear me?

.....
**Improving juvenile justice systems
in Europe:**

A toolkit for the training of
professionals
.....





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The International Juvenile Justice Observatory (IJJO) is an international organisation based in Brussels and recognised as a foundation of public interest. It works as an inter-disciplinary forum for sharing information, communication, debates, analysis and proposals focused on juvenile justice around the world.

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Foreword

The European Commission states that approximately 1 million children face criminal justice proceedings in the EU each year (around 12% of the total).¹ In the context of a Study related to children involved in criminal, civil and administrative proceedings, the Commission has gathered data on child justice and its reports show wide variability in practice and procedure between States.²

While at the international level the United Nations Convention on the Rights of the Child³ (1989) is the instrument of reference regarding the protection of children's rights, including those in conflict with the law, at the European level, the Council of Europe Guidelines on Child-Friendly Justice⁴ play an important role despite their non-binding character. Several other instruments have been developed by the Council of Europe (e.g. *The European Rules for juvenile offenders subject to sanctions or measures*⁵) and the European Union, notably thanks to the EU Agenda on the Rights of the Child⁶ adopted in 2011, in an attempt to regulate and harmonise children's rights and juvenile justice systems in Europe.

This recent increase in protection is an ongoing process and the rates of implementation vary between Member States. Support and assistance for all stakeholders and actors on the rights of the child is necessary for a full implementation of EU legislation and Council of Europe Guidelines. A concrete improvement of juvenile justice systems in Europe can only happen through the effective participation of children in the procedures concerning them, but this cannot be done without proper training and knowledge about children's rights, development and needs.

In May 2016, in the context of the EU Agenda on the Rights of the Child, the European Parliament agreed with the European Council to adopt the **Directive of the European Parliament and of the Council on procedural safeguards for children who are suspects or accused persons in criminal proceedings**.⁷ The EU Directive introduces measures designed to safeguard a package of rights in a manner consistent with the reasoning of the European Court of Human Rights⁸ and the *Guidelines on Child-friendly Justice*. The Directive's purpose is "to establish procedural safeguards to ensure that children, meaning persons under the age of 18, who are suspects or accused persons in criminal proceedings, are able to understand and follow those proceedings and to exercise their right to a fair trial, and to prevent children from re-offending and foster their social integration." (Recital 1).

1 Commission Staff Working Document, 2013:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0480:FIN:EN:PDF>

2 Summary of contextual overviews on children's involvement in criminal judicial proceedings in the 28 Member States of the European Union, European Commission, 2015, available at: <https://goo.gl/RQYxZp>

3 UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p.3.

4 Council of Europe: Committee of Ministers, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*, 2011.

5 Council of Europe: Committee of Ministers, *Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures*, 5 November 2008, CM/Rec(2008)11.

6 European Commission (2011) Communication from the Commission to the European parliament, the Council, the Economic and Social Committee and the Committee of the Regions. *An EU Agenda for the Rights of the Child*.

7 *Directive 2016/800/EU of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings*.

8 The ECtHR which has stated that the right to a fair trial under Article 6 requires that: "a child charged with an offence is dealt with in a manner which takes full account of his age/level of maturity and intellectual and emotional capacities and that steps are taken to promote his ability to understand and participate in the proceeding" (T v. UKT v. UK, No. 24724/94, 16 December 1999, at [84]).

The Directive provides a package of rights that children are to enjoy at every stage of the criminal justice system, including most importantly: the mandatory right to be assisted by a lawyer and the right to free legal aid; the right to an individual assessment; the rules on questioning; the provision for the child to take part in the proceedings; the compulsory special training for judges, law enforcement authorities and prison staff, lawyers and others who come into contact with children in their work; and the provisions on detention, under which children should be held on remand only where there is no alternative. In such cases, it must be ensured that the children are held separately from adults, except where it is in their best interests not to do so.

Regarding the rights of the child to be heard and to participate effectively in judicial proceedings, the Directive rises up to the level of protection provided by Article 6 ECHR⁹ (the right to a fair trial) and Articles 47 and 48 of the EU Charter of Fundamental Rights¹⁰ (Right to an effective remedy and to a fair trial; Presumption of innocence and right of defence). Article 16 confirms a child’s right to be present at, and participate effectively in, their own trial. This includes giving them the opportunity to be heard and to express their views. If a child is not present at their trial, the Directive provides the right to a new trial, or another legal remedy, in accordance with and under the conditions set out in the Directive on the presumption of innocence.¹¹ Moreover, the Directive introduces a requirement that appropriate measures should be taken to ensure that children are “always treated in a manner which protects their dignity and which is appropriate to their age, maturity and level of understanding, and which takes into account any special needs, including any communication difficulties, that they may have.” (Article 13 (2)). This Article ensures that child-friendly communication should become a requirement whenever a child is involved in a judicial procedure.

The Member States of the EU are bound by the legal obligations set forth in this Directive. Moreover, the Member States must comply with the Directive within 36 months after its entry into force.¹² The role of the IJJO in this context is to support Member States in this effort.

The International Juvenile Justice Observatory (IJJO) is an international organisation based in Brussels and recognised as a foundation of public interest. It works as an inter-disciplinary forum for sharing information, communication, debates, analysis and proposals focused on juvenile justice around the world. Through the European Council for Juvenile Justice (ECJJ), the IJJO formal network and think-tank for the European region, the IJJO participates in the improvement of juvenile justice in Europe. The ECJJ, of which all partners of the Improving project are members, has authored several publications, including a European Research on Juvenile Restorative Justice, four Green Papers and a White Paper on *“Improving Youth Justice Systems during a Time of Economic Crisis”* (2013), on which the Improving project is based.

The main objective of the project *“Improving juvenile justice systems in Europe: Training for professionals”* is to improve juvenile justice systems in Europe and to understand where they can be made more efficient and child-friendly, focusing on a better implementation of the Guidelines of the Council of Europe on Child Friendly Justice and other international and European standards. Led by the IJJO, the project is based on the recommendations made in the ECJJ White Paper on *“Improving Youth Justice Systems during a Time of Economic Crisis”* (2013). The White Paper highlights the need for more action to be taken at a local and national level, in particular, the need for more training of professionals and to form organised groups of stakeholders at a national level. Moreover, it is recommended that juvenile justice professionals should acquire specific knowledge concerning children’s rights, international and European standards and

9 C.f. footnote 8.

10 European Union, Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02

11 <http://data.consilium.europa.eu/doc/document/ST-13471-2015-INIT/en/pdf>

12 The Directive was formally adopted on the 11th of May 2016.

communication with children in order to foster their re-integration.

Therefore, the project intends to put the voice of the child at the heart of juvenile justice systems by providing information, knowledge and training to juvenile justice national authorities and staff working with juvenile offenders at a European level. The project focuses on improving juvenile justice national systems and exchanging promising practices concerning juvenile offenders subject to sanctions or measures. This will promote a better implementation of international standards concerning children in conflict with the law. A training package composed of this Manual, a Toolkit for Professionals and a series of videos featuring young people in conflict with the law has been developed, and has been adapted into an online training course hosted on the International School of Juvenile Justice, the IJJO e-learning platform.

Through the two publications of this project, the Manual and the Toolkit, we expect to participate in the **improvement of know-how, knowledge and good practices** among juvenile justice stakeholders, with the underlying goal of effectively listening to the voice of children in conflict with the law.

The momentum created by the new Directive will certainly be an asset to the sustainability of the project's results. In this context, the IJJO will endeavour to help Member States with the implementation of the Directive through continuous dissemination of the project's training package, including the online training course, as well as tailor-made programmes of technical assistance.

The project also foresaw the creation of national coalitions in the partners' countries as an important means to provide support and assistance to Member States in the implementation of the Directive, particularly Art. 20.¹³ These national coalitions involve important stakeholders on the rights of the child and juvenile justice systems, and constitute a pool of experts and advocacy actors at national level that can act together to disseminate knowledge and good practices and assist national authorities in the implementation of international norms.

In consequence, we expect these publications to be major assets in the implementation of the Directive, particularly the provisions regarding the right to be heard and to participate effectively in the proceedings. They will provide law enforcement authorities, staff of detention facilities, the judiciary, prosecutors and lawyers with useful knowledge, skills and tools to communicate with children in an appropriate manner, which will allow them to participate fully in the proceedings and to have their voices heard. These are necessary prerequisites for children to trust the justice process, develop appropriately and avoid recidivism.

Dr. Francisco Legaz Cervantes, Chairman of the International Juvenile Justice Observatory

Cédric Foussard, Director of International Affairs, International Juvenile Justice Observatory

13 Article 20 (1) of the Directive states that:
'Member States shall ensure that staff of law enforcement authorities and of detention facilities who handle cases involving children, receive specific training to a level appropriate to their contact with children with regard to children's rights, appropriate questioning techniques, child psychology, and communication in a language adapted to the child.'

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About this Toolkit

INTRODUCTION

INTERNATIONAL CHILDREN'S RIGHTS IN JUVENILE JUSTICE

In 2010 the *Guidelines of the Council of Europe on Child-friendly Justice* were published. These Guidelines aim to ensure that in all proceedings in which children are involved 'all rights of children, among which the right to information, to representation, to participation and to protection, are fully respected with due consideration to the child's level of maturity and understanding and to the circumstances of the case' (para. I.3). The Guidelines provide a comprehensive overview of child-friendly practices to be implemented in criminal, civil or administrative law.

The main objective of the project "**Improving juvenile justice systems in Europe: Training for professionals**" is to make juvenile justice systems in Europe more efficient and child-friendly, focusing on a better implementation of the *Guidelines of the Council of Europe on Child-friendly Justice* and other international and European standards. The project is based on the recommendations made in the IJJO White Paper entitled "*Improving Youth Justice Systems during a Time of Economic Crisis*" (Moore, 2013). The white paper highlights the need for more action to be taken at a local and national level, in particular, the need for more training of professionals and to form organised groups of stakeholders at a national level. Moreover, it is recommended that juvenile justice professionals acquire specific knowledge concerning children's rights, international and European standards and communication with children in order to foster their re-integration. In this training special attention will be paid to the right of children in conflict with the law to be heard, their right to effective participation and how professionals who are involved in the juvenile justice process can improve their communication with children.

In 2015, the European Parliament agreed with the European Council to adopt the **Directive of the European Parliament and of the Council on procedural safeguards for children who are suspects or accused persons in criminal proceedings**.¹⁴ The EU Directive introduces measures that are meant to be consistent with the reasoning of the European Court of Human Rights and the *Guidelines on Child-friendly Justice*. Article 20 (1) of the Directive states that:

'Member States shall ensure that staff of law enforcement authorities and of detention facilities who handle cases involving children, receive specific training to a level appropriate to their contact with children with regard to children's rights, appropriate questioning techniques, child psychology, and communication in a language adapted to the child.'

The Member States of the EU are bound by the legal obligations set forth in this Directive and must comply with the Directive within 36 months after its entry into force.

The Manual and Toolkit have the purpose of providing training to professionals working with children in conflict with the law, specifically geared towards improving their communication with children. The Toolkit, divided into different chapters, will touch upon topics relating to children's legal rights, interviewing techniques, communication, child psychology and pedagogical skills. The Toolkit aims to

¹⁴ Directive 2016/800/EU of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings.

provide information and to give further guidance on the implementation of the provisions of the new EU Directive. Information is provided with regard to the content of the Directive and how to implement the Directive in congruence with other relevant international and European standards in juvenile justice.

STRUCTURE OF THE TOOLKIT AND MANUAL

The Toolkit and Manual focus on promising practices and techniques related to child-friendly justice. The Toolkit and Manual aim to contribute to the dissemination of knowledge on and respect for the rights of the child in conflict with the law, both in informal and restorative justice procedures, as well as in formal procedures, such as court proceedings. Therefore, it should be noted that when the term ‘Juvenile Justice process’ is used this could also be read as mediation or restorative justice.

The training Toolkit and the Manual follow the same structure which reflects the content of the training. Both documents cover the following topics:

- International and European standards in juvenile justice and adolescent development.
- General requirements; specific proceedings for children in conflict with the law, the role of legal or other assistance and the role of parents in juvenile justice.
- Effective participation; the right to information and the right to be heard.
- Communication skills; how to communicate effectively with children in conflict with the law.
- Follow-up and support; incorporating the views of children in conflict with the law in decisions and clarifying decisions.

In every chapter **the implementation of the relevant international and European standards in practice** will be attended to. Basic requirements are given as to how to implement the standards in the different phases of the juvenile justice process. The phases that will be distinguished are: the phase of arrest and police interrogation; the phase of court proceedings and trial; the phase of disposition; and the phase of pre- and post-trial detention.

Good practices are presented in the Manual that relate to the topics discussed in that particular chapter. These practices serve as illustrations of how certain principles or legal provisions can be implemented in practice and were provided by the partner organisations. Therefore, these examples come from the countries of the partner organisations taking part in this project. These countries are: Austria, Cyprus, Czech Republic, Finland, France, Ireland, Italy, Latvia, Portugal and Spain. The partner organisations participating in this project are all members of the European Council for Juvenile Justice.¹⁵

HOW TO USE THE TOOLKIT?

This Toolkit was developed as part of the training programme “*Improving juvenile justice systems in Europe: Training for professionals*”. The Toolkit acts as a practical guide for the trainer in shaping and executing the training programme. The structure of the Toolkit and Manual is largely the same, but in the Toolkit extra information is added for the trainers. Every chapter in the Toolkit starts with the following topics:

15 The partner organisations in this project are: Providus (Latvia), University College Cork (Ireland), Fundación Diagrama (Spain), Ministry of Justice (Portugal), Hope for Children UNCRC (Cyprus), Finnish Forum for Mediation (Finland), Ludwig Boltzmann Institute of Human Rights (Austria), Ministry of Justice Transparency and Human Rights (Greece), Rubikon Centrum (Czech Republic), Istituto Don Calabria (Italy). Association Diagrama (France) and Include Youth (UK).

- Learning objectives of the chapter.
- Preparation; the kind of substantive and practical preparation that is needed from the trainer.
- Summary of the chapter.
- Time schedule of the training session covering the chapter.

In addition to the Toolkit and Manual, the **training package** consists of video material. The three components of the training package should be used together in a training or national discussion day. The Manual is the textbook for participants and the Toolkit is the guide for trainers. The videos were developed by the Northern Ireland based NGO Include Youth, to illustrate several topics from the perspective of young people themselves. Several assignments in the Toolkit relate to the videos. The videos can be found here: <http://www.oijj.org/en/improvingjjs-video>

The Toolkit presents **questions and exercises** in each section of the different chapters focusing on the most important substantive and procedural issues addressed in that particular section. The questions are accompanied by model answers. The questions can be discussed with the participants during the training session or they can be worked on individually, for example as part of homework assignments. The exercises include interactive components requiring active involvement of the participants.

The Toolkit should be used by the trainer as a practical **guide** in setting up the training sessions or national discussion day. The questions and exercises serve as examples of what can be included in these sessions. It should be noted that the trainer will probably not have enough time available to discuss every question or to conduct every exercise. It is advisable to adapt the execution of the training to the specific target group of professionals that participates in the training. The assignments are geared towards multi-agency groups, so professionals with different backgrounds should be able to participate in the training session or national discussion day.

PURPOSE AND METHODS

The Toolkit presents a comprehensive methodology concerning training and capacity building for professionals as well as a compendium of techniques related to knowledge concerning children's rights in juvenile justice, child-friendly justice, adolescent development and skills related to working in groups, fostering child participation with children in conflict with the law.

OBJECTIVES OF THE TRAINING

It is important that the Toolkit is accompanied by a face-to-face **training session or national discussion day**, during which knowledge is disseminated and skills can be practiced. The purpose of the training is threefold:

- To familiarise the participants with the international and European children's rights framework relating to juvenile justice.
- To make professionals aware of the importance of child participation in juvenile justice.
- To teach professionals skills to enhance child participation.

The manner in which the objectives of the training can be met differ, according to the local situation and the target group of the training. The first two objectives do not necessarily have to be addressed in a classical training session, but can also be part of a national discussion day. This general day of discussion could focus on a larger audience of stakeholders and professionals who work with children in conflict with the law. The third objective is preferably addressed in a more practical and small-scaled training session or workshop.

In the following table the learning objectives per module are listed. Moreover, the assignments that relate to the particular learning objective are provided. The assignments are given the qualification of either applying to **knowledge** of the subject matter, **understanding** of the subject matter, **application** and practice **skills** of the subject matter in practice. These qualifications correspond to the three purposes of the training as listed above: the first purpose mainly applies to acquiring knowledge, the second purpose to understanding the subject, the third to solving (practical) problems and the fourth to applying skills in practice.

- Knowledge: to remember information and be able to reproduce this information.
- Understanding: to be able to summarise information and to explain it, using examples.
- Application: to use information to solve a problem, and find links between different pieces of information.
- Skills: practical skills that can be used when communicating with children in practice.

Module	Learning objectives	Assignment	Taxonomy
1	The participants will gain knowledge on the issue concerning the participation of children in conflict with the law in the juvenile justice proceedings, including the importance of the right to be heard and the development of child-friendly justice in Europe.	1.1	Knowledge
	The participants will become familiarised with the international standards in juvenile justice as part of international human rights law.	1.2	Understanding
	The participants will become familiarised with the European standards in juvenile justice.	1.3	Knowledge Understanding
	The participants will acquire basic knowledge and understanding on adolescent development in relation to juvenile justice.	1.4	Understanding Knowledge Application
2	The participants will gain knowledge and understanding on the institutional requirements of the juvenile justice process in order to be child-friendly.	2.1	Knowledge
	The participants will become familiarised with legal safeguards in the juvenile justice system, in particular the right to legal and other appropriate assistance.	2.2	Knowledge Application Knowledge
	The participants will become familiarised with the role of parents in the juvenile justice system.	2.3	Understanding

3	The participants gain knowledge and understanding on the right to information and its underpinnings in international and European law and standards.	3.1	Application
	The participants gain knowledge and understanding on how to implement the right to information in the different phases of the juvenile justice process.	3.1	Application
	The participants will gain knowledge and understanding on the right to be heard and its underpinnings in international and European law and standards.	3.2	Understanding
	The participants will gain knowledge and understanding on the implementation of the right to be heard in the different phases of the juvenile justice process.	3.2	Understanding
	The participants will gain knowledge and understanding on the implications of effective participation and how to implement this principle in practice.	3.1 / 3.2	Application / Understanding
4	The participants will gain knowledge and understanding on how to communicate effectively with children, from a non-legal perspective.	4.1	Application
	The participants will gain knowledge and understanding on the preferred setting and atmosphere in which to communicate with children in conflict with the law.	4.1	Application
	The participants will gain knowledge and understanding on conversation techniques that enhance the participation of children and will practice conversation technique skills to enhance the participation of children in conflict with the law.	4.2	Application / Skills
	The participants will gain knowledge and understanding on adapting language to children in conflict with the law and providing explanations and clarifications to children and practice the necessary skills to adapt the setting and atmosphere in which a conversation with a child is to be held.	4.3	Understanding / Application / Skills
5	The participants will gain knowledge and understanding on how to incorporate the voice of the child in decisions taken in the juvenile justice system and the underpinnings in international and European law and standards.	5.1	Knowledge / Understanding
	The participants will gain knowledge and understanding on how to incorporate the voice of the child in practice, when decisions are taken in different phases of the juvenile justice process.	5.1	Knowledge / Understanding
	The participants will gain knowledge and understanding on how to clarify decisions to the child and the underpinnings in international and European law and standards.	5.2	Application
	The participants will gain knowledge and understanding on how to clarify decisions to children in conflict with the law, and the importance of adapting the clarification to the age and maturity of the child and practice skills in explaining procedures and decisions to children.	5.2	Application / Skills

KNOWLEDGE AND SKILLS

In order to contribute to juvenile justice systems in Europe that respect the rights of children and have a particular focus on child participation in juvenile justice proceedings, it is important that the professionals involved acquire certain knowledge and skills.

The knowledge professionals need

Knowledge about:

- Core human rights, such as the right to a fair trial, the right to information and the right to be heard.
- Key concepts such as procedural safeguards, child participation and adolescent development.
- The international and European children's rights instruments and their value.
- The design of specific proceedings for children in conflict with the law.
- The role of child participation in the different phases of the juvenile justice process.

The skills professionals need

Skills in:

- Having an effective conversation with a child who is in conflict with the law, during which the child is able to give his or her views.
- Listening to children in conflict with the law.
- Conversation techniques to enhance the participation of children in conflict with the law.
- Explaining procedures and decisions to children in conflict with the law.
- Adapting the setting and atmosphere in which a conversation with a child in conflict with the law is to be held.
- Involving parents in the juvenile justice process.

TEACHING METHODS

Research on education and learning shows that the more interactive the method of teaching is, the more the participant will acquire and remember from the lesson that was taught. A one-way lecture in which knowledge is transferred from the lecturer to the participants is the least effective method; in general, only 5 to 10 percent of the knowledge is picked up by the participants. Exercises prepared in small groups, accompanied by presentations by the participants are far more effective, participants will remember up to 70 percent of the knowledge acquired. The same holds true for skills; when skills are practiced it is easier for participants to perform those skills in practice.

As explained above, in every chapter of the Toolkit exercises are included. The exercises make use of a range of **interactive teaching methods**.

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EXAMPLES OF METHODS:

- Discussions with the group or in smaller subgroups.
- Brainstorming with the group or in smaller subgroups.
- Making a mind-map.
- Think-pair-share: think a question through individually, share answers in pairs and exchange with the group.
- Preparation of an exercise in pairs and presentation to the group.
- Quiz with multiple choice questions.
- Role-play.
- Watching a video and discussing afterwards.
- Interviews in pairs on certain topic.

When using interactive teaching methods, it is important to give the participants clear instructions before they start. They should know what is expected from them. Moreover, the goals of the exercise should be clear for the participants. This in turn influences the answers or output the trainer expects from the participants. Information on instructions, the goals of an exercise and model answers are provided in each of the chapters of the Toolkit.

ROLE OF THE TRAINER

As a trainer you are expected to guide the participant through the Manual. The participants can read the Manual before they start the training, but it is only when they are encouraged to discuss the content and to practice the skills that they will be able to truly acquire the knowledge and skills that are presented in the Manual. The trainer has the task **to facilitate the learning process of the participants**. The trainer should for example:

- Highlight relevant aspects of a certain chapter, depending on the target group of participants.
- Put the information in a broader perspective by focusing on the implementation in a specific regional context or work field of the participants.
- Facilitate discussions among participants.
- Give feedback on the exercises that are completed by the participants.

The trainer should be able to adapt the training to the **needs of the participants** as well as to his or her own **personal style of teaching**. Before and during the training the trainer must take into account the following:

- The background, knowledge, expertise and experiences of the participants.
- The dynamic of the group; attention and participation level in the group.
- The time available for an activity, the resources and the setting of the training.

Knowing your **target group (audience)** is of vital importance for the success of the training. It is therefore advisable to collect information on the participants before you start the training. This can be done by asking the participants to send a short biography or CV. The content of the training and exercises can be adapted accordingly. The training package is developed for multi-agency groups. This means that both legal professionals and social professionals can participate in the training or national discussion day. It is important to devote extra time and attention to the legal and international children's rights perspective when the target group consists of social professionals, since they might be less familiar with this topic.

During the training it is important to assess and to be aware of the **group dynamic**. It might be advisable for example to split the group into smaller groups, to enhance the participation of several participants. Otherwise, you can put certain people apart from each other.

With regard to **time and resources**, each chapter explains what kind of preparation is needed in terms of resources, a time schedule and the setting for every exercise. The assignments can be selected on the basis of the target group; legal or social professionals or professionals who work directly with children and parents or professionals who work at a policy level.

As a trainer you should **encourage the participants' efforts to learn**. Here are some more suggestions that can help you do so:

- Encourage everyone to participate; balance the participation in the group, to support and encourage everyone to get involved; this requires that participants feel at ease and that your classroom offers a safe environment in which they can participate freely.
- Take enough time to handle conflicting or differences in opinions; the purpose of activities is not that everyone agrees. Discussions can facilitate the learning process. Enough time should be made available to be able to understand each other's viewpoints in a respectful and open atmosphere.
- Help participants in finding information and support, especially within the local context of their own organisation or country.

TIME SCHEDULE

As pointed out before, the training programme should include two days of training sessions or national discussion. During these two days, you can work on the realisation of the objectives of the training programme, that is: disseminating knowledge, awareness raising and skills training. If you focus on specific objectives only, you could limit the training or discussion day to one day at the time. This depends, among others, on the target group of the training session.

One way to organise the training session is to hold a discussion day with national stakeholders, for example, working at the policy level. The aim of this national discussion day should then be to familiarise and make professionals aware of the notion and significance of child participation in juvenile justice. During this day knowledge can be disseminated and information and experiences can be exchanged between the stakeholders.

The second day of training can be more geared towards skills training. Naturally, professionals who work directly with children and parents can benefit from acquiring practical skills in communication and how to enhance the participation of children in practice.

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Timeline for a 2-day training programme		
Time	Module	Content
Day 1 – National discussion day		
09h00-09h30	Introduction	Introduction of the training programme, round of introductions
09h30-10h30	Module 1	General introduction to international and European children’s rights framework
10h30-10h45	<i>Coffee break</i>	
10h45-12h00	Module 2 + 3	General introduction on how to facilitate effective child participation
12h00-13h00	<i>Lunch</i>	
13h00-15h00	Discussion session	How to implement the effective participation in practice: in the different stages of the juvenile justice process and/or by different actors in the field
15h00-15h15	<i>Coffee break</i>	
15h15-16h15	Feedback session	What are the results of the discussion session and what are the steps taken to move forward with child participation? Is it possible to build a national coalition on child participation in juvenile justice?
Day 2 – Practical training session		
09h00-09h30	Introduction	Introduction of the training programme, round of introductions
09h30-10h30	Module 1	General introduction to international and European children’s rights framework Effective participation
10h30-10h45	<i>Coffee break</i>	
10h45-11h45	Module 2 + 3	General introduction on how to facilitate effective child participation
11h45-13h00	<i>Lunch</i>	
13h00-14h30	Module 4	Communication skills: practical skills training in communicating with children
14h30-14h45	<i>Coffee break</i>	
14h45-16h30	Module 5	Follow-up and support: practical skills training in communicating with children
16h30-17h00	Feedback session	Questions and evaluation



CHAPTER 1

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International and European standards in juvenile justice

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Chapter 1. International and European standards in juvenile justice

LEARNING OBJECTIVES

Corresponding general objectives of training:

- To familiarise the participants with the international and European children's rights framework regarding juvenile justice (General objective 1).
- To make professionals aware of the importance of child participation in juvenile justice proceedings (General objective 2).

In this particular module the participants gain knowledge and insight on the following topics:

- The participants will gain knowledge about the issue concerning the participation of children in conflict with the law in juvenile justice proceedings, including the importance of the right to be heard and the development of child-friendly justice in Europe.
- The participants will become familiarised with the international standards in juvenile justice proceedings as part of international human rights law.
- The participants will become familiarised with the European standards in juvenile justice proceedings.
- The participants will acquire basic knowledge and understanding of adolescent development in relation to juvenile justice.

SUMMARY

The UN Convention on the Rights of the Child (CRC) was adopted in 1989 and recognises children as autonomous human right bearers. According to Article 12 CRC, children have the right to be heard in all matters affecting them. Naturally, this provision applies to children suspected or convicted of committing a criminal offence. Children do not only have the right to give their views, but they should also be able to learn from how their views have had an effect on the decision-making in juvenile justice proceedings. The core provision of international human rights law for children in conflict with the law is Article 40 of the CRC. Article 37 CRC is the core human rights provision for children deprived of their liberty and it recognises the impact of deprivation of liberty on children's lives, as well as the need for a child-specific approach. The Beijing Rules contain detailed minimum rules regulating the administration of juvenile justice at the domestic level and the Havana Rules contain guidelines for all minors deprived of their liberty.

At the European level, the right to a fair trial, enshrined in Article 6 of the European Convention in Human Rights (ECHR) is of great importance. This provision is applicable to everyone, including children. Moreover, the Council of Europe has developed a number of standards at the regional level. These include, among others, the 2008 *European Rules for juvenile offenders subject to sanctions or measures* (ERJO); and the adoption of the *Guidelines on Child-friendly Justice* in 2010. The Guidelines contain general elements of

child-friendly justice. One of these elements is for children to be informed and given advice from their first involvement with the juvenile justice system and throughout the justice process. In 2015, the European Parliament agreed with the Council of Europe to adopt the *Directive of the European Parliament and of the Council on procedural safeguards for children who are suspects or accused persons in criminal proceedings*.¹⁶ Case law of the European Court of Human Rights (ECtHR) contributes to a system that advances children's rights in the juvenile justice system. In particular, the use of Article 12 and 40 CRC had a clear impact on the case law of the ECtHR.

This part of the toolkit also contains a reflection on the development of adolescents. The intellectual abilities of young people develop markedly; adolescents are able to think in more advanced, abstract, efficient and effective ways. However, adolescents are only capable of understanding what it means to appear before a judge when they are around the age of 14. Delinquent children have a higher risk of experiencing a range of problems, such as mental health problems and a low IQ.

PREPARATION

To prepare this module it is recommended to follow the steps below.

- Read the text as provided in the Manual carefully.
- Make use of a PowerPoint presentation to show the questions and the answers (afterwards).
- In the case of not being able to use a PowerPoint presentation, make sure to print the questions out for every participant.

TIME SCHEDULE

To be able to teach the contents of this module, in a three-hour long class, it is recommended to use the following time schedule:

Time	Module	Content
5 minutes	Introduction	Introduction of module and learning objectives
	1.1 Participation of children in conflict with the law	
5 minutes		Presentation of key terms and issues
15 minutes		Discussion of assignment 1.1
	1.2 International standards	
15 minutes		Presentation of key issues
10 minutes		Preparation of assignment by participants
10 minutes		Discussion of assignment 1.2

¹⁶ Directive 2016/800/EU of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings.

20 minute break		
15 minutes	1.3 European standards	Presentation of key issues
10 minutes		Preparation of assignment by participants 1.3
10 minutes		Discussion of assignment
15 minutes	1.4 Adolescent development	Presentation of key issues
15 minutes		Preparation of assignment 1.4, question 1-3 by participants
15 minutes		Discussion of questions 1-3
20 minutes		Watch video and discuss question 4

ASSIGNMENT 1.1 - PARTICIPATION OF CHILDREN IN CONFLICT WITH THE LAW IN JUVENILE JUSTICE PROCEEDINGS

1.1.1 PARTICIPATION OF CHILDREN IN CONFLICT WITH THE LAW

PREPARATION

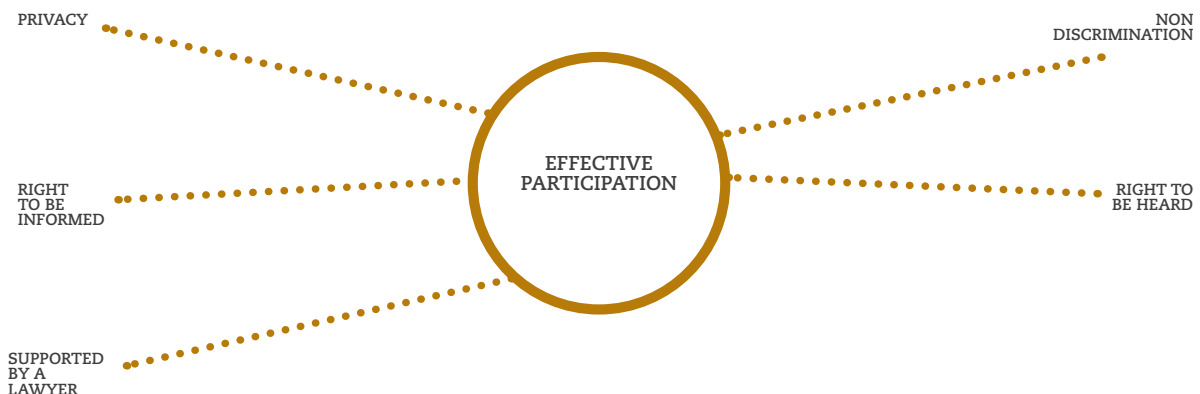
- Make use of a flipchart/white board/blackboard to make the mind-map.

QUESTION

This assignment can be carried out with all of the participants.

Draw a mind map, and in the middle, write; '**participation of children in conflict with the law in juvenile justice proceedings**'.

An example of a mind map can be found here:



ASSIGNMENT 1.2 - INTRODUCTION TO INTERNATIONAL STANDARDS IN JUVENILE JUSTICE

1.2.1 THE PEDAGOGICAL APPROACH OF ARTICLE 40 CRC

PREPARATION

- Read Article 40 CRC.
- Read the Directive of the European Parliament and of the Council on procedural safeguards for children who are suspects or accused persons in criminal proceedings, art. 9, 14, 15.
- Read the Guidelines on Child-friendly Justice.

The CRC approach towards children in conflict with the law is based on two assumptions.

1) The first one is that every child is entitled to be treated fairly, with full respect for his or her human dignity and his or her right to a fair trial, including the right to effective participation and fair justice proceedings. Assumption 1: fair treatment.

2) The second assumption is that every child is entitled to be treated in a special and child-friendly way, which, among others, means that every juvenile justice intervention should aim to reintegrate the child in society in which he or she can play a constructive role. Assumption 2: special and child-friendly treatment.

The pedagogical aspects are thus important: children in conflict with the law should be able to learn from their mistakes and should receive means to prevent reoffending. And this should all be done in a fair manner.

QUESTION

A. Take a closer look at Article 40 CRC and clarify which elements of this provision belong to which assumption.

B. Have a look at the *Directive of the European Parliament and of the Council on procedural safeguards for children who are suspects or accused persons in criminal proceedings*, art. 9, 14, 15. Which elements would you consider to be part of the first assumption (fair trial) and which the second assumption (child-specific treatment)?

C. Have a look at the *Guidelines on Child-friendly Justice*. Which elements would you consider to be part of the first assumption (fair trial) and which the second assumption (child-specific treatment)?

ANSWER

A.

Assumption 1:

Article 40 (2) of the CRC provides a list with due process rights that must in particular be awarded to every child alleged as, accused of or recognized as having infringed the penal law. These include (respect for):

- Principle of legality;

- Presumption of innocence;
- Prohibition of self-incrimination;
- Procedural safeguards (information on charges, legal or other appropriate assistance);
- Trial without delay by a competent, independent and impartial authority;
- Particular role of parents or legal guardians;
- Right to appeal;
- Free assistance of an interpreter;
- Respect for privacy 'at all stages of the proceedings';
- Effective participation (art. 40 jo. 12 CRC).

In addition, art. 40 (4) CRC refers to the principle of proportionality (i.e. every disposition must be proportionate given the circumstances of the case, incl. the seriousness of the offence and the level of culpability of the offender).

Assumption 2:

Article 40 (1) CRC grants every child subject to criminal justice proceedings treatment which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assumption of a constructive role in society. This, in conjunction with the educational nature of the wording 'reinforces the child's respect for the human rights and fundamental freedoms of others', could be referred to as the pedagogical objective of the juvenile justice system.

In addition, Article 40 (3) CRC recognizes that not every child can be regarded as criminally responsible for his or her behaviour (i.e. States parties should set a minimum age of criminal responsibility; see module II, theme 1). In addition, diversion should be used to prevent the child from being exposed to the potential negative impact of criminal justice proceedings and should enable a fast justice response to his or her behaviour, which is relevant for the effectiveness of the intervention. Art. 40 (3)(b) CRC provides that the human rights of the child and legal safeguards must be fully respected, which should be seen in light of assumption 1.

Furthermore, the position of parents has been recognized under art. 40(2) CRC which can be regarded as part of the recognition of the special status of the child.

B.

The guidelines contain general elements of child-friendly justice. One of these elements is to be informed and given advice from the first involvement with the juvenile justice system and throughout the justice process. Children should, for example, be informed of their rights, the juvenile justice system, its procedures and different procedural steps that have to be taken, the charges and the court dates. Parents should be informed when charges are brought before the court as well, but giving information to parents should not be an alternative to providing the child with information (art. 4). Other general elements of child-friendly justice are that children should be heard in closed court sessions and that professionals working with children should be trained in communicating with children from different age groups and that these professionals receive education on children's rights and needs and regarding proceedings that are adapted to children (art. 9, 14, 15).

C.

In this Directive, several child-specific provisions are laid down. The Commission states that from Article 6 ECHR follows that an accused person has the right to appear in person at the trial (recital 60). Therefore, Member States should take appropriate measures to promote that children are present at their trial and they should lay down practical arrangements regarding the presence of the child at the trial. Moreover, it is acknowledged that children should be 'treated in a manner appropriate to their age, maturity and level of understanding, taking into account any special needs, including communication difficulties, that they may have.' (recital 55). Trials against children should be organised away from the glare of public attention (art. 14) and

children have the right to be accompanied by an adult (art. 15). The right to legal assistance is laid down in Article 6 of the Directive. In the preamble it is stated that children should be assisted by a lawyer because they “are vulnerable and not always able to fully understand and follow criminal proceedings” (recital 25). Member States should arrange for a lawyer to assist the child and they should provide legal aid where necessary, to ensure that the child is effectively assisted by a lawyer (recital 25).

ASSIGNMENT 1.3 - INTRODUCTION TO EUROPEAN STANDARDS IN JUVENILE JUSTICE

1.3.1 EFFECTIVE PARTICIPATION

PREPARATION

- Read ECtHR 15 June 2004, App. No. 60958/00 (S.C. v. United Kingdom), para. 29.
- Provide or Print the ECtHR judgment to/for the participants

Read the following paragraph from ECtHR 15 June 2004, App. No. 60958/00 (S.C. v. United Kingdom) :

Para. 29:

“Article 6 (1) ECHR does not require that a child on trial for a criminal offence should understand or be capable of understanding every point of law or evidential detail. Given the sophistication of modern legal systems, many adults of normal intelligence are unable fully to comprehend all the intricacies and all the exchanges which take place in the courtroom: this is why the Convention, in Article 6(3)(c), emphasizes the importance of the right to legal representation. However, “effective participation” in this context presupposes that the accused has a broad understanding of the nature of the trial process and of what is at stake for him or her, including the significance of any penalty that may be imposed. It means that he or she, if necessary with the assistance of, for example, an interpreter, lawyer, social worker or friend, should be able to understand the general thrust of what is said in court. The defendant should be able to follow what is said by the prosecution witnesses and, if represented, to explain to his own lawyers his version of events, point out any statements with which he disagrees and make them aware of any facts which should be put forward in his defence”

QUESTION

What does the right to ‘effective participation’ of accused children in criminal justice proceedings under Article 6(1) ECHR mean in the context of your profession? And how could you incorporate this into your profession and daily work?

ANSWER

Open.

For further clarification in the context of youth court proceedings read, for example: T. Liefgaard, S.E. Rap & I. Weijers, ‘Procedural justice for juveniles - a human rights and developmental psychology perspective’, Chronicle IAYFJM, July 2011. See:

http://www.aimjf.org/download/Chronicle/English/The_Chronicle/English_Chronicle_2011_July.pdf

ASSIGNMENT 1.4 - JUVENILE JUSTICE AND ADOLESCENT DEVELOPMENT

1.4.1 MINIMUM AGE OF CRIMINAL RESPONSIBILITY

PREPARATION

- Prepare question 1 for your own country.
- Read General Comment No. 10, paras. 30-35.
- Read General Comment No. 10, paras. 36-39.
- Make sure that you can play the video 'JJC Young people's' in the classroom.
- Read, as an illustration, the good practice of the Czech Republic and MACR.

QUESTION

Consider the MACR within your own jurisdiction and consider the age at which:

- A child in conflict with the law can (and de facto may) be prosecuted.
- A child in conflict with the law can be prosecuted for certain offences only.
- A child in conflict with the law can be sentenced to a form of deprivation of liberty.

ANSWER

Open.

According to Article 40(3) CRC states parties 'shall seek to promote (...) the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law'. The CRC does not provide a specific minimum age. According to rule 4.1 of the Beijing Rules the MACR shall not be fixed at too low an age level, bearing in mind the facts regarding emotional, mental and intellectual maturity.

QUESTION

Read UN Committee on the Rights of the Child, General Comment No. 10, paras. 30-35 and answer the following questions:

What are, according to the UN Committee on the Rights of the Child, and as far as the following elements are concerned, the concrete implications of this CRC provision for the MACR at the domestic level?:

- A. Are states parties under the obligation to set a MACR.
- B. What should be the MACR (i.e. the internationally acceptable MACR)?
- C. If a states party has a higher MACR, is it allowed to lower it to twelve?
- D. What if there is no proof of age, for example, due to the absence of proper birth registration?

ANSWER

A.

'The Committee understands this provision as an obligation (...) to set a MACR' (para. 31).

B.

The Committee has taken the rather firm position that the MACR should be set at the age of twelve (para. 32). The Committee states that 'it can be concluded (from its recommendations to States-Parties – TL) that a [MACR] below the age of 12 years is considered (...) not to be internationally acceptable'.

C.

No, according to the Committee '[s]tates parties are encouraged to increase their lower MACR to the age of 12 years as the absolute minimum and to continue to increase it to a higher level' (emphasis added – TL; para. 32). It can thus be assumed that the Committee prefers a higher age level. This assumption can be confirmed by the Committee's call upon States Parties 'not to lower their MACR to the age of 12' (para. 33). In addition, it indicates that a higher MACR, for example 14 or 16 years of age, contributes to a juvenile justice system that fits what was proclaimed by the CRC.

D.

According to the Committee, a child should not be held criminally responsible if there is no proof of age and it cannot be established that the child is at or above the MACR (para. 35). See also para. 39. A child should have the benefit of the doubt, according to the Committee.

Under the CRC, in principle, all people under the age of 18 are regarded as children and are entitled to be treated in accordance with Article 40 CRC and other relevant CRC provisions. In general, European jurisdictions tend to draw the line between juvenile justice and criminal justice at 18. However, there are exceptions at both sides of the dividing line.

QUESTION

Read UN Committee on the Rights of the Child, General Comment No. 10, paras. 36-39 and answer the following question (see manual and annex):

The Committee has taken the position that exceptions to the upper age limit of 18 are not in conformity with the CRC. What is the Committee's main argument?

ANSWER

The Committee finds that all children who, where under the age of 18, should be entitled to be treated in conformity with the juvenile justice principles of the CRC. States are not allowed to distinguish between children in this regard, according to the Committee (paras. 36 and 37). Although, it does not refer to art. 2 of the CRC, the Committee actually takes the position that the application of adult penal law for children or the transfer of children to the adult court is a form of discrimination (see para. 38).

Note for trainers: you could have an additional discussion about the position of the CRC Committee in class and ask the participants to share their views on the pro's and con's of the recommendations of the CRC Committee.

QUESTION

Watch the video 'Young people's experience of the formal youth system' about Mick. Mick was 11 years old when he was brought to court. Then, read section in the Manual that shows how the Czech Republic deals with the minimum age of criminal responsibility and answer the following question.

As there is great concern about the treatment of the group of children (just) beneath the MACR, should the MACR be raised?

ANSWER

Open.

Further clarification: There is great concern about the treatment of the group of children who are (just) beneath the MACR. These children may very well commit criminal offences and be confronted with police and/or justice interventions. Sometimes these children are dealt with by social services, child protection or welfare interventions or other administrative proceedings, without respect for their human rights and without sufficient legal safeguards. Consequently, it is of crucial importance that children underneath the MACR are given, like everyone else, human rights based treatment.



CHAPTER 2

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General requirements

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Chapter 2. General requirements

LEARNING OBJECTIVES

Corresponding general objectives of training:

- To familiarise the participants with the international and European children's rights framework regarding juvenile justice (General objective 1).
- To make professionals aware of the importance of child participation in juvenile justice proceedings (General objective 2).

In this particular module, the participants gain knowledge and insight on the following topics:

- The participants will gain knowledge and understanding of the general requirements of the juvenile justice process in order to be child-friendly.
- The participants will become familiarised with legal safeguards in the juvenile justice system, in particular the right to legal and other appropriate assistance.
- The participants will become familiarised with the role of parents in the juvenile justice system.

SUMMARY

In order to be able to implement child-friendly procedures and practices in the juvenile justice system, it is important that procedures are adapted to the age, needs and level of maturity of children in conflict with the law. Article 40 (3) CRC encourages the creation of a specific juvenile justice system. The CRC Committee recommends specialised services at every stage of the juvenile justice process, starting with the police and ending with the implementation of sanctions and measures. The right to protection of privacy is a key element specific to children involved in the juvenile justice system and it is highly relevant for the effective participation of children in justice proceedings.

Specialised legal or other assistance is needed and regarded as a prerequisite of child-friendly justice in every part of the proceedings and it is relevant for the effective participation of children. The 'right to legal or other appropriate assistance' can be considered as a fundamental human right for both adults and children and is part of the right to a fair trial. According to the CRC Committee, the right to legal or other appropriate assistance is vital to the right of the young person to participate in the juvenile justice process. This assistance is not necessarily under all circumstances legal assistance, but it must be appropriate. Parental assistance can be seen as a form of 'other appropriate assistance'. Parents can play an important role in assisting the child in understanding the procedures and participating in the process. Contrary to lawyers, parents are in the position to provide emotional support to the child.

PREPARATION

To prepare this module it is recommended to follow the steps below.

- Carefully read the text as provided in the Manual.
- Make use of a PowerPoint presentation to show the questions and the answers (afterwards).
- In the case of not being able to use a PowerPoint presentation, make sure to print the questions out for every participant.

TIME SCHEDULE

To be able to teach the contents of this module in a two-and-a-half-hour class, it is recommended to use the following time schedule.

Time	Module	Content
5 minutes	Introduction	Introduction of module and learning objectives
	2.1 General requirements	
10 minutes		Presentation of key terms and issues
10 minutes		Preparation of assignment 2.1 by participants
5 minutes		Discussion of assignment
	2.2 Legal assistance	
15 minutes		Presentation of key issues
20 minutes		Preparation of assignment 2.2.1-2.2.2 by participants
20 minutes		Discussion of assignment 2.2.1-2.2.2
20 minutes		Watch video and discuss assignment 2.2.3
<i>10 minute break</i>		
15 minutes	2.3 The role of parents	Presentation of key issues
10 minutes		Preparation of assignment 2.3 by participants
10 minutes		Discussion of assignment 2.3

ASSIGNMENT 2.1 - ENTITLEMENT TO SPECIFIC PROCEEDINGS

2.1.1 SEPARATE JUVENILE JUSTICE SYSTEM

PREPARATION

- Read General Comment No. 10, paras. 90-95.

Take a closer look at General Comment No. 10, paras. 90-95 and answer the following questions.

QUESTION 1

Do you think you have enough specific knowledge regarding a separate juvenile justice system or do you wish to gain additional knowledge? If so, on which points? Share your thoughts in pairs.

ANSWER

Open.

QUESTION 2

To what extent are states parties compelled to draw up separate juvenile justice system or require a certain level of specialisation for professionals? Share your thoughts in pairs and discuss what specialisation means in relation to child-friendly justice proceedings.

ANSWER

In essence, this is recommended, but the Committee leaves room for situations in which this is not directly feasible (para. 92-94). The rest of the discussion is open.

Note for trainers: it might be good to ask the participants (in pairs) to share their main findings with the group.

ASSIGNMENT 2.2 - RIGHT TO LEGAL OR OTHER ASSISTANCE

2.2.1 LEGAL OR OTHER APPROPRIATE ASSISTANCE

PREPARATION

- Read the judgments of ECtHR 27 November 2008, no. 36391/02 (*Salduz v. Turkey*) para. 63 and ECtHR 11 December 2008, no. 4268/04 (*Panovitz v. Cyprus*) para. 72.
- Provide or print the ECtHR judgments for the participants.

QUESTION 1

To what extent should 'legal or other appropriate assistance' be free of charge? See also the Beijing Rules, the Guidelines for Action on Children in the Juvenile Justice System and General Comment No. 10.

ANSWER

Guidelines for Action on Children in the Juvenile Justice System 16: Priority should be given to setting up agencies

and programmes to provide legal and other assistance to children, if needed, free of charge, such as interpretation services, and it should be insured that the right of every child to have access to such assistance from the moment that the child is detained is respected in practice.

See also General Comment no. 10, para. 49: It is left to the discretion of states parties to determine how this assistance is provided, but it should be free of charge. See also Rule 15.1 Beijing Rules: Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.

The Committee on the Rights of the Child is of the opinion that legal assistance should be free to children (CRC Committee, Concluding Observations: St. Vincent and the Grenadines (UN Doc. CRC/C/15/Add.184,2002), para. 53.

Thus, the Committee on the Rights of the Child seems to be stricter on this point. In other documents it is left to the discretion of States. Interpretation services should always be paid for by the State (see art. 40 CRC and see also below).

In the case of *Salduz v. Turkey*, the European Court considered that Article 6(1) ECHR was violated, since a 17-year-old suspect did not have access to a lawyer throughout his five days in police custody. The Court found that: “in order for the right to a fair trial under Article 6(1), to remain sufficiently ‘practical and effective’, access to a lawyer should be provided, as a rule, from the first interrogation of a suspect by the police [...]” (ECtHR 27 November 2008, no. 36391/02 (*Salduz v. Turkey*)). See also ECtHR 11 December 2008, no. 4268/04 (*Panovitz v. Cyprus*), in which the *Salduz* judgment was confirmed.

QUESTION 2

Read the statements below, choose one statement. Try to write down your arguments in favour and against. Share in small groups and explain your reasoning behind the position you take. In developing and supporting your position, you should consider ways in which the statement might or might not hold true and explain how these considerations shape your position.

- i. A legal representative should be free of charge for children.
- ii. Children should not be able to waive their right of access to a lawyer.
- iii. Parents should always be present during police custody.
- iv. Interrogations should always be recorded.

ANSWER

Open.

QUESTION 3

Check how legal assistance is regulated by the EU Directive and look at the questions raised above.

ANSWER

Open.

2.2.2 THINK-PAIR-SHARE

QUESTION

Individually consider the right to assistance within the legal procedures in your own jurisdiction, share answers in pairs and exchange with the group.

- i. The scope (in theory and practice) of this right in context of police interrogations.
- ii. The scope (in theory and practice) of this right in context of diversion methods.
- iii. The scope (in theory and practice) of this right in context of the trial.
- iv. The scope (in theory and practice) of this right in context of being placed in a closed institution (either as a form of pre-trial or post-trial detention).

ANSWER

Open.

2.2.3 NON-LEGAL ASSISTANCE

PREPARATION

- Read General Comment No. 10, paras. 49 and 50.
- Make sure that you can play the video 'Young people's experience of the formal youth system' in the classroom.
- Read the Directive of the European Parliament and of the Council on procedural safeguards for children who are suspects or accused persons in criminal proceedings.

First, watch the video 'Young people's experience of the formal youth system' about Louise. Louise talks about the role of her social worker during her time in the Juvenile Justice Centre.

QUESTION 1

Does Article 40 CRC give preference to legal assistance over non-legal assistance (e.g. social worker), according to the Committee on the Rights of the Child? What are your views on this?

ANSWER

No, it is the quality of the representation that is important. According to General Comment no. 10, para. 49, the CRC does require that the child be provided with assistance, which is not necessarily under all circumstances legal but it must be appropriate. The Committee recommends the State parties provide as much as possible for adequate trained legal assistance, such as expert lawyers or paralegal professionals. Other appropriate assistance is possible (e.g. social worker), but that person must have sufficient knowledge and understanding of the various legal aspects of the process of juvenile justice and must be trained to work with children in conflict with the law.

QUESTION 2

To what extent do the European standards allow for the waiver of legal representation by children?

ANSWER

According to the Directive of the European Parliament and of the Council on procedural safeguards for children who are suspects or accused persons in criminal proceedings, children should not be able to waive their rights of access to a lawyer, in the case of police interrogations or deprivations of liberty.

The ECtHR has also ruled that suspects should always have access to a lawyer before the first police interrogation.

See also: EU Access to a Lawyer Directive 2013/48/EU. Article 3 (3) states that access to a lawyer includes the right of suspects to meet and communicate with the lawyer in private, including before the first interrogation, the presence and effective participation of the lawyer during questioning and the lawyer's presence during the investigation and evidence gathering.

QUESTION 3

How is this issue dealt with in your own jurisdiction?

ANSWER

Open.

ASSIGNMENT 2.3 - THE ROLE OF PARENTS

2.3.1 THE ROLE OF PARENTS

PREPARATION

- Read General Comment No. 10, paras. 51-55.
- Read Rule 15 and its commentary of the Beijing Rules.
- Read the Directive of the European Parliament and of the Council on procedural safeguards for children who are suspects or accused persons in criminal proceedings, art. 15.
- Read Article 15 of the Guidelines on Child-friendly Justice.

Article 40(2) CRC does not contain an explicit right of the child to receive assistance by his/her parents. Nevertheless, the UN Committee on the Rights of the Child clearly recognises the importance of the parents' involvement in juvenile justice proceedings. The Committee addresses this issue in its commentary on Article 40(2)(b)(iii) CRC.

QUESTION 1

How do you involve parents in the juvenile justice proceedings and how does this relate to the autonomy of the minor?

ANSWER

According to the Beijing Rules, the involvement of the parents in juvenile justice proceedings is not a right of the child in conflict with the law, but a right of the parents. Rule 15.2 stipulates that the parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. The parents may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.

Parents or legal guardians should be present at the proceedings, because they can provide general psychological and emotional assistance to the child. The presence of parents does not mean that parents can act in defence of the child or be involved in the decision-making process. However, the judge or competent authority may decide, at the request of the child or of his/her legal or other appropriate assistance or because it is not in the best interests of the child, to limit, restrict or exclude the presence of the parents from the proceedings (par 53). The Committee recommends that states parties explicitly provide by law for the maximum possible involvement of parents or legal guardians in the proceedings against the child. This involvement shall in general contribute to an effective response to the child's infringement of the penal law. To promote parental involvement, parents must be notified of the apprehension of their child as soon as possible (par. 54).

All in all, the Committee acknowledges the importance of the involvement of parents in the juvenile justice proceedings, but the underlying reasons appear to be mainly the well-being of the child and the effectiveness of the response to the child's law-breaking behaviour rather than the fairness of the trial.

QUESTION 2

To what extent do the European standards involve parents in the juvenile justice proceedings?

ANSWER

This is also confirmed on the European level. The Guidelines on Child-friendly Justice of the Council of Europe (2010) require that, in case of children being arrested and taken into custody, children and their parents should be promptly and adequately informed of the reason for which the child has been taken into custody (para. IV, A.1).

The Directive of the European Parliament and of the Council on procedural safeguards for children who are suspects or accused persons in criminal proceedings provides that children should benefit from the assistance of parents, unless this would be contrary to the child's best interests (art. 15(2a)). The holder of parental responsibility should be provided with the same information the child receives, as soon as possible (art. 5(1)). Moreover, the child has the right to be accompanied by a holder of parental responsibility or by another appropriate adult during court hearings in which they are involved (art. 15(1-2)).



CHAPTER 3

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Effective participation

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Chapter 3. Effective participation

LEARNING OBJECTIVES

Corresponding general objectives of training:

- To familiarise the participants with the international and European children's rights framework regarding juvenile justice (General objective 1).
- To make professionals aware of the importance of child participation in juvenile justice proceedings (General objective 2).

In this particular module the participants gain knowledge and insight on the following topics:

- The participants will gain knowledge and understanding on the right to information and its underpinnings in international and European law and standards.
- The participants will gain knowledge and understanding on how to implement the right to information in the different phases of the juvenile justice process.
- The participants will gain knowledge and understanding on the right to be heard and its underpinnings in international and European law and standards.
- The participants will gain knowledge and understanding on the implementation of the right to be heard in the different phases of the juvenile justice process.
- The participants will gain knowledge and understanding on the implications of effective participation and how to implement this principle in practice.

SUMMARY

The core focus of this chapter is the right to effective participation. In order for children to effectively participate in juvenile justice proceedings, two rights are of vital importance: the right to information and the right to be heard. The right to information entails that children in conflict with the law are informed about the charges that are brought against them, the juvenile justice process as a whole and of the possible measures that can be taken. It is important that the child receives the information in a language he or she understands, preferably orally and it should be directed towards him or her personally, and not through his parents. As well as the right to be informed, juveniles have the right to be heard. Both rights are an important part of protecting their right to effective participation in juvenile justice proceedings. Children in conflict with the law should have the opportunity to give their views in every phase of the juvenile justice process and their views should be weighed taking into account their age and maturity. Participation can be seen as a prerequisite for a fair trial and it can help the young person accept the final decision rendered in a case.

PREPARATION

To prepare this module it is recommended to follow the steps below.

- Read the text as provided in chapter 3 of the Manual carefully.
 - Make use of a PowerPoint presentation to show the questions and afterwards the answers.
 - In the case of not being able to use a PowerPoint presentation, make sure you print the questions out for every participant.
-

TIME SCHEDULE

To be able to teach the contents of this module, in a two-hour long class, it is recommended to use the following time schedule.

Time	Module	Content
5 minutes	Introduction	Introduction of module and learning objectives
	3.1 Right to information	
15 minutes		Presentation of key terms and issues
15 minutes		Preparation of assignment 3.1 by participants
20 minutes		Discussion of assignment 3.1
<i>15 minute break</i>		
	3.2 Right to be heard	
15 minutes		Presentation of key issues
15 minutes		Preparation of assignment 3.2 by participants
20 minutes		Discussion of assignment 3.2

ASSIGNMENT 3.1 - RIGHT TO INFORMATION

3.1.1 THE RIGHT TO INFORMATION

The assignment can be prepared by the participants in small groups. Each group can cover one phase of the juvenile justice process (four groups). Afterwards, each group’s outcomes can be shared with all of the participants

PREPARATION

- Read section 3.1 of chapter 3.
- Make sure that you can play the video ‘Community-based restorative justice’ in the classroom.
- To prepare the assignment make sure that you can divide the group of participants into four subgroups and that the groups will have space in the room to sit together.
- Prepare the assignment for your own country; pay attention to the key professionals involved in providing information to the child in every phase of the process, which information is or should be communicated and how parents are involved in every phase.
- Make use of a flipchart/white board/blackboard to write down the key elements of the answer to the questions, so that the participants are provided with an overview of the answers.

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QUESTION

Watch the video 'Community-based restorative justice' about Gareth and answer the following questions.

- A. Define for every phase in the juvenile justice process (phase of arrest and police interrogation, phase of court proceedings and trial, phase of disposition and phase of pre- and post-trial detention) the key professionals who should provide the child with information.
- B. Determine what kind of information should be given to the child in each phase in the juvenile justice process, as a minimum, on the basis of the international standards.
- C. Discuss how, when and by which professional information is given to parents in every phase of the process and assess whether this is done in a manner that is in line with the international standards. How can practice be improved in this regard?

ANSWER

These questions can be answered based on the discussion and on the current practices in your own country.

ASSIGNMENT 3.2 - RIGHT TO BE HEARD

3.2.1 EFFECTIVE PARTICIPATION

This assignment can be prepared individually or in small groups and afterwards discussed with the whole group.

PREPARATION

- Read section 3.2 of chapter 3.
- Read Article 40 CRC (see p. 14 of the Manual).
- Read General Comment No. 10, paras. 40-67 (see annex 3).
- Read Rule 14(2) of the Beijing Rules and its commentary (see annex 1).
- EU- Directive of the European Parliament and of the Council on procedural safeguards for children who are suspects or accused persons in criminal proceedings (see annex 4).
- Guidelines on Child-Friendly justice 2010 (see annex 5).

QUESTION

The right to effective participation for the child in the justice proceedings is not explicitly mentioned in Article 40(2) CRC. Nevertheless, the UN Committee on the Rights of the Child emphasizes in General Comment No. 10 that this is an essential requirement that children receive a fair trial; this is a right that is directly linked to Article 12 CRC which embodies the right of every child to be heard, among others, in judicial or administrative procedures.

The questions can be prepared in pairs. The answers can be shared with the whole group and can also be shown in a PowerPoint presentation. Make pairs and ask each other the following questions (interview):

- A. How does Article 12(2) CRC relate to the right to effective participation and how does it affect the way the other rights set out in Article 40(2) CRC should be implemented? Choose one of the guarantees and discuss the implications of the right to effective participation.
- B. Read Article 4 of the EU-Directive. What are, according to the Directive, the implications of the child's right to effective participation for the courtroom procedures and practices?

ANSWER

A.

The right to be heard can be considered an integral part of the right to effective participation in the proceedings. According to the Committee, the child must be given the opportunity to express his/her views freely, and those views should be given due weight in accordance with the age and maturity of the child, throughout the juvenile justice process. This means that the child, in order to effectively participate in the proceedings, must be informed, not only of the charges, but also of the juvenile justice process as such and of the possible measures (General Comment No. 10, para. 44). The child should be given the opportunity to express his/her views concerning the (alternative) measures that may be imposed, and the specific wishes or preferences he/she may have in this regard should be given due weight (General Comment No. 10, para. 45).

For example: the right to prompt and direct information of the charge. As to this guarantee, the Committee is of the opinion that providing the parents or legal guardians with the information of the charge should not be an alternative to communicating this information to the child. The most appropriate situation is given if both the child and the parents or legal guardians receive the information in such a way that they can understand the charge(s) and the possible consequences (General Comment No. 10, para. 48).

B.

The Directive of the European Parliament and of the Council on procedural safeguards for children who are suspects or accused persons in criminal proceedings provided that children should be informed about their rights promptly (art. 4(1)). Specifically, the following issues are mentioned:

- (a) The information to be given to a holder of parental responsibility.*
- (b) The right of access to a lawyer.*
- (c) The assistance by a lawyer.*
- (d) The individual assessment.*
- (e) The access to medical examination.*
- (f) The limitation of detention and use of alternative measures.*
- (g) The specific treatment in detention.*
- (h) The protection of privacy.*
- (i) The right to be accompanied by an adult during the court hearings.*
- (j) The right to appear in person at the trial.*
- (k) Legal aid.*

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CHAPTER 4

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Communication skills

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Chapter 4. Communication skills

LEARNING OBJECTIVES

Corresponding general objectives of training:

- To familiarise the participants with the international and European children's rights framework regarding juvenile justice (General objective 1).
- To make professionals aware of the importance of child participation in juvenile justice proceedings (General objective 2).
- To teach professionals skills to enhance child participation (General objective 3).

In this particular module the participants gain knowledge and insight in the following topics:

- The participants will gain knowledge and understanding on how to communicate effectively with children, from a non-legal perspective.
- The participants will gain knowledge and understanding on the preferred setting and atmosphere in which to communicate with children.
- The participants will gain knowledge and understanding on conversation techniques that enhance the participation of children.
- The participants will gain knowledge and understanding on adapting language to children and providing explanations and clarifications to children.

SUMMARY

In this chapter several aspects on how to communicate effectively with children in the child justice context are explained. First, the importance of the setting in which one talks with a child is discussed. The issues of building trust with the child and the importance of confidentiality are explained. Communicating with children is more effective when the child feels safe, in relation to the conversation partner(s). Second, several conversation techniques are discussed that help facilitate the conversation between a child and an adult and can help increase mutual understanding between them. Third, the importance of adapting language to the understanding of children and to provide the child with explanations and clarifications is explained. Explanations are of particular importance, because these relate to the right to information of the child and it enables the child to give his informed views in a case.

PREPARATION

To prepare this module it is recommended to follow the steps below.

- Read the text as provided in chapter 4 of the Manual carefully.
 - Make use of a PowerPoint presentation to show the questions and afterwards the answers.
 - In the case of not being able to use a PowerPoint presentation, make sure to print the questions out for every participant.
-

TIME SCHEDULE

To be able to teach the contents of this module, in a two-hour long class, it is recommended to use the following time schedule.

Time	Module	Content
5 minutes	Introduction	Introduction of module and learning objectives
	4.1 Setting	
10 minutes		Presentation of key terms and issues
10 minutes		Preparation of assignment 4.1 by participants
10 minutes		Discussion of assignment 4.1
	4.2 Conversation techniques	
10 minutes		Presentation of key issues
20 minutes		Preparation of assignment 4.2 by participants
20 minutes		Discussion of assignment 4.2
<i>10 minute break</i>		
	4.3 Language use and explanations	
10 minutes		Presentation of key issues
15 minutes		Discussion of assignment 4.3 with the group

ASSIGNMENT 4.1 - SETTING

4.1.1 CONFIDENTIALITY

The following questions relate to the case displayed below. Let the participants discuss the questions in pairs or small groups and share the outcomes with the whole group.

PREPARATION

- Read Section 4.1 of chapter 4.
- To prepare the assignment make sure that you can divide the group of participants into pairs.
- Make use of a PowerPoint presentation to show Case 1 and the accompanying questions to the participants.
- In the case of not being able to use a PowerPoint presentation, make sure to print Case 1 and the accompanying questions out for every participant.

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CASE 1: BRAHIM IS CHARGED WITH SEXUAL ASSAULT

A 16-year-old boy, Brahim, is charged with sexual assault of a 14-year-old girl, Dana, and publicising/spreading sexually explicit photographs of the victim through social media. Brahim does not deny the fact that he had sexual intercourse with Dana, but he claims that she consented to have sex with him. Only after Dana reported to the police that she was sexually assaulted, did Brahim publish the photographs. Again, he claims that the photographs were taken with the full consent of Dana.

Brahim is an average student who is in his last year of secondary education. He has been involved with the police once before, for property violence and causing nuisance in his neighbourhood. He was interrogated and charged by the police, but the prosecutor diverted him by imposing 20 hours of community service on him. Brahim's parents are immigrant workers from Algeria. Brahim and his older brother and younger sister, are born and have lived in country X their whole lives. The family professes the Islamic faith.

Brahim has to appear before the juvenile court judge. He is accompanied by his older brother (18 years old) and his mother to the hearing. A state funded lawyer represents Brahim. At the hearing Brahim will be questioned by the judge about the charges that are brought against him and about his personal circumstances. Before the hearing commences, the lawyer addresses the judge about the difficulties Brahim has with being questioned in front of his relatives. Brahim's father insisted that his older brother went with him and his mother wanted to come as well. The lawyer claims that Brahim will not be able to speak freely in the presence of his family.

QUESTION

- A. Explain the legal status of parents and other relatives at a juvenile criminal court hearing in your jurisdiction (e.g. are they entitled to be present?, can parents or other relatives be expelled from (parts of) the hearing, etc.?).
- B. What is the common practice with regard to the presence of parents and other relatives at the court hearing in your jurisdiction?
- C. You have to advise the judge on this matter. What would you advise him or her to do in this case? Take into account the legal framework of your jurisdiction as well as notions concerning confidentiality, the right to be heard and effective communication.

ANSWER

A.

Open

B.

Open

C.

If it is possible in your jurisdiction it is advisable to hear B. separate from his mother and brother. Because of the sensitive nature of the alleged offence, B. would be able to speak more freely alone to the judge, compared to in the presence of his relatives. The judge can ask the mother and brother to leave the room for 10 minutes, because he would like to hear B.'s voice privately. This way, B. is in the position to speak more openly, if he wishes to do so, and the judge is in the position to receive a less biased statement from B. It is important that the judge discusses with B. which

information will be given to his mother and brother once they return. The judge can briefly summarize B.'s statement in general terms and ask whether he agrees to tell his relatives in that way.

Note for trainer: you could also pick and focus on another phase of the justice process or restorative justice / mediation process. The Brahim case can be adjusted accordingly.

ASSIGNMENT 4.2 - CONVERSATION TECHNIQUES

4.2.1 CONVERSATION TECHNIQUES

This assignment relates to the case displayed below. Have the participants prepare the assignment in pairs and share the outcome with the whole group. It is possible to share the outcomes by means of a role-play. If you would like the participants to present the results by means of a role-play, you do not have to inform the participants beforehand about this. When everyone has completed the questions on paper, you can ask two or more participants to play out what they have written down. One participant plays the girl (minor suspect) and another participant plays the prosecutor in the case. It is possible to change the actors for each part of the conversation (1, 2 and 3, see below), so that more participants will be involved.

PREPARATION

- Read section 4.2 of chapter 4.
- To prepare the assignment make sure that you can divide the group of participants into pairs.
- Make use of a PowerPoint presentation to show Case 2 and the accompanying questions to the participants.
- In the case of not being able to use a PowerPoint presentation, make sure to print Case 2 and the accompanying questions out for every participant.

CASE 2: MARIA HAS BEEN FIGHTING AT SCHOOL

A 14-year-old girl, Maria, is charged with violence against a classmate in school. During a break Maria beat and pulled another girl's hair in the schoolyard. The victim has several bruises and a severe headache after the fight. The victim reported the assault to the police. Maria is summoned to come to the prosecutor, who will have to decide how to proceed in this case. Maria does not understand why she was charged. She admits to being guilty, but does not feel that fighting at school is such a problem. Maria feels that the case is being exaggerated.

QUESTION

Have a look at the *goal oriented matrix* in the Manual. You are the prosecutor (or take a different position, for example: the mediator) who has to have this conversation with the girl. Prepare this conversation by drawing up:

- A. The introduction you would give to the girl (e.g. the aim of the conversation).
- B. The questions that you would ask her (e.g. about the offence, her motive and her personal situation).
- C. The end of the conversation (e.g. how to proceed).

ANSWER

A.

Elements that should be included in the introduction:

- Introduce yourself and the other participants.
- Explain the reason for the hearing.
- Explain the order of the proceedings that will be followed.
- Explain what is expected from the different participants.
- Explain what will be decided at the hearing.
- “Do you have any questions so far about something you don’t understand?”

B.

Possible questions that can be asked:

- “Tell me about what happened on day X.?”
- “Can you tell me about why it happened?”
- “How do you feel about what happened? How did you feel about it right after? How do you feel about it now?”
- “How do you get along with the victim now?”
- “How are things going at home/at school?”
- “Do you feel that you get angry a lot or fight with other people? Can you tell about the problems you experience when you get angry?”
- “What would according to you be a solution to your problem / in this case?”
- “Do you want to add anything to what we have discussed so far?”

C.

End of the conversation:

- Summarise your findings on the basis of what you have heard from the girl.
- Explain how you are going to proceed: dismiss the case, impose a certain disposal, send the case to a judge, etc.
- Explain why you take this decision and how you take into account the position of the girl.
- Explain what the consequences of your decision will be for the girl.
- Explain whether appeal is possible and how this should be filed.
- “Do you have any questions before you leave?”

ASSIGNMENT 4.3 - LANGUAGE USE AND EXPLANATIONS

4.3.1 JUDICIAL TERMS

Professionals often use judicial terms and oftentimes they are not aware of the fact that a child does not understand the strict sense of a certain term. In this assignment participants have to think of the terms they use in their daily practice and possible common language explanations.

PREPARATION

- Read section 4.3 of chapter 4.
- Make use of a flipchart/white board/blackboard to construct the mind-map.

QUESTION

- A. Draw a mind-map of the judicial terms and jargon that the participants use in their daily practice.
- B. Pick the five most commonly used terms and formulate an explanation of these terms that is easy to understand and uses common language.

ANSWER

These questions can be answered based on the discussion and on the current practices in your own country



CHAPTER 5

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Follow-up and support

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Chapter 5. Follow-up and support

LEARNING OBJECTIVES

Corresponding general objectives of training:

- To familiarise the participants with the international and European children's rights framework regarding juvenile justice (General objective 1).
- To make professionals aware of the importance of child participation in juvenile justice proceedings (General objective 2).
- To teach professionals skills to enhance child participation (General objective 3).

In this particular module the participants gain knowledge and insight on the following topics:

- The participants will gain knowledge and understanding on incorporating the voice of the child in decisions taken in the juvenile justice system and the underpinnings in international and European law and standards.
- The participants will gain knowledge and understanding on how to incorporate the voice of the child in practice, when decisions are taken in different phases of the juvenile justice process.
- The participants will gain knowledge and understanding on clarifying decisions to the juvenile and the underpinnings in international and European law and standards.
- The participants will gain knowledge and understanding on how to clarify decisions to children, and the importance of adapting the clarification to the age and maturity of the child.

SUMMARY

In this chapter the follow-up and support regarding decisions that are taken in the juvenile justice process are the central issue to be discussed. First, the importance of incorporating and giving weight to the views of the child in decisions that are taken will be explained. Incorporating the voice of children implies that their views are taken seriously by the decision-maker and this in turn affects the child's perception of the procedure and its outcome. The juvenile will perceive both the procedure and its outcome as more fair and this will contribute to his or her reintegration. Second, it will also discuss how to clarify decisions to children in the different stages of the juvenile justice process, in a manner that takes into account the age and the maturity of the child.

PREPARATION

To prepare this module it is recommended to follow the steps below.

- Carefully read the text as provided in chapter 5 of the Manual.
 - Make use of a PowerPoint presentation to show the questions and afterwards the answers.
 - In the case of not being able to use a PowerPoint presentation, make sure to print the questions out for every participant.
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- Find a judgment which covers one of the different stages of the juvenile justice process of your own country; make use of a PowerPoint presentation to show the judgement to the participants and in the case of not being able to use a PowerPoint presentation, make sure to print the judgment out for every participant.

TIME SCHEDULE

To be able to teach the contents of this module, in a two-hour long class, it is recommended to use the following time schedule.

Time	Module	Content
5 minutes	Introduction	Introduction of module and learning objectives
	5.1 Incorporating the voice of the child	
10 minutes		Presentation of key terms and issues
20 minutes		Preparation of assignment 5.1 by participants
20 minutes		Discussion of assignment 5.1
<i>15 minute break</i>		
	5.2 Clarifying the decision	
10 minutes		Presentation of key issues
20 minutes		Preparation of assignment 5.2 by participants
20 minutes		Discussion of assignment 5.2

ASSIGNMENT 5.1 - INCORPORATING THE VOICE OF THE CHILD IN DECISIONS

5.1.1 INCORPORATING THE VOICE OF CHILDREN

PREPARATION

- Read section 5.1 of chapter 5.
- To prepare the assignment make sure that you can divide the group of participants into four subgroups and that the groups will have space in the room to sit together.
- Prepare the assignment for your own country; take into account which decisions can be taken and how decisions are delivered to the child.
- Make use of a flipchart/white board/blackboard to write down the key elements of the answer to the questions, so that the participants are provided with an overview of the answers.

QUESTION 1

The participants can prepare question 1 in small groups. Each group can cover one phase of the juvenile justice process (four groups). Afterwards, each group's outcomes can be shared with the rest of the participants.

- A. Determine the decisions that can be taken at every phase of the juvenile justice process (phase of arrest and police interrogation, phase of court proceedings and trial, phase of disposition and phase of pre- and post-trial detention).
- B. Explain how each decision is delivered to the child in practice (e.g. orally, in writing, through a representative, etc.).
- C. Discuss whether improvements can be made in the manner in which decisions are delivered to children.

ANSWER

These questions can be answered based on the discussion and on the current practices in your own country.

QUESTION 2

This question can be prepared individually and the outcomes can be discussed with the whole group afterwards.

Why is it important to incorporate the voice of children?

- A. Compile a list of arguments in favour of incorporating the voice of children in decisions taken in the juvenile justice process on the basis of international law, standards and scientific research outcomes.
- B. Rank the arguments to your personal preference (i.e. the argument that you find most convincing first and from there continue listing until you reach the least convincing argument) and explain your ranking to the group.

ANSWER

A.

Possible answers:

- In Article 12 CRC it is stated that the views of the child should be weighed in accordance with his age and level of maturity. This implies that the views of the child in conflict with the law should be incorporated in order to make this assessment and, to some extent, these views should have some weight in the final decision.
- The CRC Committee states the following: 'Since the child enjoys the right that her or his views are given due weight, the decision maker has to inform the child of the outcome of the process and explain how her or his views were considered. The feedback is a guarantee that the views of the child are not only heard as a formality, but are taken seriously' (General Comment No. 12, para. 45).
- When the young person is able to give his or her views and these views are taken seriously and then this is communicated to the child in a manner that he or she understands, it is more likely that the final decision is accepted and abided by to a greater extent.

B.

Open.

ASSIGNMENT 5.2 - CLARIFYING THE DECISION

5.2.1 CLARIFYING THE DECISION

The following questions relate to the issue of how to clarify the decision to the child. Let the participants discuss the question in pairs or small groups and share the outcomes with the whole group. It is possible to share the outcomes of Question 2 by means of a role-play. If you would like the participants to present the results by means of a role-play, you do not have to inform the participants beforehand about this. When everyone has completed the question on paper, you can ask two or more participants to play out what they have written down. One participant plays the child and another participant plays the decision-maker in the case.

PREPARATION

- Read section 5.2 of chapter 5.
- Make sure that you can play the video 'A young care leaver's experience of the police' in the classroom.
- To prepare the assignment make sure that you can divide the group of participants into pairs.
- Make use of a PowerPoint presentation to show the judgement and the accompanying questions to the participants.
- In the case of not being able to use a PowerPoint presentation, make sure to print the judgment and the accompanying questions out for every participant.

QUESTION 1

Watch the video 'A young care leaver's experience of the police' about Blair and answer the following questions.

Judicial verdicts/judgments can be delivered in several different ways.

- A. Discuss whether a judgment should be delivered orally, in writing or both.
- B. Think of examples from your own jurisdiction about how to make the judgment (more) child-friendly.

ANSWER

These questions can be answered based on the discussion and the current practices in your own country.

QUESTION 2

Find a judgment or decision which covers one of the different stages of the juvenile justice process of your own country.

Formulate in plain and understandable language how you would clarify the judgment /decision as displayed in this case to a juvenile to which this judgment was delivered. Reflect on this with the group in a (small) group discussion.



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Annexes

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ANNEX 1: UNITED
NATIONS CONVENTION
ON THE RIGHTS OF THE
CHILD

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Convention on the Rights of the Child

**Adopted and opened for signature, ratification and accession by General Assembly
resolution 44/25 of 20 November 1989**

entry into force 2 September 1990, in accordance with article 49

Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) ; and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, 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 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. 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.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. 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, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

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

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their

own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. 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.
2. 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.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; or
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. 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, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development
4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
 - (a) To diminish infant and child mortality;
 - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
 - (d) To ensure appropriate pre-natal and post-natal health care for mothers;
 - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
 - (f) To develop preventive health care, guidance for parents and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy

throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) 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;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, 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 unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) 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 his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

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.

Article 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.

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

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) 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 in the preparation and presentation of his or her defence;

(iii) 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, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) 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;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

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:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) 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. 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.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State party; or

(b) International law in force for that State.

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute

a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any

amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.

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ANNEX 2: UNITED
NATIONS STANDARD
MINIMUM RULES FOR
THE ADMINISTRATION
OF JUVENILE JUSTICE
("THE BEIJING RULES")

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United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")

Adopted by General Assembly resolution 40/33 of 29 November 1985

Part one

GENERAL PRINCIPLES

1. Fundamental perspectives

1.1 Member States shall seek, in conformity with their respective general interests, to further the well-being of the juvenile and her or his family.

1.2 Member States shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible.

1.3 Sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law.

1.4 Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.

1.5 These Rules shall be implemented in the context of economic, social and cultural conditions prevailing in each Member State.

1.6 Juvenile justice services shall be systematically developed and coordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes.

Commentary

These broad fundamental perspectives refer to comprehensive social policy in general and aim at promoting juvenile welfare to the greatest possible extent, which will minimize the necessity of intervention by the juvenile justice system, and in turn, will reduce the harm that may be caused by any intervention. Such care measures for the young, before the onset of delinquency, are basic policy requisites designed to obviate the need for the application of the Rules.

Rules 1.1 to 1.3 point to the important role that a constructive social policy for juveniles will play, inter alia, in the prevention of juvenile crime and delinquency. Rule 1.4 defines juvenile justice as an integral part of social justice for juveniles, while rule 1.6 refers to the necessity of constantly improving juvenile justice, without falling behind the development of progressive social policy for juveniles in general and bearing in mind the need for consistent improvement of staff services.

Rule 1.5 seeks to take account of existing conditions in Member States which would cause the manner of implementation of particular rules necessarily to be different from the manner adopted in other States.

2. Scope of the Rules and definitions used

2.1 The following Standard Minimum Rules shall be applied to juvenile offenders impartially, without distinction of any kind, for example as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.

2.2 For purposes of these Rules, the following definitions shall be applied by Member States in a manner which is compatible with their respective legal systems and concepts:

(a) A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult;

(b) An offence is any behaviour (act or omission) that is punishable by law under the respective legal systems;

(c) A juvenile offender is a child or young person who is alleged to have committed or who has been found to have committed an offence.

2.3 Efforts shall be made to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed:

(a) To meet the varying needs of juvenile offenders, while protecting their basic rights;

(b) To meet the need of society;

To implement the following rules thoroughly and fairly.

Commentary

The Standard Minimum Rules are deliberately formulated so as to be applicable within different legal systems and, at the same time, to set some minimum standards for the handling of juvenile offenders under any definition of a juvenile and under any system of dealing with juvenile offenders. The Rules are always to be applied impartially and without distinction of any kind.

Rule 2.1 therefore stresses the importance of the Rules always being applied impartially and without distinction of any kind. The rule follows the formulation of principle 2 of the Declaration of the Rights of the Child.

Rule 2.2 defines "juvenile" and "offence" as the components of the notion of the "juvenile offender", who is the main subject of these Standard Minimum Rules (see, however, also rules 3 and 4). It should be noted that age limits will depend on, and are explicitly made dependent on, each respective legal system, thus fully respecting the economic, social, political, cultural and legal systems of Member States. This makes for a wide variety of ages coming under the definition of "juvenile", ranging from 7 years to 18 years or above. Such a variety seems inevitable in view of the different national legal systems and does not diminish the impact of these Standard Minimum Rules.

Rule 2.3 is addressed to the necessity of specific national legislation for the optimal implementation of these Standard Minimum Rules, both legally and practically.

3. Extension of the Rules

3.1 The relevant provisions of the Rules shall be applied not only to juvenile offenders but also to juveniles who may be proceeded against for any specific behaviour that would not be punishable if committed by an adult.

3.2 Efforts shall be made to extend the principles embodied in the Rules to all juveniles who are dealt with in welfare and care proceedings.

3.3 Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders.

Commentary

Rule 3 extends the protection afforded by the Standard Minimum Rules for the Administration of Juvenile Justice to cover:

(a) The so-called "status offences" prescribed in various national legal systems where the range of behaviour considered to be an offence is wider for juveniles than it is for adults (for example, truancy, school and family disobedience, public drunkenness, etc.) (rule 3.1);

(b) Juvenile welfare and care proceedings (rule 3.2);

(c) Proceedings dealing with young adult offenders, depending of course on each given age limit (rule 3.3).

The extension of the Rules to cover these three areas seems to be justified. Rule 3.1 provides minimum guarantees in those fields, and rule 3.2 is considered a desirable step in the direction of more fair, equitable and humane justice for all juveniles in conflict with the law.

4 . Age of criminal responsibility

4.1 In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.

Commentary

The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially antisocial behaviour. If the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility would become meaningless. In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority, etc.).

Efforts should therefore be made to agree on a reasonable lowest age limit that is applicable internationally.

5. Aims of juvenile justice

5. 1 The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

Commentary

Rule 5 refers to two of the most important objectives of juvenile justice. The first objective is the promotion of the well-being of the juvenile. This is the main focus of those legal systems in which juvenile offenders are dealt with by family courts or administrative authorities, but the well-being of the juvenile should also be emphasized in legal systems that follow the criminal court model, thus contributing to the avoidance of merely punitive sanctions. (See also rule 14.)

The second objective is "the principle of proportionality". This principle is well-known as an instrument for curbing punitive sanctions, mostly expressed in terms of just deserts in relation to the gravity of the offence. The response to young offenders should be based on the consideration not only of the gravity of the offence but also of personal circumstances. The individual circumstances of the offender (for example social status, family situation, the harm caused by the offence or other factors affecting personal circumstances) should influence the proportionality of the reactions (for example by having regard to the offender's endeavour to indemnify the victim or to her or his willingness to turn to wholesome and useful life).

By the same token, reactions aiming to ensure the welfare of the young offender may go beyond necessity and therefore infringe upon the fundamental rights of the young individual, as has been observed in some juvenile justice systems. Here, too, the proportionality of the reaction to the circumstances of both the offender and the offence, including the victim, should be safeguarded.

In essence, rule 5 calls for no less and no more than a fair reaction in any given cases of juvenile delinquency and crime. The issues combined in the rule may help to stimulate development in both regards: new and innovative types of reactions are as desirable as precautions against any undue widening of the net of formal social control over juveniles.

6. Scope of discretion

6.1 In view of the varying special needs of juveniles as well as the variety of measures available, appropriate scope for discretion shall be allowed at all stages of proceedings and at the different levels of juvenile justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions.

6.2 Efforts shall be made, however, to ensure sufficient accountability at all stages and levels in the exercise of any such discretion.

6.3 Those who exercise discretion shall be specially qualified or trained to exercise it judiciously and in accordance with their functions and mandates.

Commentary

Rules 6.1, 6.2 and 6.3 combine several important features of effective, fair and humane juvenile justice administration: the need to permit the exercise of discretionary power at all significant levels of processing so that those who make determinations can take the actions deemed to be most appropriate in each individual case; and the need to provide checks and balances in order to curb any abuses of discretionary power and to safeguard the rights of the young offender. Accountability and professionalism are instruments best apt to curb broad discretion. Thus, professional qualifications and expert training are emphasized here as a valuable means of ensuring the judicious exercise of discretion in matters of juvenile offenders. (See also rules 1.6 and 2.2.) The formulation of specific guidelines on the exercise of discretion and the provision of systems of review, appeal and the like in order to permit scrutiny of decisions and accountability are emphasized in this context. Such mechanisms are not specified here, as they do not easily lend themselves to incorporation into international standard minimum rules, which cannot possibly cover all differences in justice systems.

7 . Rights of juveniles

7.1 Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.

Commentary

Rule 7.1 emphasizes some important points that represent essential elements for a fair and just trial and that are internationally recognized in existing human rights instruments (See also rule 14.). The presumption of innocence, for instance, is also to be found in article 11 of the Universal Declaration of Human rights and in article 14, paragraph 2, of the International Covenant on Civil and Political Rights.

Rules 14 seq. of these Standard Minimum Rules specify issues that are important for proceedings in juvenile cases, in particular, while rule 7.1 affirms the most basic procedural safeguards in a general way.

8. Protection of privacy

8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling.

8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.

Commentary

Rule 8 stresses the importance of the protection of the juvenile's right to privacy. Young persons are particularly susceptible to stigmatization. Criminological research into labelling processes has provided evidence of the detrimental effects (of different kinds) resulting from the permanent identification of young persons as "delinquent" or "criminal".

Rule 8 stresses the importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media of information about the case (for example the names of young offenders, alleged or convicted). The interest of the individual should be protected and upheld, at least in principle. (The general contents of rule 8 are further specified in rule 2 1.)

9. Saving clause

9.1 Nothing in these Rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations and other human rights instruments and standards recognized by the international community that relate to the care and protection of the young.

Commentary

Rule 9 is meant to avoid any misunderstanding in interpreting and implementing the present Rules in conformity with principles contained in relevant existing or emerging international human rights instruments and standards-such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and the Declaration of the Rights of the Child and the draft convention on the rights of the child. It should be understood that the application of the present Rules is without prejudice to any such international instruments which may contain provisions of wider application. (See also rule 27.)

Part two

INVESTIGATION AND PROSECUTION

10. Initial contact

10.1 Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter.

10.2 A judge or other competent official or body shall, without delay, consider the issue of release.

10.3 Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case.

Commentary

Rule 10.1 is in principle contained in rule 92 of the Standard Minimum Rules for the Treatment of Prisoners.

The question of release (rule 10.2) shall be considered without delay by a judge or other competent official. The latter refers to any person or institution in the broadest sense of the term, including community boards or police authorities having power to release an arrested person. (See also the International Covenant on Civil and Political Rights, article 9, paragraph 3.)

Rule 10.3 deals with some fundamental aspects of the procedures and behaviour on the part of the police and other law enforcement officials in cases of juvenile crime. To "avoid harm" admittedly is flexible wording and covers many features of possible interaction (for example the use of harsh language, physical violence or exposure to the environment). Involvement in juvenile justice processes in itself can be "harmful" to juveniles; the term "avoid harm" should be broadly interpreted, therefore, as doing the least harm possible to the juvenile in the first instance, as well as any additional or undue harm. This is especially important in the initial contact with law enforcement agencies, which might profoundly influence the juvenile's attitude towards the State and society. Moreover, the success of any further intervention is largely dependent on such initial contacts. Compassion and kind firmness are important in these situations.

11. Diversion

11.1 Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority, referred to in rule 14.1 below.

11.2 The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules.

11.3 Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.

11.4 In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.

Commentary

Diversion, involving removal from criminal justice processing and, frequently, redirection to community support services, is commonly practised on a formal and informal basis in many legal systems. This practice serves to hinder the negative effects of subsequent proceedings in juvenile justice administration (for example the stigma of conviction and sentence). In many cases, non-intervention would be the best response. Thus, diversion at the outset and without referral to alternative (social) services may be the optimal response. This is especially the case where the offence is of a non-serious nature and where the family, the school or other

informal social control institutions have already reacted, or are likely to react, in an appropriate and constructive manner.

As stated in rule 11.2, diversion may be used at any point of decision-making-by the police, the prosecution or other agencies such as the courts, tribunals, boards or councils. It may be exercised by one authority or several or all authorities, according to the rules and policies of the respective systems and in line with the present Rules. It need not necessarily be limited to petty cases, thus rendering diversion an important instrument.

Rule 11.3 stresses the important requirement of securing the consent of the young offender (or the parent or guardian) to the recommended diversionary measure(s). (Diversion to community service without such consent would contradict the Abolition of Forced Labour Convention.) However, this consent should not be left unchallengeable, since it might sometimes be given out of sheer desperation on the part of the juvenile. The rule underlines that care should be taken to minimize the potential for coercion and intimidation at all levels in the diversion process. Juveniles should not feel pressured (for example in order to avoid court appearance) or be pressured into consenting to diversion programmes. Thus, it is advocated that provision should be made for an objective appraisal of the appropriateness of dispositions involving young offenders by a "competent authority upon application". (The "competent authority," may be different from that referred to in rule 14.)

Rule 11.4 recommends the provision of viable alternatives to juvenile justice processing in the form of community-based diversion. Programmes that involve settlement by victim restitution and those that seek to avoid future conflict with the law through temporary supervision and guidance are especially commended. The merits of individual cases would make diversion appropriate, even when more serious offences have been committed (for example first offence, the act having been committed under peer pressure, etc.).

12 . Specialization within the police

12.1 In order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose.

Commentary

Rule 12 draws attention to the need for specialized training for all law enforcement officials who are involved in the administration of juvenile justice. As police are the first point of contact with the juvenile justice system, it is most important that they act in an informed and appropriate manner.

While the relationship between urbanization and crime is clearly complex, an increase in juvenile crime has been associated with the growth of large cities, particularly with rapid and unplanned growth. Specialized police units would therefore be indispensable, not only in the interest of implementing specific principles contained in the present instrument (such as rule 1.6) but more generally for improving the prevention and control of juvenile crime and the handling of juvenile offenders.

13 . Detention pending trial

13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

13.2 Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.

13.3 Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.

13.4 Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, medical and physical-that they may require in view of their age, sex and personality.

Commentary

The danger to juveniles of "criminal contamination" while in detention pending trial must not be underestimated. It is therefore important to stress the need for alternative measures. By doing so, rule 13.1 encourages the devising of new and innovative measures to avoid such detention in the interest of the well-being of the juvenile.

Juveniles under detention pending trial are entitled to all the rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners as well as the International Covenant on Civil and Political Rights, especially article 9 and article 10, paragraphs 2 (b) and 3.

Rule 13.4 does not prevent States from taking other measures against the negative influences of adult offenders which are at least as effective as the measures mentioned in the rule.

Different forms of assistance that may become necessary have been enumerated to draw attention to the broad range of particular needs of young detainees to be addressed (for example females or males, drug addicts, alcoholics, mentally ill juveniles, young persons suffering from the trauma, for example, of arrest, etc.).

Varying physical and psychological characteristics of young detainees may warrant classification measures by which some are kept separate while in detention pending trial, thus contributing to the avoidance of victimization and rendering more appropriate assistance.

The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 4 on juvenile justice standards, specified that the Rules, inter alia , should reflect the basic principle that pre-trial detention should be used only as a last resort, that no minors should be held in a facility where they are vulnerable to the negative influences of adult detainees and that account should always be taken of the needs particular to their stage of development.

Part three

ADJUDICATION AND DISPOSITION

14. Competent authority to adjudicate

14.1 Where the case of a juvenile offender has not been diverted (under rule 11), she or he shall be dealt with by the competent authority (court, tribunal, board, council, etc.) according to the principles of a fair and just trial.

14.2 The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely.

Commentary

It is difficult to formulate a definition of the competent body or person that would universally describe an adjudicating authority. "Competent authority" is meant to include those who

preside over courts or tribunals (composed of a single judge or of several members), including professional and lay magistrates as well as administrative boards (for example the Scottish and Scandinavian systems) or other more informal community and conflict resolution agencies of an adjudicatory nature.

The procedure for dealing with juvenile offenders shall in any case follow the minimum standards that are applied almost universally for any criminal defendant under the procedure known as "due process of law". In accordance with due process, a "fair and just trial" includes such basic safeguards as the presumption of innocence, the presentation and examination of witnesses, the common legal defences, the right to remain silent, the right to have the last word in a hearing, the right to appeal, etc. (See also rule 7.1.)

15. Legal counsel, parents and guardians

15.1 Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.

15.2 The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.

Commentary

Rule 15.1 uses terminology similar to that found in rule 93 of the Standard Minimum Rules for the Treatment of Prisoners. Whereas legal counsel and free legal aid are needed to assure the juvenile legal assistance, the right of the parents or guardian to participate as stated in rule 15.2 should be viewed as general psychological and emotional assistance to the juvenile—a function extending throughout the procedure.

The competent authority's search for an adequate disposition of the case may profit, in particular, from the co-operation of the legal representatives of the juvenile (or, for that matter, some other personal assistant who the juvenile can and does really trust). Such concern can be thwarted if the presence of parents or guardians at the hearings plays a negative role, for instance, if they display a hostile attitude towards the juvenile, hence, the possibility of their exclusion must be provided for.

16. Social inquiry reports

16.1 In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority.

Commentary

Social inquiry reports (social reports or pre-sentence reports) are an indispensable aid in most legal proceedings involving juveniles. The competent authority should be informed of relevant facts about the juvenile, such as social and family background, school career, educational experiences, etc. For this purpose, some jurisdictions use special social services or personnel attached to the court or board. Other personnel, including probation officers, may serve the same function. The rule therefore requires that adequate social services should be available to deliver social inquiry reports of a qualified nature.

17. Guiding principles in adjudication and disposition

17.1 The disposition of the competent authority shall be guided by the following principles:

(a) The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society;

(b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;

(c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;

(d) The well-being of the juvenile shall be the guiding factor in the consideration of her or his case.

17.2 Capital punishment shall not be imposed for any crime committed by juveniles.

17.3 Juveniles shall not be subject to corporal punishment.

17.4 The competent authority shall have the power to discontinue the proceedings at any time.

Commentary

The main difficulty in formulating guidelines for the adjudication of young persons stems from the fact that there are unresolved conflicts of a philosophical nature, such as the following:

(a) Rehabilitation versus just desert;

(b) Assistance versus repression and punishment;

(c) Reaction according to the singular merits of an individual case versus reaction according to the protection of society in general;

(d) General deterrence versus individual incapacitation.

The conflict between these approaches is more pronounced in juvenile cases than in adult cases. With the variety of causes and reactions characterizing juvenile cases, these alternatives become intricately interwoven.

It is not the function of the Standard Minimum Rules for the Administration of Juvenile Justice to prescribe which approach is to be followed but rather to identify one that is most closely in consonance with internationally accepted principles. Therefore the essential elements as laid down in rule 17.1, in particular in subparagraphs (a) and (c), are mainly to be understood as practical guidelines that should ensure a common starting point; if heeded by the concerned authorities (see also rule 5), they could contribute considerably to ensuring that the fundamental rights of juvenile offenders are protected, especially the fundamental rights of personal development and education.

Rule 17.1 (b) implies that strictly punitive approaches are not appropriate. Whereas in adult cases, and possibly also in cases of severe offences by juveniles, just desert and retributive sanctions might be considered to have some merit, in juvenile cases such considerations should always be outweighed by the interest of safeguarding the well-being and the future of the young person.

In line with resolution 8 of the Sixth United Nations Congress, rule 17.1 (b) encourages the use of alternatives to institutionalization to the maximum extent possible, bearing in mind the need to respond to the specific requirements of the young. Thus, full use should be made of the range of existing alternative sanctions and new alternative sanctions should be developed,

bearing the public safety in mind. Probation should be granted to the greatest possible extent via suspended sentences, conditional sentences, board orders and other dispositions.

Rule 17.1 (c) corresponds to one of the guiding principles in resolution 4 of the Sixth Congress which aims at avoiding incarceration in the case of juveniles unless there is no other appropriate response that will protect the public safety.

The provision prohibiting capital punishment in rule 17.2 is in accordance with article 6, paragraph 5, of the International Covenant on Civil and Political Rights.

The provision against corporal punishment is in line with article 7 of the International Covenant on Civil and Political Rights and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the draft convention on the rights of the child.

The power to discontinue the proceedings at any time (rule 17.4) is a characteristic inherent in the handling of juvenile offenders as opposed to adults. At any time, circumstances may become known to the competent authority which would make a complete cessation of the intervention appear to be the best disposition of the case.

18. Various disposition measures

18.1 A large variety of disposition measures shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalization to the greatest extent possible. Such measures, some of which may be combined, include:

- (a) Care, guidance and supervision orders;
- (b) Probation;
- (c) Community service orders;
- (d) Financial penalties, compensation and restitution;
- (e) Intermediate treatment and other treatment orders;
- (f) Orders to participate in group counselling and similar activities;
- (g) Orders concerning foster care, living communities or other educational settings;
- (h) Other relevant orders.

18.2 No juvenile shall be removed from parental supervision, whether partly or entirely, unless the circumstances of her or his case make this necessary.

Commentary

Rule 18.1 attempts to enumerate some of the important reactions and sanctions that have been practised and proved successful thus far, in different legal systems. On the whole they represent promising opinions that deserve replication and further development. The rule does not enumerate staffing requirements because of possible shortages of adequate staff in some regions; in those regions measures requiring less staff may be tried or developed.

The examples given in rule 18.1 have in common, above all, a reliance on and an appeal to the community for the effective implementation of alternative dispositions. Community-based correction is a traditional measure that has taken on many aspects. On that basis, relevant authorities should be encouraged to offer community-based services.

Rule 18.2 points to the importance of the family which, according to article 10, paragraph I, of the International Covenant on Economic, Social and Cultural Rights, is "the natural and fundamental group unit of society". Within the family, the parents have not only the right but also the responsibility to care for and supervise their children. Rule 18.2, therefore, requires that the separation of children from their parents is a measure of last resort. It may be resorted to only when the facts of the case clearly warrant this grave step (for example child abuse).

19. Least possible use of institutionalization

19.1 The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.

Commentary

Progressive criminology advocates the use of non-institutional over institutional treatment. Little or no difference has been found in terms of the success of institutionalization as compared to non-institutionalization. The many adverse influences on an individual that seem unavoidable within any institutional setting evidently cannot be outbalanced by treatment efforts. This is especially the case for juveniles, who are vulnerable to negative influences. Moreover, the negative effects, not only of loss of liberty but also of separation from the usual social environment, are certainly more acute for juveniles than for adults because of their early stage of development.

Rule 19 aims at restricting institutionalization in two regards: in quantity ("last resort") and in time ("minimum necessary period"). Rule 19 reflects one of the basic guiding principles of resolution 4 of the Sixth United Nations Congress: a juvenile offender should not be incarcerated unless there is no other appropriate response. The rule, therefore, makes the appeal that if a juvenile must be institutionalized, the loss of liberty should be restricted to the least possible degree, with special institutional arrangements for confinement and bearing in mind the differences in kinds of offenders, offences and institutions. In fact, priority should be given to "open" over "closed" institutions. Furthermore, any facility should be of a correctional or educational rather than of a prison type.

20. Avoidance of unnecessary delay

20.1 Each case shall from the outset be handled expeditiously, without any unnecessary delay.

Commentary

The speedy conduct of formal procedures in juvenile cases is a paramount concern. Otherwise whatever good may be achieved by the procedure and the disposition is at risk. As time passes, the juvenile will find it increasingly difficult, if not impossible, to relate the procedure and disposition to the offence, both intellectually and psychologically.

21. Records

21.1 Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.

21.2 Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

Commentary

The rule attempts to achieve a balance between conflicting interests connected with records or files: those of the police, prosecution and other authorities in improving control versus the

interests of the juvenile offender. (See also rule 8.) "Other duly authorized persons" would generally include, among others, researchers.

22. Need for professionalism and training

22.1 Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.

22.2 Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies.

Commentary

The authorities competent for disposition may be persons with very different backgrounds (magistrates in the United Kingdom of Great Britain and Northern Ireland and in regions influenced by the common law system; legally trained judges in countries using Roman law and in regions influenced by them; and elsewhere elected or appointed laymen or jurists, members of community-based boards, etc.). For all these authorities, a minimum training in law, sociology, psychology, criminology and behavioural sciences would be required. This is considered as important as the organizational specialization and independence of the competent authority.

For social workers and probation officers, it might not be feasible to require professional specialization as a prerequisite for taking over any function dealing with juvenile offenders. Thus, professional on-the-job instruction would be minimum qualifications.

Professional qualifications are an essential element in ensuring the impartial and effective administration of juvenile justice. Accordingly, it is necessary to improve the recruitment, advancement and professional training of personnel and to provide them with the necessary means to enable them to properly fulfil their functions.

All political, social, sexual, racial, religious, cultural or any other kind of discrimination in the selection, appointment and advancement of juvenile justice personnel should be avoided in order to achieve impartiality in the administration of juvenile justice. This was recommended by the Sixth Congress. Furthermore, the Sixth Congress called on Member States to ensure the fair and equal treatment of women as criminal justice personnel and recommended that special measures should be taken to recruit, train and facilitate the advancement of female personnel in juvenile justice administration.

Part four

NON-INSTITUTIONAL TREATMENT

23. Effective implementation of disposition

23.1 Appropriate provisions shall be made for the implementation of orders of the competent authority, as referred to in rule 14.1 above, by that authority itself or by some other authority as circumstances may require.

23.2 Such provisions shall include the power to modify the orders as the competent authority may deem necessary from time to time, provided that such modification shall be determined in accordance with the principles contained in these Rules.

Commentary

Disposition in juvenile cases, more so than in adult cases, tends to influence the offender's life for a long period of time. Thus, it is important that the competent authority or an independent body (parole board, probation office, youth welfare institutions or others) with qualifications equal to those of the competent authority that originally disposed of the case should monitor the implementation of the disposition. In some countries, a juge de l'exécution des peines has been installed for this purpose.

The composition, powers and functions of the authority must be flexible; they are described in general terms in rule 23 in order to ensure wide acceptability.

24 . Provision of needed assistance

24.1 Efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process.

Commentary

The promotion of the well-being of the juvenile is of paramount consideration. Thus, rule 24 emphasizes the importance of providing requisite facilities, services and other necessary assistance as may further the best interests of the juvenile throughout the rehabilitative process.

25. Mobilization of volunteers and other community services

25.1 Volunteers, voluntary organizations, local institutions and other community resources shall be called upon to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit.

Commentary

This rule reflects the need for a rehabilitative orientation of all work with juvenile offenders. Co-operation with the community is indispensable if the directives of the competent authority are to be carried out effectively. Volunteers and voluntary services, in particular, have proved to be valuable resources but are at present underutilized. In some instances, the co-operation of ex-offenders (including ex-addicts) can be of considerable assistance.

Rule 25 emanates from the principles laid down in rules 1.1 to 1.6 and follows the relevant provisions of the International Covenant on Civil and Political Rights.

Part five

INSTITUTIONAL TREATMENT

26. Objectives of institutional treatment

26.1 The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.

26.2 Juveniles in institutions shall receive care, protection and all necessary assistance-social, educational, vocational, psychological, medical and physical-that they may require because of their age, sex, and personality and in the interest of their wholesome development .

26.3 Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

26.4 Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.

26.5 In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.

26.6 Inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do not leave the institution at an educational disadvantage.

Commentary

The objectives of institutional treatment as stipulated in rules 26.1 and 26.2 would be acceptable to any system and culture. However, they have not yet been attained everywhere, and much more has to be done in this respect.

Medical and psychological assistance, in particular, are extremely important for institutionalized drug addicts, violent and mentally ill young persons.

The avoidance of negative influences through adult offenders and the safeguarding of the well-being of juveniles in an institutional setting, as stipulated in rule 26.3, are in line with one of the basic guiding principles of the Rules, as set out by the Sixth Congress in its resolution 4. The rule does not prevent States from taking other measures against the negative influences of adult offenders, which are at least as effective as the measures mentioned in the rule. (See also rule 13.4.)

Rule 26.4 addresses the fact that female offenders normally receive less attention than their male counterparts, as pointed out by the Sixth Congress. In particular, resolution 9 of the Sixth Congress calls for the fair treatment of female offenders at every stage of criminal justice processes and for special attention to their particular problems and needs while in custody. Moreover, this rule should also be considered in the light of the Caracas Declaration of the Sixth Congress, which, inter alia, calls for equal treatment in criminal justice administration, and against the background of the Declaration on the Elimination of Discrimination against Women and the Convention on the Elimination of All Forms of Discrimination against Women.

The right of access (rule 26.5) follows from the provisions of rules 7.1, 10.1, 15.2 and 18.2. Inter-ministerial and inter-departmental co-operation (rule 26.6) are of particular importance in the interest of generally enhancing the quality of institutional treatment and training.

27. Application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations

27.1 The Standard Minimum Rules for the Treatment of Prisoners and related recommendations shall be applicable as far as relevant to the treatment of juvenile offenders in institutions, including those in detention pending adjudication.

27.2 Efforts shall be made to implement the relevant principles laid down in the Standard Minimum Rules for the Treatment of Prisoners to the largest possible extent so as to meet the varying needs of juveniles specific to their age, sex and personality.

Commentary

The Standard Minimum Rules for the Treatment of Prisoners were among the first instruments of this kind to be promulgated by the United Nations. It is generally agreed that they have had

a world-wide impact. Although there are still countries where implementation is more an aspiration than a fact, those Standard Minimum Rules continue to be an important influence in the humane and equitable administration of correctional institutions.

Some essential protections covering juvenile offenders in institutions are contained in the Standard Minimum Rules for the Treatment of Prisoners (accommodation, architecture, bedding, clothing, complaints and requests, contact with the outside world, food, medical care, religious service, separation of ages, staffing, work, etc.) as are provisions concerning punishment and discipline, and restraint for dangerous offenders. It would not be appropriate to modify those Standard Minimum Rules according to the particular characteristics of institutions for juvenile offenders within the scope of the Standard Minimum Rules for the Administration of Juvenile Justice.

Rule 27 focuses on the necessary requirements for juveniles in institutions (rule 27.1) as well as on the varying needs specific to their age, sex and personality (rule 27.2). Thus, the objectives and content of the rule interrelate to the relevant provisions of the Standard Minimum Rules for the Treatment of Prisoners.

28. Frequent and early recourse to conditional release

28.1 Conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time.

28.2 Juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community.

Commentary

The power to order conditional release may rest with the competent authority, as mentioned in rule 14.1, or with some other authority. In view of this, it is adequate to refer here to the "appropriate" rather than to the "competent" authority.

Circumstances permitting, conditional release shall be preferred to serving a full sentence. Upon evidence of satisfactory progress towards rehabilitation, even offenders who had been deemed dangerous at the time of their institutionalization can be conditionally released whenever feasible. Like probation, such release may be conditional on the satisfactory fulfilment of the requirements specified by the relevant authorities for a period of time established in the decision, for example relating to "good behaviour" of the offender, attendance in community programmes, residence in half-way houses, etc.

In the case of offenders conditionally released from an institution, assistance and supervision by a probation or other officer (particularly where probation has not yet been adopted) should be provided and community support should be encouraged.

29. Semi-institutional arrangements

29.1 Efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society.

Commentary

The importance of care following a period of institutionalization should not be underestimated. This rule emphasizes the necessity of forming a net of semi-institutional arrangements.

This rule also emphasizes the need for a diverse range of facilities and services designed to meet the different needs of young offenders re-entering the community and to provide

guidance and structural support as an important step towards successful reintegration into society.

Part six

RESEARCH, PLANNING, POLICY FORMULATION AND EVALUATION

30. Research as a basis for planning, policy formulation and evaluation

30.1 Efforts shall be made to organize and promote necessary research as a basis for effective planning and policy formulation.

30.2 Efforts shall be made to review and appraise periodically the trends, problems and causes of juvenile delinquency and crime as well as the varying particular needs of juveniles in custody.

30.3 Efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyse relevant data and information for appropriate assessment and future improvement and reform of the administration.

30.4 The delivery of services in juvenile justice administration shall be systematically planned and implemented as an integral part of national development efforts.

Commentary

The utilization of research as a basis for an informed juvenile justice policy is widely acknowledged as an important mechanism for keeping practices abreast of advances in knowledge and the continuing development and improvement of the juvenile justice system. The mutual feedback between research and policy is especially important in juvenile justice. With rapid and often drastic changes in the life-styles of the young and in the forms and dimensions of juvenile crime, the societal and justice responses to juvenile crime and delinquency quickly become outmoded and inadequate.

Rule 30 thus establishes standards for integrating research into the process of policy formulation and application in juvenile justice administration. The rule draws particular attention to the need for regular review and evaluation of existing programmes and measures and for planning within the broader context of overall development objectives.

A constant appraisal of the needs of juveniles, as well as the trends and problems of delinquency, is a prerequisite for improving the methods of formulating appropriate policies and establishing adequate interventions, at both formal and informal levels. In this context, research by independent persons and bodies should be facilitated by responsible agencies, and it may be valuable to obtain and to take into account the views of juveniles themselves, not only those who come into contact with the system.

The process of planning must particularly emphasize a more effective and equitable system for the delivery of necessary services. Towards that end, there should be a comprehensive and regular assessment of the wide-ranging, particular needs and problems of juveniles and an identification of clear-cut priorities. In that connection, there should also be a co-ordination in the use of existing resources, including alternatives and community support that would be suitable in setting up specific procedures designed to implement and monitor established programmes.

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ANNEX 3: COMMITTEE
ON THE RIGHTS OF
THE CHILD, GENERAL
COMMENT NO. 10 (2007),
CHILDREN'S RIGHTS IN
JUVENILE JUSTICE

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Children's rights in juvenile justice

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I. INTRODUCTION

1. In the reports they submit to the Committee on the Rights of the Child (hereafter: the Committee), States parties often pay quite detailed attention to the rights of children alleged as, accused of, or recognized as having infringed the penal law, also referred to as “children in conflict with the law”. In line with the Committee’s guidelines for periodic reporting, the implementation of articles 37 and 40 of the Convention on the Rights of the Child (hereafter: CRC) is the main focus of the information provided by the States parties. The Committee notes with appreciation the many efforts to establish an administration of juvenile justice in compliance with CRC. However, it is also clear that many States parties still have a long way to go in achieving full compliance with CRC, e.g. in the areas of procedural rights, the development and implementation of measures for dealing with children in conflict with the law without resorting to judicial proceedings, and the use of deprivation of liberty only as a measure of last resort.

2. The Committee is equally concerned about the lack of information on the measures that States parties have taken to prevent children from coming into conflict with the law. This may be the result of a lack of a comprehensive policy for the field of juvenile justice. This may also explain why many States parties are providing only very limited statistical data on the treatment of children in conflict with the law.

3. The experience in reviewing the States parties’ performance in the field of juvenile justice is the reason for the present general comment, by which the Committee wants to provide the States parties with more elaborated guidance and recommendations for their efforts to establish an administration of juvenile justice in compliance with CRC. This juvenile justice, which should promote, inter alia, the use of alternative measures such as diversion and restorative justice, will provide States parties with possibilities to respond to children in conflict with the law in an effective manner serving not only the best interests of these children, but also the short- and long-term interest of the society at large.

II. THE OBJECTIVES OF THE PRESENT GENERAL COMMENT

4. At the outset, the Committee wishes to underscore that CRC requires States parties to develop and implement a comprehensive juvenile justice policy. This comprehensive approach should not be limited to the implementation of the specific provisions contained in articles 37 and 40 of CRC, but should also take into account the general principles enshrined in articles 2, 3, 6 and 12, and in all other relevant articles of CRC, such as articles 4 and 39. Therefore, the objectives of this general comment are:

- To encourage States parties to develop and implement a comprehensive juvenile justice policy to prevent and address juvenile delinquency based on and in compliance with CRC, and to seek in this regard advice and support from the Interagency Panel on Juvenile Justice, with representatives of the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Children’s Fund (UNICEF), the United Nations Office on Drugs and Crime (UNODC) and non-governmental organizations (NGO’s), established by ECOSOC resolution 1997/30;

- To provide States parties with guidance and recommendations for the content of this comprehensive juvenile justice policy, with special attention to prevention of juvenile delinquency, the introduction of alternative measures allowing for responses to juvenile delinquency without resorting to judicial procedures, and for the interpretation and implementation of all other provisions contained in articles 37 and 40 of CRC;
- To promote the integration, in a national and comprehensive juvenile justice policy, of other international standards, in particular, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the “Beijing Rules”), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the “Havana Rules”), and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the “Riyadh Guidelines”).

III. JUVENILE JUSTICE: THE LEADING PRINCIPLES OF A COMPREHENSIVE POLICY

5. Before elaborating on the requirements of CRC in more detail, the Committee will first mention the leading principles of a comprehensive policy for juvenile justice. In the administration of juvenile justice, States parties have to apply systematically the general principles contained in articles 2, 3, 6 and 12 of CRC, as well as the fundamental principles of juvenile justice enshrined in articles 37 and 40.

Non-discrimination (art. 2)

6. States parties have to take all necessary measures to ensure that all children in conflict with the law are treated equally. Particular attention must be paid to de facto discrimination and disparities, which may be the result of a lack of a consistent policy and involve vulnerable groups of children, such as street children, children belonging to racial, ethnic, religious or linguistic minorities, indigenous children, girl children, children with disabilities and children who are repeatedly in conflict with the law (recidivists). In this regard, training of all professionals involved in the administration of juvenile justice is important (see paragraph 97 below), as well as the establishment of rules, regulations or protocols which enhance equal treatment of child offenders and provide redress, remedies and compensation.

7. Many children in conflict with the law are also victims of discrimination, e.g. when they try to get access to education or to the labour market. It is necessary that measures are taken to prevent such discrimination, inter alia, as by providing former child offenders with appropriate support and assistance in their efforts to reintegrate in society, and to conduct public campaigns emphasizing their right to assume a constructive role in society (art. 40 (1)).

8. It is quite common that criminal codes contain provisions criminalizing behavioural problems of children, such as vagrancy, truancy, runaways and other acts, which often are the result of psychological or socio-economic problems. It is particularly a matter of concern that girls and street children are often victims of this criminalization. These acts, also known as Status Offences, are not considered to be such if committed by adults. The Committee recommends that the States parties abolish the provisions on status offences in order to establish

an equal treatment under the law for children and adults. In this regard, the Committee also refers to article 56 of the Riyadh Guidelines which reads: “In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person.”

9. In addition, behaviour such as vagrancy, roaming the streets or runaways should be dealt with through the implementation of child protective measures, including effective support for parents and/or other caregivers and measures which address the root causes of this behaviour.

Best interests of the child (art. 3)

10. In all decisions taken within the context of the administration of juvenile justice, the best interests of the child should be a primary consideration. Children differ from adults in their physical and psychological development, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law. These and other differences are the reasons for a separate juvenile justice system and require a different treatment for children. The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders. This can be done in concert with attention to effective public safety.

The right to life, survival and development (art. 6)

11. This inherent right of every child should guide and inspire States parties in the development of effective national policies and programmes for the prevention of juvenile delinquency, because it goes without saying that delinquency has a very negative impact on the child’s development. Furthermore, this basic right should result in a policy of responding to juvenile delinquency in ways that support the child’s development. The death penalty and a life sentence without parole are explicitly prohibited under article 37 (a) of CRC (see paragraphs 75-77 below). The use of deprivation of liberty has very negative consequences for the child’s harmonious development and seriously hampers his/her reintegration in society. In this regard, article 37 (b) explicitly provides that deprivation of liberty, including arrest, detention and imprisonment, should be used only as a measure of last resort and for the shortest appropriate period of time, so that the child’s right to development is fully respected and ensured (see paragraphs 78-88 below).¹

The right to be heard (art. 12)

12. The right of the child to express his/her views freely in all matters affecting the child should be fully respected and implemented throughout every stage of the process of juvenile

¹ Note that the rights of a child deprived of his/her liberty, as recognized in CRC, apply with respect to children in conflict with the law, and to children placed in institutions for the purposes of care, protection or treatment, including mental health, educational, drug treatment, child protection or immigration institutions.

justice (see paragraphs 43-45 below). The Committee notes that the voices of children involved in the juvenile justice system are increasingly becoming a powerful force for improvements and reform, and for the fulfilment of their rights.

Dignity (art. 40 (1))

13. CRC provides a set of fundamental principles for the treatment to be accorded to children in conflict with the law:

- *Treatment that is consistent with the child's sense of dignity and worth.* This principle reflects the fundamental human right enshrined in article 1 of UDHR, which stipulates that all human beings are born free and equal in dignity and rights. This inherent right to dignity and worth, to which the preamble of CRC makes explicit reference, has to be respected and protected throughout the entire process of dealing with the child, from the first contact with law enforcement agencies and all the way to the implementation of all measures for dealing with the child;
- *Treatment that reinforces the child's respect for the human rights and freedoms of others.* This principle is in line with the consideration in the preamble that a child should be brought up in the spirit of the ideals proclaimed in the Charter of the United Nations. It also means that, within the juvenile justice system, the treatment and education of children shall be directed to the development of respect for human rights and freedoms (art. 29 (1) (b) of CRC and general comment No. 1 on the aims of education). It is obvious that this principle of juvenile justice requires a full respect for and implementation of the guarantees for a fair trial recognized in article 40 (2) (see paragraphs 40-67 below). If the key actors in juvenile justice, such as police officers, prosecutors, judges and probation officers, do not fully respect and protect these guarantees, how can they expect that with such poor examples the child will respect the human rights and fundamental freedom of others?;
- *Treatment that takes into account the child's age and promotes the child's reintegration and the child's assuming a constructive role in society.* This principle must be applied, observed and respected throughout the entire process of dealing with the child, from the first contact with law enforcement agencies all the way to the implementation of all measures for dealing with the child. It requires that all professionals involved in the administration of juvenile justice be knowledgeable about child development, the dynamic and continuing growth of children, what is appropriate to their well-being, and the pervasive forms of violence against children;
- *Respect for the dignity of the child requires that all forms of violence in the treatment of children in conflict with the law must be prohibited and prevented.* Reports received by the Committee show that violence occurs in all phases of the juvenile justice process, from the first contact with the police, during pretrial detention and during the stay in treatment and other facilities for children sentenced to deprivation of liberty. The committee urges the States parties to take effective measures to prevent such violence and to make sure that the perpetrators are brought to justice and to give effective follow-up to the recommendations made in the report on the United Nations Study on Violence Against Children presented to the General Assembly in October 2006 (A/61/299).

14. The Committee acknowledges that the preservation of public safety is a legitimate aim of the justice system. However, it is of the opinion that this aim is best served by a full respect for and implementation of the leading and overarching principles of juvenile justice as enshrined in CRC.

IV. JUVENILE JUSTICE: THE CORE ELEMENTS OF A COMPREHENSIVE POLICY

15. A comprehensive policy for juvenile justice must deal with the following core elements: the prevention of juvenile delinquency; interventions without resorting to judicial proceedings and interventions in the context of judicial proceedings; the minimum age of criminal responsibility and the upper age-limits for juvenile justice; the guarantees for a fair trial; and deprivation of liberty including pretrial detention and post-trial incarceration.

A. Prevention of juvenile delinquency

16. One of the most important goals of the implementation of CRC is to promote the full and harmonious development of the child's personality, talents and mental and physical abilities (preamble, and articles 6 and 29). The child should be prepared to live an individual and responsible life in a free society (preamble, and article 29), in which he/she can assume a constructive role with respect for human rights and fundamental freedoms (arts. 29 and 40). In this regard, parents have the responsibility to provide the child, in a manner consistent with his evolving capacities, with appropriate direction and guidance in the exercise of her/his rights as recognized in the Convention. In the light of these and other provisions of CRC, it is obviously not in the best interests of the child if he/she grows up in circumstances that may cause an increased or serious risk of becoming involved in criminal activities. Various measures should be taken for the full and equal implementation of the rights to an adequate standard of living (art. 27), to the highest attainable standard of health and access to health care (art. 24), to education (arts. 28 and 29), to protection from all forms of physical or mental violence, injury or abuse (art. 19), and from economic or sexual exploitation (arts. 32 and 34), and to other appropriate services for the care or protection of children.

17. As stated above, a juvenile justice policy without a set of measures aimed at preventing juvenile delinquency suffers from serious shortcomings. States parties should fully integrate into their comprehensive national policy for juvenile justice the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) adopted by the General Assembly in its resolution 45/112 of 14 December 1990.

18. The Committee fully supports the Riyadh Guidelines and agrees that emphasis should be placed on prevention policies that facilitate the successful socialization and integration of all children, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations. This means, inter alia that prevention programmes should focus on support for particularly vulnerable families, the involvement of schools in teaching basic values (including information about the rights and responsibilities of children and parents under the law), and extending special care and attention to young persons at risk. In this regard, particular attention should also be given to children who drop out of school or otherwise do not complete their education. The use of peer group support and a strong involvement of parents are recommended. The States parties should also develop

community-based services and programmes that respond to the special needs, problems, concerns and interests of children, in particular of children repeatedly in conflict with the law, and that provide appropriate counselling and guidance to their families.

19. Articles 18 and 27 of CRC confirm the importance of the responsibility of parents for the upbringing of their children, but at the same time CRC requires States parties to provide the necessary assistance to parents (or other caretakers), in the performance of their parental responsibilities. The measures of assistance should not only focus on the prevention of negative situations, but also and even more on the promotion of the social potential of parents. There is a wealth of information on home- and family-based prevention programmes, such as parent training, programmes to enhance parent-child interaction and home visitation programmes, which can start at a very young age of the child. In addition, early childhood education has shown to be correlated with a lower rate of future violence and crime. At the community level, positive results have been achieved with programmes such as Communities that Care (CTC), a risk-focused prevention strategy.

20. States parties should fully promote and support the involvement of children, in accordance with article 12 of CRC, and of parents, community leaders and other key actors (e.g. representatives of NGOs, probation services and social workers), in the development and implementation of prevention programmes. The quality of this involvement is a key factor in the success of these programmes.

21. The Committee recommends that States parties seek support and advice from the Interagency Panel on Juvenile Justice in their efforts to develop effective prevention programmes.

B. Interventions/diversion (see also section E below)

22. Two kinds of interventions can be used by the State authorities for dealing with children alleged as, accused of, or recognized as having infringed the penal law: measures without resorting to judicial proceedings and measures in the context of judicial proceedings. The Committee reminds States parties that utmost care must be taken to ensure that the child's human rights and legal safeguards are thereby fully respected and protected.

23. Children in conflict with the law, including child recidivists, have the right to be treated in ways that promote their reintegration and the child's assuming a constructive role in society (art. 40 (1) of CRC). The arrest, detention or imprisonment of a child may be used only as a measure of last resort (art. 37 (b)). It is, therefore, necessary - as part of a comprehensive policy for juvenile justice - to develop and implement a wide range of measures to ensure that children are dealt with in a manner appropriate to their well-being, and proportionate to both their circumstances and the offence committed. These should include care, guidance and supervision, counselling, probation, foster care, educational and training programmes, and other alternatives to institutional care (art. 40 (4)).

Interventions without resorting to judicial proceedings

24. According to article 40 (3) of CRC, the States parties shall seek to promote measures for dealing with children alleged as, accused of, or recognized as having infringed the penal law

without resorting to judicial proceedings, whenever appropriate and desirable. Given the fact that the majority of child offenders commit only minor offences, a range of measures involving removal from criminal/juvenile justice processing and referral to alternative (social) services (i.e. diversion) should be a well-established practice that can and should be used in most cases.

25. In the opinion of the Committee, the obligation of States parties to promote measures for dealing with children in conflict with the law without resorting to judicial proceedings applies, but is certainly not limited to children who commit minor offences, such as shoplifting or other property offences with limited damage, and first-time child offenders. Statistics in many States parties indicate that a large part, and often the majority, of offences committed by children fall into these categories. It is in line with the principles set out in article 40 (1) of CRC to deal with all such cases without resorting to criminal law procedures in court. In addition to avoiding stigmatization, this approach has good results for children and is in the interests of public safety, and has proven to be more cost-effective.

26. States parties should take measures for dealing with children in conflict with the law without resorting to judicial proceedings as an integral part of their juvenile justice system, and ensure that children's human rights and legal safeguards are thereby fully respected and protected (art. 40 (3) (b)).

27. It is left to the discretion of States parties to decide on the exact nature and content of the measures for dealing with children in conflict with the law without resorting to judicial proceedings, and to take the necessary legislative and other measures for their implementation. Nonetheless, on the basis of the information provided in the reports from some States parties, it is clear that a variety of community-based programmes have been developed, such as community service, supervision and guidance by for example social workers or probation officers, family conferencing and other forms of restorative justice including restitution to and compensation of victims. Other States parties should benefit from these experiences. As far as full respect for human rights and legal safeguards is concerned, the Committee refers to the relevant parts of article 40 of CRC and emphasizes the following:

- Diversion (i.e. measures for dealing with children, alleged as, accused of, or recognized as having infringed the penal law without resorting to judicial proceedings) should be used only when there is compelling evidence that the child committed the alleged offence, that he/she freely and voluntarily admits responsibility, and that no intimidation or pressure has been used to get that admission and, finally, that the admission will not be used against him/her in any subsequent legal proceeding;
- The child must freely and voluntarily give consent in writing to the diversion, a consent that should be based on adequate and specific information on the nature, content and duration of the measure, and on the consequences of a failure to cooperate, carry out and complete the measure. With a view to strengthening parental involvement, States parties may also consider requiring the consent of parents, in particular when the child is below the age of 16 years;

- The law has to contain specific provisions indicating in which cases diversion is possible, and the powers of the police, prosecutors and/or other agencies to make decisions in this regard should be regulated and reviewed, in particular to protect the child from discrimination;
- The child must be given the opportunity to seek legal or other appropriate assistance on the appropriateness and desirability of the diversion offered by the competent authorities, and on the possibility of review of the measure;
- The completion of the diversion by the child should result in a definite and final closure of the case. Although confidential records can be kept of diversion for administrative and review purposes, they should not be viewed as “criminal records” and a child who has been previously diverted must not be seen as having a previous conviction. If any registration takes place of this event, access to that information should be given exclusively and for a limited period of time, e.g. for a maximum of one year, to the competent authorities authorized to deal with children in conflict with the law.

Interventions in the context of judicial proceedings

28. When judicial proceedings are initiated by the competent authority (usually the prosecutor’s office), the principles of a fair and just trial must be applied (see section D below). At the same time, the juvenile justice system should provide for ample opportunities to deal with children in conflict with the law by using social and/or educational measures, and to strictly limit the use of deprivation of liberty, and in particular pretrial detention, as a measure of last resort. In the disposition phase of the proceedings, deprivation of liberty must be used only as a measure of last resort and for the shortest appropriate period of time (art. 37 (b)). This means that States parties should have in place a well-trained probation service to allow for the maximum and effective use of measures such as guidance and supervision orders, probation, community monitoring or day report centres, and the possibility of early release from detention.

29. The Committee reminds States parties that, pursuant to article 40 (1) of CRC, reintegration requires that no action may be taken that can hamper the child’s full participation in his/her community, such as stigmatization, social isolation, or negative publicity of the child. For a child in conflict with the law to be dealt with in a way that promotes reintegration requires that all actions should support the child becoming a full, constructive member of his/her society.

C. Age and children in conflict with the law

The minimum age of criminal responsibility

30. The reports submitted by States parties show the existence of a wide range of minimum ages of criminal responsibility. They range from a very low level of age 7 or 8 to the commendable high level of age 14 or 16. Quite a few States parties use two minimum ages of criminal responsibility. Children in conflict with the law who at the time of the commission of the crime are at or above the lower minimum age but below the higher minimum age are assumed to be criminally responsible only if they have the required maturity in that regard. The assessment of this maturity is left to the court/judge, often without the requirement of involving a psychological expert, and results in practice in the use of the lower minimum age in cases of

serious crimes. The system of two minimum ages is often not only confusing, but leaves much to the discretion of the court/judge and may result in discriminatory practices. In the light of this wide range of minimum ages for criminal responsibility the Committee feels that there is a need to provide the States parties with clear guidance and recommendations regarding the minimum age of criminal responsibility.

31. Article 40 (3) of CRC requires States parties to seek to promote, inter alia, the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law, but does not mention a specific minimum age in this regard. The committee understands this provision as an obligation for States parties to set a minimum age of criminal responsibility (MACR). This minimum age means the following:

- Children who commit an offence at an age below that minimum cannot be held responsible in a penal law procedure. Even (very) young children do have the capacity to infringe the penal law but if they commit an offence when below MACR the irrefutable assumption is that they cannot be formally charged and held responsible in a penal law procedure. For these children special protective measures can be taken if necessary in their best interests;
- Children at or above the MACR at the time of the commission of an offence (or: infringement of the penal law) but younger than 18 years (see also paragraphs 35-38 below) can be formally charged and subject to penal law procedures. But these procedures, including the final outcome, must be in full compliance with the principles and provisions of CRC as elaborated in the present general comment.

32. Rule 4 of the Beijing Rules recommends that the beginning of MACR shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity. In line with this rule the Committee has recommended States parties not to set a MACR at a too low level and to increase the existing low MACR to an internationally acceptable level. From these recommendations, it can be concluded that a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable. States parties are encouraged to increase their lower MACR to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level.

33. At the same time, the Committee urges States parties not to lower their MACR to the age of 12. A higher MACR, for instance 14 or 16 years of age, contributes to a juvenile justice system which, in accordance with article 40 (3) (b) of CRC, deals with children in conflict with the law without resorting to judicial proceedings, providing that the child's human rights and legal safeguards are fully respected. In this regard, States parties should inform the Committee in their reports in specific detail how children below the MACR set in their laws are treated when they are recognized as having infringed the penal law, or are alleged as or accused of having done so, and what kinds of legal safeguards are in place to ensure that their treatment is as fair and just as that of children at or above MACR.

34. The Committee wishes to express its concern about the practice of allowing exceptions to a MACR which permit the use of a lower minimum age of criminal responsibility in cases where

the child, for example, is accused of committing a serious offence or where the child is considered mature enough to be held criminally responsible. The Committee strongly recommends that States parties set a MACR that does not allow, by way of exception, the use of a lower age.

35. If there is no proof of age and it cannot be established that the child is at or above the MACR, the child shall not be held criminally responsible (see also paragraph 39 below).

The upper age-limit for juvenile justice

36. The Committee also wishes to draw the attention of States parties to the upper age-limit for the application of the rules of juvenile justice. These special rules - in terms both of special procedural rules and of rules for diversion and special measures - should apply, starting at the MACR set in the country, for all children who, at the time of their alleged commission of an offence (or act punishable under the criminal law), have not yet reached the age of 18 years.

37. The Committee wishes to remind States parties that they have recognized the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in accordance with the provisions of article 40 of CRC. This means that every person under the age of 18 years at the time of the alleged commission of an offence must be treated in accordance with the rules of juvenile justice.

38. The Committee, therefore, recommends that those States parties which limit the applicability of their juvenile justice rules to children under the age of 16 (or lower) years, or which allow by way of exception that 16 or 17-year-old children are treated as adult criminals, change their laws with a view to achieving a non-discriminatory full application of their juvenile justice rules to all persons under the age of 18 years. The Committee notes with appreciation that some States parties allow for the application of the rules and regulations of juvenile justice to persons aged 18 and older, usually till the age of 21, either as a general rule or by way of exception.

39. Finally, the Committee wishes to emphasize the fact that it is crucial for the full implementation of article 7 of CRC requiring, inter alia, that every child shall be registered immediately after birth to set age-limits one way or another, which is the case for all States parties. A child without a provable date of birth is extremely vulnerable to all kinds of abuse and injustice regarding the family, work, education and labour, particularly within the juvenile justice system. Every child must be provided with a birth certificate free of charge whenever he/she needs it to prove his/her age. If there is no proof of age, the child is entitled to a reliable medical or social investigation that may establish his/her age and, in the case of conflict or inconclusive evidence, the child shall have the right to the rule of the benefit of the doubt.

D. The guarantees for a fair trial

40. Article 40 (2) of CRC contains an important list of rights and guarantees that are all meant to ensure that every child alleged as or accused of having infringed the penal law receives fair treatment and trial. Most of these guarantees can also be found in article 14 of the International Covenant on Civil and Political Rights (ICCPR), which the Human Rights Committee elaborated and commented on in its general comment No. 13 (1984) (Administration of justice) which is

currently in the process of being reviewed. However, the implementation of these guarantees for children does have some specific aspects which will be presented in this section. Before doing so, the Committee wishes to emphasize that a key condition for a proper and effective implementation of these rights or guarantees is the quality of the persons involved in the administration of juvenile justice. The training of professionals, such as police officers, prosecutors, legal and other representatives of the child, judges, probation officers, social workers and others is crucial and should take place in a systematic and ongoing manner. These professionals should be well informed about the child's, and particularly about the adolescent's physical, psychological, mental and social development, as well as about the special needs of the most vulnerable children, such as children with disabilities, displaced children, street children, refugee and asylum-seeking children, and children belonging to racial, ethnic, religious, linguistic or other minorities (see paragraphs 6-9 above). Since girls in the juvenile justice system may be easily overlooked because they represent only a small group, special attention must be paid to the particular needs of the girl child, e.g. in relation to prior abuse and special health needs. Professionals and staff should act under all circumstances in a manner consistent with the child's dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others, and which promotes the child's reintegration and his/her assuming a constructive role in society (art. 40 (1)). All the guarantees recognized in article 40 (2), which will be dealt with hereafter, are minimum standards, meaning that States parties can and should try to establish and observe higher standards, e.g. in the areas of legal assistance and the involvement of the child and her/his parents in the judicial process.

No retroactive juvenile justice (art. 40 (2) (a))

41. Article 40 (2) (a) of CRC affirms that the rule that no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time it was committed is also applicable to children (see also article 15 of ICCPR). It means that no child can be charged with or sentenced under the penal law for acts or omissions which at the time they were committed were not prohibited under national or international law. In the light of the fact that many States parties have recently strengthened and/or expanded their criminal law provisions to prevent and combat terrorism, the Committee recommends that States parties ensure that these changes do not result in retroactive or unintended punishment of children. The Committee also wishes to remind States parties that the rule that no heavier penalty shall be imposed than the one that was applicable at the time when the criminal offence was committed, as expressed in article 15 of ICCPR, is in the light of article 41 of CRC, applicable to children in the States parties to ICCPR. No child shall be punished with a heavier penalty than the one applicable at the time of his/her infringement of the penal law. But if a change of law after the act provides for a lighter penalty, the child should benefit from this change.

The presumption of innocence (art. 40 (2) (b) (i))

42. The presumption of innocence is fundamental to the protection of the human rights of children in conflict with the law. It means that the burden of proof of the charge(s) brought against the child is on the prosecution. The child alleged as or accused of having infringed the penal law has the benefit of doubt and is only guilty as charged if these charges have been proven beyond reasonable doubt. The child has the right to be treated in accordance with this presumption and it is the duty of all public authorities or others involved to refrain from

prejudging the outcome of the trial. States parties should provide information about child development to ensure that this presumption of innocence is respected in practice. Due to the lack of understanding of the process, immaturity, fear or other reasons, the child may behave in a suspicious manner, but the authorities must not assume that the child is guilty without proof of guilt beyond any reasonable doubt.

The right to be heard (art. 12)

43. Article 12 (2) of CRC requires that a child be provided with the opportunity to be heard in any judicial or 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.

44. It is obvious that for a child alleged as, accused of, or recognized as having infringed the penal law, the right to be heard is fundamental for a fair trial. It is equally obvious that the child has the right to be heard directly and not only through a representative or an appropriate body if it is in her/his best interests. This right must be fully observed at all stages of the process, starting with pretrial stage when the child has the right to remain silent, as well as the right to be heard by the police, the prosecutor and the investigating judge. But it also applies to the stages of adjudication and of implementation of the imposed measures. In other words, the child must be given the opportunity to express his/her views freely, and those views should be given due weight in accordance with the age and maturity of the child (art. 12 (1)), throughout the juvenile justice process. This means that the child, in order to effectively participate in the proceedings, must be informed not only of the charges (see paragraphs 47-48 below), but also of the juvenile justice process as such and of the possible measures.

45. The child should be given the opportunity to express his/her views concerning the (alternative) measures that may be imposed, and the specific wishes or preferences he/she may have in this regard should be given due weight. Alleging that the child is criminally responsible implies that he/she should be competent and able to effectively participate in the decisions regarding the most appropriate response to allegations of his/her infringement of the penal law (see paragraph 46 below). It goes without saying that the judges involved are responsible for taking the decisions. But to treat the child as a passive object does not recognize his/her rights nor does it contribute to an effective response to his/her behaviour. This also applies to the implementation of the measure(s) imposed. Research shows that an active engagement of the child in this implementation will, in most cases, contribute to a positive result.

The right to effective participation in the proceedings (art 40 (2) (b) (iv))

46. A fair trial requires that the child alleged as or accused of having infringed the penal law be able to effectively participate in the trial, and therefore needs to comprehend the charges, and possible consequences and penalties, in order to direct the legal representative, to challenge witnesses, to provide an account of events, and to make appropriate decisions about evidence, testimony and the measure(s) to be imposed. Article 14 of the Beijing Rules provides that the proceedings should be conducted in an atmosphere of understanding to allow the child to participate and to express himself/herself freely. Taking into account the child's age and maturity may also require modified courtroom procedures and practices.

Prompt and direct information of the charge(s) (art. 40 (2) (b) (ii))

47. Every child alleged as or accused of having infringed the penal law has the right to be informed promptly and directly of the charges brought against him/her. Prompt and direct means as soon as possible, and that is when the prosecutor or the judge initially takes procedural steps against the child. But also when the authorities decide to deal with the case without resorting to judicial proceedings, the child must be informed of the charge(s) that may justify this approach. This is part of the requirement of article 40 (3) (b) of CRC that legal safeguards should be fully respected. The child should be informed in a language he/she understands. This may require a presentation of the information in a foreign language but also a “translation” of the formal legal jargon often used in criminal/juvenile charges into a language that the child can understand.

48. Providing the child with an official document is not enough and an oral explanation may often be necessary. The authorities should not leave this to the parents or legal guardians or the child’s legal or other assistance. It is the responsibility of the authorities (e.g. police, prosecutor, judge) to make sure that the child understands each charge brought against him/her. The Committee is of the opinion that the provision of this information to the parents or legal guardians should not be an alternative to communicating this information to the child. It is most appropriate if both the child and the parents or legal guardians receive the information in such a way that they can understand the charge(s) and the possible consequences.

Legal or other appropriate assistance (art. 40 (2) (b) (ii))

49. The child must be guaranteed legal or other appropriate assistance in the preparation and presentation of his/her defence. CRC does require that the child be provided with assistance, which is not necessarily under all circumstances legal but it must be appropriate. It is left to the discretion of States parties to determine how this assistance is provided but it should be free of charge. The Committee recommends the State parties provide as much as possible for adequate trained legal assistance, such as expert lawyers or paralegal professionals. Other appropriate assistance is possible (e.g. social worker), but that person must have sufficient knowledge and understanding of the various legal aspects of the process of juvenile justice and must be trained to work with children in conflict with the law.

50. As required by article 14 (3) (b) of ICCPR, the child and his/her assistant must have adequate time and facilities for the preparation of his/her defence. Communications between the child and his/her assistance, either in writing or orally, should take place under such conditions that the confidentiality of such communications is fully respected in accordance with the guarantee provided for in article 40 (2) (b) (vii) of CRC, and the right of the child to be protected against interference with his/her privacy and correspondence (art. 16 of CRC). A number of States parties have made reservations regarding this guarantee (art. 40 (2) (b) (ii) of CRC), apparently assuming that it requires exclusively the provision of legal assistance and therefore by a lawyer. That is not the case and such reservations can and should be withdrawn.

Decisions without delay and with involvement of parents (art. 40 (2) (b) (iii))

51. Internationally there is a consensus that for children in conflict with the law the time between the commission of the offence and the final response to this act should be as short as

possible. The longer this period, the more likely it is that the response loses its desired positive, pedagogical impact, and the more the child will be stigmatized. In this regard, the Committee also refers to article 37 (d) of CRC, where the child deprived of liberty has the right to a prompt decision on his/her action to challenge the legality of the deprivation of his/her liberty. The term “prompt” is even stronger - and justifiably so given the seriousness of deprivation of liberty - than the term “without delay” (art. 40 (2) (b) (iii) of CRC), which is stronger than the term “without undue delay” of article 14 (3) (c) of ICCPR.

52. The Committee recommends that the States parties set and implement time limits for the period between the commission of the offence and the completion of the police investigation, the decision of the prosecutor (or other competent body) to bring charges against the child, and the final adjudication and decision by the court or other competent judicial body. These time limits should be much shorter than those set for adults. But at the same time, decisions without delay should be the result of a process in which the human rights of the child and legal safeguards are fully respected. In this decision-making process without delay, the legal or other appropriate assistance must be present. This presence should not be limited to the trial before the court or other judicial body, but also applies to all other stages of the process, beginning with the interviewing (interrogation) of the child by the police.

53. Parents or legal guardians should also be present at the proceedings because they can provide general psychological and emotional assistance to the child. The presence of parents does not mean that parents can act in defence of the child or be involved in the decision-making process. However, the judge or competent authority may decide, at the request of the child or of his/her legal or other appropriate assistance or because it is not in the best interests of the child (art. 3 of CRC), to limit, restrict or exclude the presence of the parents from the proceedings.

54. The Committee recommends that States parties explicitly provide by law for the maximum possible involvement of parents or legal guardians in the proceedings against the child. This involvement shall in general contribute to an effective response to the child’s infringement of the penal law. To promote parental involvement, parents must be notified of the apprehension of their child as soon as possible.

55. At the same time, the Committee regrets the trend in some countries to introduce the punishment of parents for the offences committed by their children. Civil liability for the damage caused by the child’s act can, in some limited cases, be appropriate, in particular for the younger children (e.g. below 16 years of age). But criminalizing parents of children in conflict with the law will most likely not contribute to their becoming active partners in the social reintegration of their child.

Freedom from compulsory self-incrimination (art. 40 (2) (b) (iii))

56. In line with article 14 (3) (g) of ICCPR, CRC requires that a child be not compelled to give testimony or to confess or acknowledge guilt. This means in the first place - and self-evidently - that torture, cruel, inhuman or degrading treatment in order to extract an admission or a confession constitutes a grave violation of the rights of the child (art. 37 (a) of CRC) and is wholly unacceptable. No such admission or confession can be admissible as evidence (article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

57. There are many other less violent ways to coerce or to lead the child to a confession or a self-incriminatory testimony. The term “compelled” should be interpreted in a broad manner and not be limited to physical force or other clear violations of human rights. The age of the child, the child’s development, the length of the interrogation, the child’s lack of understanding, the fear of unknown consequences or of a suggested possibility of imprisonment may lead him/her to a confession that is not true. That may become even more likely if rewards are promised such as: “You can go home as soon as you have given us the true story”, or lighter sanctions or release are promised.

58. The child being questioned must have access to a legal or other appropriate representative, and must be able to request the presence of his/her parent(s) during questioning. There must be independent scrutiny of the methods of interrogation to ensure that the evidence is voluntary and not coerced, given the totality of the circumstances, and is reliable. The court or other judicial body, when considering the voluntary nature and reliability of an admission or confession by a child, must take into account the age of the child, the length of custody and interrogation, and the presence of legal or other counsel, parent(s), or independent representatives of the child. Police officers and other investigating authorities should be well trained to avoid interrogation techniques and practices that result in coerced or unreliable confessions or testimonies.

Presence and examination of witnesses (art. 40 (2) (b) (iv))

59. The guarantee in article 40 (2) (b) (iv) of CRC underscores that the principle of equality of arms (i.e. under conditions of equality or parity between defence and prosecution) should be observed in the administration of juvenile justice. The term “to examine or to have examined” refers to the fact that there are distinctions in the legal systems, particularly between the accusatorial and inquisitorial trials. In the latter, the defendant is often allowed to examine witnesses although he/she rarely uses this right, leaving examination of the witnesses to the lawyer or, in the case of children, to another appropriate body. However, it remains important that the lawyer or other representative informs the child of the possibility to examine witnesses and to allow him/her to express his/her views in that regard, views which should be given due weight in accordance with the age and maturity of the child (art. 12).

The right to appeal (art. 40 (2) (b) (v))

60. The child has the right to appeal against the decision by which he is found guilty of the charge(s) brought against him/her and against the measures imposed as a consequence of this guilty verdict. This appeal should be decided by a higher, competent, independent and impartial authority or judicial body, in other words, a body that meets the same standards and requirements as the one that dealt with the case in the first instance. This guarantee is similar to the one expressed in article 14 (5) of ICCPR. This right of appeal is not limited to the most serious offences.

61. This seems to be the reason why quite a few States parties have made reservations regarding this provision in order to limit this right of appeal by the child to the more serious offences and/or imprisonment sentences. The Committee reminds States parties to the ICCPR

that a similar provision is made in article 14 (5) of the Covenant. In the light of article 41 of CRC, it means that this article should provide every adjudicated child with the right to appeal. The Committee recommends that the States parties withdraw their reservations to the provision in article 40 (2) (b) (v).

Free assistance of an interpreter (art. 40 (2) (vi))

62. If a child cannot understand or speak the language used by the juvenile justice system, he/she has the right to get free assistance of an interpreter. This assistance should not be limited to the court trial but should also be available at all stages of the juvenile justice process. It is also important that the interpreter has been trained to work with children, because the use and understanding of their mother tongue might be different from that of adults. Lack of knowledge and/or experience in that regard may impede the child's full understanding of the questions raised, and interfere with the right to a fair trial and to effective participation. The condition starting with "if", "if the child cannot understand or speak the language used", means that a child of a foreign or ethnic origin for example, who - besides his/her mother tongue - understands and speaks the official language, does not have to be provided with the free assistance of an interpreter.

63. The Committee also wishes to draw the attention of States parties to children with speech impairment or other disabilities. In line with the spirit of article 40 (2) (vi), and in accordance with the special protection measures provided to children with disabilities in article 23, the Committee recommends that States parties ensure that children with speech impairment or other disabilities are provided with adequate and effective assistance by well-trained professionals, e.g. in sign language, in case they are subject to the juvenile justice process (see also in this regard general comment No. 9 (The rights of children with disabilities) of the Committee on the Rights of the Child).

Full respect of privacy (arts. 16 and 40 (2) (b) (vii))

64. The right of a child to have his/her privacy fully respected during all stages of the proceedings reflects the right to protection of privacy enshrined in article 16 of CRC. "All stages of the proceedings" includes from the initial contact with law enforcement (e.g. a request for information and identification) up until the final decision by a competent authority, or release from supervision, custody or deprivation of liberty. In this particular context, it is meant to avoid harm caused by undue publicity or by the process of labelling. No information shall be published that may lead to the identification of a child offender because of its effect of stigmatization, and possible impact on his/her ability to have access to education, work, housing or to be safe. It means that a public authority should be very reluctant with press releases related to offences allegedly committed by children and limit them to very exceptional cases. They must take measures to guarantee that children are not identifiable via these press releases. Journalists who violate the right to privacy of a child in conflict with the law should be sanctioned with disciplinary and when necessary (e.g. in case of recidivism) with penal law sanctions.

65. In order to protect the privacy of the child, most States parties have as a rule - sometimes with the possibility of exceptions - that the court or other hearings of a child accused of an

infringement of the penal law should take place behind closed doors. This rule allows for the presence of experts or other professionals with a special permission of the court. Public hearings in juvenile justice should only be possible in well-defined cases and at the written decision of the court. Such a decision should be open for appeal by the child.

66. The Committee recommends that all States parties introduce the rule that court and other hearings of a child in conflict with the law be conducted behind closed doors. Exceptions to this rule should be very limited and clearly stated in the law. The verdict/sentence should be pronounced in public at a court session in such a way that the identity of the child is not revealed. The right to privacy (art. 16) requires all professionals involved in the implementation of the measures taken by the court or another competent authority to keep all information that may result in the identification of the child confidential in all their external contacts. Furthermore, the right to privacy also means that the records of child offenders should be kept strictly confidential and closed to third parties except for those directly involved in the investigation and adjudication of, and the ruling on, the case. With a view to avoiding stigmatization and/or prejudgements, records of child offenders should not be used in adult proceedings in subsequent cases involving the same offender (see the Beijing Rules, rules 21.1 and 21.2), or to enhance such future sentencing.

67. The Committee also recommends that the States parties introduce rules which would allow for an automatic removal from the criminal records of the name of the child who committed an offence upon reaching the age of 18, or for certain limited, serious offences where removal is possible at the request of the child, if necessary under certain conditions (e.g. not having committed an offence within two years after the last conviction).

E. Measures (see also chapter IV, section B, above)

Pretrial alternatives

68. The decision to initiate a formal criminal law procedure does not necessarily mean that this procedure must be completed with a formal court sentence for a child. In line with the observations made above in section B, the Committee wishes to emphasize that the competent authorities - in most States the office of the public prosecutor - should continuously explore the possibilities of alternatives to a court conviction. In other words, efforts to achieve an appropriate conclusion of the case by offering measures like the ones mentioned above in section B should continue. The nature and duration of these measures offered by the prosecution may be more demanding, and legal or other appropriate assistance for the child is then necessary. The performance of such a measure should be presented to the child as a way to suspend the formal criminal/juvenile law procedure, which will be terminated if the measure has been carried out in a satisfactory manner.

69. In this process of offering alternatives to a court conviction at the level of the prosecutor, the child's human rights and legal safeguards should be fully respected. In this regard, the Committee refers to the recommendations set out in paragraph 27 above, which equally apply here.

Dispositions by the juvenile court/judge

70. After a fair and just trial in full compliance with article 40 of CRC (see chapter IV, section D, above), a decision is made regarding the measures which should be imposed on the child found guilty of the alleged offence(s). The laws must provide the court/judge, or other competent, independent and impartial authority or judicial body, with a wide variety of possible alternatives to institutional care and deprivation of liberty, which are listed in a non-exhaustive manner in article 40 (4) of CRC, to assure that deprivation of liberty be used only as a measure of last resort and for the shortest possible period of time (art. 37 (b) of CRC).

71. The Committee wishes to emphasize that the reaction to an offence should always be in proportion not only to the circumstances and the gravity of the offence, but also to the age, lesser culpability, circumstances and needs of the child, as well as to the various and particularly long-term needs of the society. A strictly punitive approach is not in accordance with the leading principles for juvenile justice spelled out in article 40 (1) of CRC (see paragraphs 5-14 above). The Committee reiterates that corporal punishment as a sanction is a violation of these principles as well as of article 37 which prohibits all forms of cruel, inhuman and degrading treatment or punishment (see also the Committee's general comment No. 8 (2006) (The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment)). In cases of severe offences by children, measures proportionate to the circumstances of the offender and to the gravity of the offence may be considered, including considerations of the need of public safety and sanctions. In the case of children, such considerations must always be outweighed by the need to safeguard the well-being and the best interests of the child and to promote his/her reintegration.

72. The Committee notes that if a penal disposition is linked to the age of a child, and there is conflicting, inconclusive or uncertain evidence of the child's age, he/she shall have the right to the rule of the benefit of the doubt (see also paragraphs 35 and 39 above).

73. As far as alternatives to deprivation of liberty/institutional care are concerned, there is a wide range of experience with the use and implementation of such measures. States parties should benefit from this experience, and develop and implement these alternatives by adjusting them to their own culture and tradition. It goes without saying that measures amounting to forced labour or to torture or inhuman and degrading treatment must be explicitly prohibited, and those responsible for such illegal practices should be brought to justice.

74. After these general remarks, the Committee wishes to draw attention to the measures prohibited under article 37 (a) of CRC, and to deprivation of liberty.

Prohibition of the death penalty

75. Article 37 (a) of CRC reaffirms the internationally accepted standard (see for example article 6 (5) of ICCPR) that the death penalty cannot be imposed for a crime committed by a person who at that time was under 18 years of age. Although the text is clear, there are States parties that assume that the rule only prohibits the execution of persons below the age of 18 years. However, under this rule the explicit and decisive criteria is the age at the time of the

commission of the offence. It means that a death penalty may not be imposed for a crime committed by a person under 18 regardless of his/her age at the time of the trial or sentencing or of the execution of the sanction.

76. The Committee recommends the few States parties that have not done so yet to abolish the death penalty for all offences committed by persons below the age of 18 years and to suspend the execution of all death sentences for those persons till the necessary legislative measures abolishing the death penalty for children have been fully enacted. The imposed death penalty should be changed to a sanction that is in full conformity with CRC.

No life imprisonment without parole

77. No child who was under the age of 18 at the time he or she committed an offence should be sentenced to life without the possibility of release or parole. For all sentences imposed upon children the possibility of release should be realistic and regularly considered. In this regard, the Committee refers to article 25 of CRC providing the right to periodic review for all children placed for the purpose of care, protection or treatment. The Committee reminds the States parties which do sentence children to life imprisonment with the possibility of release or parole that this sanction must fully comply with and strive for the realization of the aims of juvenile justice enshrined in article 40 (1) of CRC. This means inter alia that the child sentenced to this imprisonment should receive education, treatment, and care aiming at his/her release, reintegration and ability to assume a constructive role in society. This also requires a regular review of the child's development and progress in order to decide on his/her possible release. Given the likelihood that a life imprisonment of a child will make it very difficult, if not impossible, to achieve the aims of juvenile justice despite the possibility of release, the Committee strongly recommends the States parties to abolish all forms of life imprisonment for offences committed by persons under the age of 18.

F. Deprivation of liberty, including pretrial detention and post-trial incarceration

78. Article 37 of CRC contains the leading principles for the use of deprivation of liberty, the procedural rights of every child deprived of liberty, and provisions concerning the treatment of and conditions for children deprived of their liberty.

Basic principles

79. The leading principles for the use of deprivation of liberty are: (a) 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; and (b) no child shall be deprived of his/her liberty unlawfully or arbitrarily.

80. The Committee notes with concern that, in many countries, children languish in pretrial detention for months or even years, which constitutes a grave violation of article 37 (b) of CRC. An effective package of alternatives must be available (see chapter IV, section B, above), for the States parties to realize their obligation under article 37 (b) of CRC to use deprivation of liberty only as a measure of last resort. The use of these alternatives must be carefully structured to reduce the use of pretrial detention as well, rather than "widening the net" of sanctioned children. In addition, the States parties should take adequate legislative and other measures to reduce the

use of pretrial detention. Use of pretrial detention as a punishment violates the presumption of innocence. The law should clearly state the conditions that are required to determine whether to place or keep a child in pretrial detention, in particular to ensure his/her appearance at the court proceedings, and whether he/she is an immediate danger to himself/herself or others. The duration of pretrial detention should be limited by law and be subject to regular review.

81. The Committee recommends that the State parties ensure that a child can be released from pretrial detention as soon as possible, and if necessary under certain conditions. Decisions regarding pretrial detention, including its duration, should be made by a competent, independent and impartial authority or a judicial body, and the child should be provided with legal or other appropriate assistance.

Procedural rights (art. 37 (d))

82. Every child deprived of his/her liberty has the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his/her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

83. Every child arrested and deprived of his/her liberty should be brought before a competent authority to examine the legality of (the continuation of) this deprivation of liberty within 24 hours. The Committee also recommends that the States parties ensure by strict legal provisions that the legality of a pretrial detention is reviewed regularly, preferably every two weeks. In case a conditional release of the child, e.g. by applying alternative measures, is not possible, the child should be formally charged with the alleged offences and be brought before a court or other competent, independent and impartial authority or judicial body, not later than 30 days after his/her pretrial detention takes effect. The Committee, conscious of the practice of adjourning court hearings, often more than once, urges the States parties to introduce the legal provisions necessary to ensure that the court/juvenile judge or other competent body makes a final decision on the charges not later than six months after they have been presented.

84. The right to challenge the legality of the deprivation of liberty includes not only the right to appeal, but also the right to access the court, or other competent, independent and impartial authority or judicial body, in cases where the deprivation of liberty is an administrative decision (e.g. the police, the prosecutor and other competent authority). The right to a prompt decision means that a decision must be rendered as soon as possible, e.g. within or not later than two weeks after the challenge is made.

Treatment and conditions (art. 37 (c))

85. Every child deprived of liberty shall be separated from adults. A child deprived of his/her liberty shall not be placed in an adult prison or other facility for adults. There is abundant evidence that the placement of children in adult prisons or jails compromises their basic safety, well-being, and their future ability to remain free of crime and to reintegrate. The permitted exception to the separation of children from adults stated in article 37 (c) of CRC, “unless it is considered in the child’s best interests not to do so”, should be interpreted narrowly; the child’s

best interests does not mean for the convenience of the States parties. States parties should establish separate facilities for children deprived of their liberty, which include distinct, child-centred staff, personnel, policies and practices.

86. This rule does not mean that a child placed in a facility for children has to be moved to a facility for adults immediately after he/she turns 18. Continuation of his/her stay in the facility for children should be possible if that is in his/her best interest and not contrary to the best interests of the younger children in the facility.

87. Every child deprived of liberty has the right to maintain contact with his/her family through correspondence and visits. In order to facilitate visits, the child should be placed in a facility that is as close as possible to the place of residence of his/her family. Exceptional circumstances that may limit this contact should be clearly described in the law and not be left to the discretion of the competent authorities.

88. The Committee draws the attention of States parties to the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by the General Assembly in its resolution 45/113 of 14 December 1990. The Committee urges the States parties to fully implement these rules, while also taking into account as far as relevant the Standard Minimum Rules for the Treatment of Prisoners (see also rule 9 of the Beijing Rules). In this regard, the Committee recommends that the States parties incorporate these rules into their national laws and regulations, and make them available, in the national or regional language, to all professionals, NGOs and volunteers involved in the administration of juvenile justice.

89. The Committee wishes to emphasize that, inter alia, the following principles and rules need to be observed in all cases of deprivation of liberty:

- Children should be provided with a physical environment and accommodations which are in keeping with the rehabilitative aims of residential placement, and due regard must be given to their needs for privacy, sensory stimuli, opportunities to associate with their peers, and to participate in sports, physical exercise, in arts, and leisure time activities;
- Every child of compulsory school age has the right to education suited to his/her needs and abilities, and designed to prepare him/her for return to society; in addition, every child should, when appropriate, receive vocational training in occupations likely to prepare him/her for future employment;
- Every child has the right to be examined by a physician upon admission to the detention/correctional facility and shall receive adequate medical care throughout his/her stay in the facility, which should be provided, where possible, by health facilities and services of the community;
- The staff of the facility should promote and facilitate frequent contacts of the child with the wider community, including communications with his/her family, friends and other persons or representatives of reputable outside organizations, and the opportunity to visit his/her home and family;

- Restraint or force can be used only when the child poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted. The use of restraint or force, including physical, mechanical and medical restraints, should be under close and direct control of a medical and/or psychological professional. It must never be used as a means of punishment. Staff of the facility should receive training on the applicable standards and members of the staff who use restraint or force in violation of the rules and standards should be punished appropriately;
- Any disciplinary measure must be consistent with upholding the inherent dignity of the juvenile and the fundamental objectives of institutional care; disciplinary measures in violation of article 37 of CRC must be strictly forbidden, including corporal punishment, placement in a dark cell, closed or solitary confinement, or any other punishment that may compromise the physical or mental health or well-being of the child concerned;
- Every child should have the right to make requests or complaints, without censorship as to the substance, to the central administration, the judicial authority or other proper independent authority, and to be informed of the response without delay; children need to know about and have easy access to these mechanisms;
- Independent and qualified inspectors should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative; they should place special emphasis on holding conversations with children in the facilities, in a confidential setting.

V. THE ORGANIZATION OF JUVENILE JUSTICE

90. In order to ensure the full implementation of the principles and rights elaborated in the previous paragraphs, it is necessary to establish an effective organization for the administration of juvenile justice, and a comprehensive juvenile justice system. As stated in article 40 (3) of CRC, States parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children in conflict with the penal law.

91. What the basic provisions of these laws and procedures are required to be, has been presented in the present general comment. More and other provisions are left to the discretion of States parties. This also applies to the form of these laws and procedures. They can be laid down in special chapters of the general criminal and procedural law, or be brought together in a separate act or law on juvenile justice.

92. A comprehensive juvenile justice system further requires the establishment of specialized units within the police, the judiciary, the court system, the prosecutor's office, as well as specialized defenders or other representatives who provide legal or other appropriate assistance to the child.

93. The Committee recommends that the States parties establish juvenile courts either as separate units or as part of existing regional/district courts. Where that is not immediately feasible for practical reasons, the States parties should ensure the appointment of specialized judges or magistrates for dealing with cases of juvenile justice.

94. In addition, specialized services such as probation, counselling or supervision should be established together with specialized facilities including for example day treatment centres and, where necessary, facilities for residential care and treatment of child offenders. In this juvenile justice system, an effective coordination of the activities of all these specialized units, services and facilities should be promoted in an ongoing manner.

95. It is clear from many States parties' reports that non-governmental organizations can and do play an important role not only in the prevention of juvenile delinquency as such, but also in the administration of juvenile justice. The Committee therefore recommends that States parties seek the active involvement of these organizations in the development and implementation of their comprehensive juvenile justice policy and provide them with the necessary resources for this involvement.

VI. AWARENESS-RAISING AND TRAINING

96. Children who commit offences are often subject to negative publicity in the media, which contributes to a discriminatory and negative stereotyping of these children and often of children in general. This negative presentation or criminalization of child offenders is often based on misrepresentation and/or misunderstanding of the causes of juvenile delinquency, and results regularly in a call for a tougher approach (e.g. zero-tolerance, three strikes and you are out, mandatory sentences, trial in adult courts and other primarily punitive measures). To create a positive environment for a better understanding of the root causes of juvenile delinquency and a rights-based approach to this social problem, the States parties should conduct, promote and/or support educational and other campaigns to raise awareness of the need and the obligation to deal with children alleged of violating the penal law in accordance with the spirit and the letter of CRC. In this regard, the States parties should seek the active and positive involvement of members of parliament, NGOs and the media, and support their efforts in the improvement of the understanding of a rights-based approach to children who have been or are in conflict with the penal law. It is crucial for children, in particular those who have experience with the juvenile justice system, to be involved in these awareness-raising efforts.

97. It is essential for the quality of the administration of juvenile justice that all the professionals involved, inter alia, in law enforcement and the judiciary receive appropriate training on the content and meaning of the provisions of CRC in general, particularly those directly relevant to their daily practice. This training should be organized in a systematic and ongoing manner and should not be limited to information on the relevant national and international legal provisions. It should include information on, inter alia, the social and other causes of juvenile delinquency, psychological and other aspects of the development of children, with special attention to girls and children belonging to minorities or indigenous peoples, the culture and the trends in the world of young people, the dynamics of group activities, and the available measures dealing with children in conflict with the penal law, in particular measures without resorting to judicial proceedings (see chapter IV, section B, above).

VII. DATA COLLECTION, EVALUATION AND RESEARCH

98. The Committee is deeply concerned about the lack of even basic and disaggregated data on, inter alia, the number and nature of offences committed by children, the use and the average duration of pretrial detention, the number of children dealt with by resorting to measures other

than judicial proceedings (diversion), the number of convicted children and the nature of the sanctions imposed on them. The Committee urges the States parties to systematically collect disaggregated data relevant to the information on the practice of the administration of juvenile justice, and necessary for the development, implementation and evaluation of policies and programmes aiming at the prevention and effective responses to juvenile delinquency in full accordance with the principles and provisions of CRC.

99. The Committee recommends that States parties conduct regular evaluations of their practice of juvenile justice, in particular of the effectiveness of the measures taken, including those concerning discrimination, reintegration and recidivism, preferably carried out by independent academic institutions. Research, as for example on the disparities in the administration of juvenile justice which may amount to discrimination, and developments in the field of juvenile delinquency, such as effective diversion programmes or newly emerging juvenile delinquency activities, will indicate critical points of success and concern. It is important that children are involved in this evaluation and research, in particular those who have been in contact with parts of the juvenile justice system. The privacy of these children and the confidentiality of their cooperation should be fully respected and protected. In this regard, the Committee refers the States parties to the existing international guidelines on the involvement of children in research.

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ANNEX 4: DIRECTIVE
OF THE EUROPEAN
PARLIAMENT AND
OF THE COUNCIL
ON PROCEDURAL
SAFEGUARDS FOR
CHILDREN WHO ARE
SUSPECTS OR ACCUSED
PERSONS IN CRIMINAL
PROCEEDINGS

.....

I

(Legislative acts)

DIRECTIVES

DIRECTIVE (EU) 2016/800 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 11 May 2016****on procedural safeguards for children who are suspects or accused persons in criminal proceedings**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular point (b) of Article 82(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) The purpose of this Directive is to establish procedural safeguards to ensure that children, meaning persons under the age of 18, who are suspects or accused persons in criminal proceedings, are able to understand and follow those proceedings and to exercise their right to a fair trial, and to prevent children from re-offending and foster their social integration.
- (2) By establishing common minimum rules on the protection of procedural rights of children who are suspects or accused persons, this Directive aims to strengthen the trust of Member States in each other's criminal justice systems and thus to improve mutual recognition of decisions in criminal matters. Such common minimum rules should also remove obstacles to the free movement of citizens throughout the territory of the Member States.
- (3) Although the Member States are parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the International Covenant on Civil and Political Rights, and the UN Convention on the Rights of the Child, experience has shown that this in itself does not always provide a sufficient degree of trust in the criminal justice systems of other Member States.
- (4) On 30 November 2009, the Council adopted a Resolution on a Roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings ⁽³⁾ ('the Roadmap'). Taking a step-by-step approach, the Roadmap calls for the adoption of measures regarding the right to translation and interpretation (measure A), the right to information on rights and information about the charges (measure B), the right to legal advice and legal aid (measure C), the right to communicate with relatives, employers and consular authorities (measure D), and special safeguards for suspected or accused persons who are vulnerable (measure E). The Roadmap emphasises

⁽¹⁾ OJ C 226, 16.7.2014, p. 63.

⁽²⁾ Position of the European Parliament of 9 March 2016 (not yet published in the Official Journal) and decision of the Council of 21 April 2016.

⁽³⁾ OJ C 295, 4.12.2009, p. 1.

that the order of the rights is indicative and thus implies that it may be changed in accordance with priorities. The Roadmap is designed to operate as a whole; only when all its components are implemented will its benefits be experienced in full.

- (5) On 11 December 2009, the European Council welcomed the Roadmap and made it part of the Stockholm programme — An open and secure Europe serving and protecting citizens ⁽¹⁾ (point 2.4). The European Council underlined the non-exhaustive character of the Roadmap by inviting the Commission to examine further elements of minimum procedural rights for suspects and accused persons, and to assess whether other issues, for instance the presumption of innocence, need to be addressed, in order to promote better cooperation in that area.
- (6) Four measures on procedural rights in criminal proceedings have been adopted pursuant to the Roadmap to date, namely Directives 2010/64/EU ⁽²⁾, 2012/13/EU ⁽³⁾, 2013/48/EU ⁽⁴⁾ and Directive (EU) 2016/343 ⁽⁵⁾ of the European Parliament and the Council.
- (7) This Directive promotes the rights of the child, taking into account the Guidelines of the Council of Europe on child-friendly justice.
- (8) Where children are suspects or accused persons in criminal proceedings or are subject to European arrest warrant proceedings pursuant to Council Framework Decision 2002/584/JHA ⁽⁶⁾ (requested persons), Member States should ensure that the child's best interests are always a primary consideration, in accordance with Article 24(2) of the Charter of Fundamental Rights of the European Union (the Charter).
- (9) Children who are suspects or accused persons in criminal proceedings should be given particular attention in order to preserve their potential for development and reintegration into society.
- (10) This Directive should apply to children who are suspects or accused persons in criminal proceedings and to children who are requested persons. In respect of children who are requested persons, the relevant provisions of this Directive should apply from the time of their arrest in the executing Member State.
- (11) This Directive, or certain provisions thereof, should also apply to suspects or accused persons in criminal proceedings, and to requested persons, who were children when they became subject to the proceedings, but who have subsequently reached the age of 18, and where the application of this Directive is appropriate in the light of all the circumstances of the case, including the maturity and vulnerability of the person concerned.
- (12) When, at the time a person becomes a suspect or accused person in criminal proceedings, that person has reached the age of 18, but the criminal offence was committed when the person was a child, Member States are encouraged to apply the procedural safeguards provided for by this Directive until that person reaches the age of 21, at least as regards criminal offences that are committed by the same suspect or accused person and that are jointly investigated and prosecuted as they are inextricably linked to criminal proceedings which were initiated against that person before the age of 18.
- (13) Member States should determine the age of the child on the basis of the child's own statements, checks of the child's civil status, documentary research, other evidence and, if such evidence is unavailable or inconclusive, a medical examination. A medical examination should be carried out as a last resort and in strict compliance with the child's rights, physical integrity and human dignity. Where a person's age remains in doubt, that person should, for the purposes of this Directive, be presumed to be a child.

⁽¹⁾ OJ C 115, 4.5.2010, p. 1.

⁽²⁾ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).

⁽³⁾ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).

⁽⁴⁾ Directive 2013/48/EU of the European Parliament and the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and European arrest warrant proceedings and on the right to have a third party informed upon deprivation of liberty, and to communicate with third persons and with consular authorities (OJ L 294, 6.11.2013, p. 1).

⁽⁵⁾ Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65, 11.3.2016, p. 1).

⁽⁶⁾ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).

- (14) This Directive should not apply in respect of certain minor offences. However, it should apply where a child who is a suspect or accused person is deprived of liberty.
- (15) In some Member States an authority other than a court having jurisdiction in criminal matters has competence for imposing sanctions other than deprivation of liberty in relation to relatively minor offences. That may be the case, for example, in relation to road traffic offences which are committed on a large scale and which might be established following a traffic control. In such situations, it would be unreasonable to require that the competent authorities ensure all the rights under this Directive. Where the law of a Member State provides for the imposition of a sanction regarding minor offences by such an authority and there is either a right of appeal or the possibility for the case to be otherwise referred to a court having jurisdiction in criminal matters, this Directive should therefore apply only to the proceedings before that court following such an appeal or referral.
- (16) In some Member States certain minor offences, in particular minor road traffic offences, minor offences in relation to general municipal regulations and minor public order offences, are considered to be criminal offences. In such situations, it would be unreasonable to require that the competent authorities ensure all the rights under this Directive. Where the law of a Member State provides in respect of minor offences that deprivation of liberty cannot be imposed as a sanction, this Directive should therefore apply only to the proceedings before a court having jurisdiction in criminal matters.
- (17) This Directive should apply only to criminal proceedings. It should not apply to other types of proceedings, in particular proceedings which are specially designed for children and which could lead to protective, corrective or educative measures.
- (18) This Directive should be implemented taking into account the provisions of Directives 2012/13/EU and 2013/48/EU. This Directive provides for further complementary safeguards with regard to information to be provided to children and to the holder of parental responsibility in order to take into account the specific needs and vulnerabilities of children.
- (19) Children should receive information about general aspects of the conduct of the proceedings. To that end, they should, in particular, be given a brief explanation about the next procedural steps in the proceedings in so far as this is possible in the light of the interest of the criminal proceedings, and about the role of the authorities involved. The information to be given should depend on the circumstances of the case.
- (20) Children should receive information in respect of the right to a medical examination at the earliest appropriate stage in the proceedings, at the latest upon deprivation of liberty where such a measure is taken in relation to the child.
- (21) Where a child is deprived of liberty, the Letter of Rights provided to the child pursuant to Directive 2012/13/EU should include clear information on the child's rights under this Directive.
- (22) Member States should inform the holder of parental responsibility about applicable procedural rights, in writing, orally, or both. The information should be provided as soon as possible and in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of the rights of the child.
- (23) In certain circumstances, which can also relate to only one of the persons holding parental responsibility, the information should be provided to another appropriate adult nominated by the child and accepted as such by the competent authority. One of those circumstances is where there are objective and factual grounds indicating or giving rise to the suspicion that providing information to the holder of parental responsibility could substantially jeopardise the criminal proceedings, in particular, where evidence might be destroyed or altered, witnesses might be interfered with, or the holder of parental responsibility might have been involved in the alleged criminal activity together with the child.
- (24) Where the circumstances which led the competent authorities to provide information to an appropriate adult other than the holder of parental responsibility cease to exist, any information that the child receives in accordance with this Directive, and which remains relevant in the course of the proceedings, should be provided to the holder of parental responsibility. This requirement should not unnecessarily prolong the criminal proceedings.

- (25) Children who are suspects or accused persons have the right of access to a lawyer in accordance with Directive 2013/48/EU. Since children are vulnerable and not always able to fully understand and follow criminal proceedings, they should be assisted by a lawyer in the situations set out in this Directive. In those situations, Member States should arrange for the child to be assisted by a lawyer where the child or the holder of parental responsibility has not arranged such assistance. Member States should provide legal aid where this is necessary to ensure that the child is effectively assisted by a lawyer.
- (26) Assistance by a lawyer under this Directive presupposes that the child has the right of access to a lawyer under Directive 2013/48/EU. Therefore, where the application of a provision of Directive 2013/48/EU would make it impossible for the child to be assisted by a lawyer under this Directive, such provision should not apply to the right of children to have access to a lawyer under Directive 2013/48/EU. On the other hand, the derogations and exceptions to assistance by a lawyer laid down in this Directive should not affect the right of access to a lawyer in accordance with Directive 2013/48/EU, or the right to legal aid in accordance with the Charter and the ECHR, and with national and other Union law.
- (27) The provisions laid down in this Directive on assistance by a lawyer should apply without undue delay once children are made aware that they are suspects or accused persons. For the purposes of this Directive, assistance by a lawyer means legal support and representation by a lawyer during the criminal proceedings. Where this Directive provides for the assistance by a lawyer during questioning, a lawyer should be present. Without prejudice to a child's right of access to a lawyer pursuant to Directive 2013/48/EU, assistance by a lawyer does not require a lawyer to be present during each investigative or evidence-gathering act.
- (28) Provided that this complies with the right to a fair trial, the obligation for Member States to provide children who are suspects or accused persons with assistance by a lawyer in accordance with this Directive does not include the following: identifying the child; determining whether an investigation should be started; verifying the possession of weapons or other similar safety issues; carrying out investigative or evidence-gathering acts other than those specifically referred to in this Directive, such as body checks, physical examinations, blood, alcohol or similar tests, or the taking of photographs or fingerprints; or bringing the child to appear before a competent authority or surrendering the child to the holder of parental responsibility or to another appropriate adult, in accordance with national law.
- (29) Where a child who was not initially a suspect or accused person, such as a witness, becomes a suspect or accused person, that child should have the right not to incriminate him or herself and the right to remain silent, in accordance with Union law and the ECHR, as interpreted by the Court of Justice of the European Union (Court of Justice) and by the European Court of Human Rights. This Directive therefore makes express reference to the practical situation where such a child becomes a suspect or accused person during questioning by the police or by another law enforcement authority in the context of criminal proceedings. Where, in the course of such questioning, a child other than a suspect or accused person becomes a suspect or accused person, questioning should be suspended until the child is made aware that he or she is a suspect or accused person and is assisted by a lawyer in accordance with this Directive.
- (30) Provided that this complies with the right to a fair trial, Member States should be able to derogate from the obligation to provide assistance by a lawyer where this is not proportionate in the light of the circumstances of the case, it being understood that the child's best interests should always be a primary consideration. In any event, children should be assisted by a lawyer when they are brought before a competent court or judge in order to decide on detention at any stage of the proceedings within the scope of this Directive, as well as during detention. Moreover, deprivation of liberty should not be imposed as a criminal sentence unless the child has been assisted by a lawyer in such a way as to allow the child to exercise his or her rights of the defence effectively and, in any event, during the trial hearings before a court. Member States should be able to make practical arrangements in that respect.
- (31) Member States should be able to derogate temporarily from the obligation to provide assistance by a lawyer in the pre-trial phase for compelling reasons, namely where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person, or where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings in relation to a serious criminal offence, inter alia, with a view to obtaining information concerning the alleged co-perpetrators of a serious criminal offence, or in order to avoid the loss of important evidence regarding a serious criminal offence. During a temporary derogation for one of those compelling reasons, the competent authorities should be able to question children without the lawyer being present, provided that they have been informed of their right to

remain silent and can exercise that right, and that such questioning does not prejudice the rights of the defence, including the right not to incriminate oneself. It should be possible to carry out questioning, to the extent necessary, for the sole purpose of obtaining information that is essential to avert serious adverse consequences for the life, liberty or physical integrity of a person, or to prevent substantial jeopardy to criminal proceedings. Any abuse of this temporary derogation would, in principle, irretrievably prejudice the rights of the defence.

- (32) Member States should clearly set out in their national law the grounds and criteria for such a temporary derogation, and they should make restricted use thereof. Any temporary derogation should be proportional, strictly limited in time, not based exclusively on the type or the seriousness of the alleged criminal offence, and should not prejudice the overall fairness of the proceedings. Member States should ensure that where the temporary derogation has been authorised pursuant to this Directive by a competent authority which is not a judge or a court, the decision on authorising the temporary derogation can be assessed by a court, at least during the trial stage.
- (33) Confidentiality of communication between children and their lawyer is key to ensuring the effective exercise of the rights of the defence and is an essential part of the right to a fair trial. Member States should therefore respect the confidentiality of meetings and other forms of communication between the lawyer and the child in the context of the assistance by a lawyer provided for in this Directive, without derogation. This Directive is without prejudice to procedures that address the situation where there are objective and factual circumstances giving rise to the suspicion that the lawyer is involved with the child in a criminal offence. Any criminal activity on the part of a lawyer should not be considered to be legitimate assistance to children within the framework of this Directive. The obligation to respect confidentiality not only implies that Member States refrain from interfering with, or accessing, such communication but also that, where children are deprived of liberty or otherwise find themselves in a place under the control of the State, Member States ensure that arrangements for communication uphold and protect such confidentiality. This is without prejudice to any mechanisms that are in place in detention facilities with the purpose of avoiding illicit enclosures being sent to detainees, such as screening correspondence, provided that such mechanisms do not allow the competent authorities to read the communication between children and their lawyer. This Directive is also without prejudice to procedures under national law according to which forwarding correspondence may be rejected if the sender does not agree to the correspondence first being submitted to a competent court.
- (34) This Directive is without prejudice to a breach of confidentiality that is incidental to a lawful surveillance operation by competent authorities. This Directive is also without prejudice to the work that is carried out, for example, by national intelligence services to safeguard national security in accordance with Article 4(2) of the Treaty on European Union (TEU), or that falls within the scope of Article 72 of the Treaty on the Functioning of the European Union (TFEU) pursuant to which Title V of Part III of the TFEU, on the Area of Freedom, Security and Justice, must not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.
- (35) Children who are suspects or accused persons in criminal proceedings should have the right to an individual assessment to identify their specific needs in terms of protection, education, training and social integration, to determine if and to what extent they would need special measures during the criminal proceedings, the extent of their criminal responsibility and the appropriateness of a particular penalty or educative measure.
- (36) The individual assessment should, in particular, take into account the child's personality and maturity, the child's economic, social and family background, including living environment, and any specific vulnerabilities of the child, such as learning disabilities and communication difficulties.
- (37) It should be possible to adapt the extent and detail of an individual assessment according to the circumstances of the case, taking into account the seriousness of the alleged criminal offence and the measures that could be taken if the child is found guilty of such an offence. An individual assessment which has been carried out with regard to the same child in the recent past could be used if it is updated.
- (38) The competent authorities should take information deriving from an individual assessment into account when determining whether any specific measure concerning the child is to be taken, such as providing any practical assistance; when assessing the appropriateness and effectiveness of any precautionary measures in respect of the child, such as decisions on provisional detention or alternative measures; and, taking account of the individual characteristics and circumstances of the child, when taking any decision or course of action in the context of the criminal proceedings, including when sentencing. Where an individual assessment is not yet available, this should

not prevent the competent authorities from taking such measures or decisions, provided that the conditions set out in this Directive are complied with, including carrying out an individual assessment at the earliest appropriate stage of the proceedings. The appropriateness and effectiveness of the measures or decisions that are taken before an individual assessment is carried out could be re-assessed when the individual assessment becomes available.

- (39) The individual assessment should take place at the earliest appropriate stage of the proceedings and in due time so that the information deriving from it can be taken into account by the prosecutor, judge or another competent authority, before presentation of the indictment for the purposes of the trial. It should nevertheless be possible to present an indictment in the absence of an individual assessment provided that this is in the child's best interests. This could be the case, for example, where a child is in pre-trial detention and waiting for the individual assessment to become available would risk unnecessarily prolonging such detention.
- (40) Member States should be able to derogate from the obligation to carry out an individual assessment where such a derogation is warranted in the circumstances of the case, taking into account, inter alia, the seriousness of the alleged criminal offence and the measures that could be taken if the child is found guilty of such an offence, provided that the derogation is compatible with the child's best interests. In that context, all relevant elements should be taken into consideration, including whether or not the child has, in the recent past, been the subject of an individual assessment in the context of criminal proceedings or whether the case concerned may be conducted without an indictment.
- (41) The duty of care towards children who are suspects or accused persons underpins a fair administration of justice, in particular where children are deprived of liberty and are therefore in a particularly weak position. In order to ensure the personal integrity of a child who is deprived of liberty, the child should have the right to a medical examination. Such a medical examination should be carried out by a physician or another qualified professional, either on the initiative of the competent authorities, in particular where specific health indications give reasons for such an examination, or in response to a request of the child, of the holder of parental responsibility or of the child's lawyer. Member States should lay down practical arrangements concerning medical examinations that are to be carried out in accordance with this Directive, and concerning access by children to such examinations. Such arrangements could, inter alia, address situations where two or more requests for medical examinations are made in respect of the same child in a short period of time.
- (42) Children who are suspects or accused persons in criminal proceedings are not always able to understand the content of questioning to which they are subject. In order to ensure sufficient protection of such children, questioning by police or by other law enforcement authorities should therefore be audio-visually recorded where it is proportionate to do so, taking into account, inter alia, whether or not a lawyer is present and whether or not the child is deprived of liberty, it being understood that the child's best interests should always be a primary consideration. This Directive does not require Member States to make audiovisual recordings of questioning of children by a judge or a court.
- (43) Where an audiovisual recording is to be made in accordance with this Directive but an insurmountable technical problem renders it impossible to make such a recording, the police or other law enforcement authorities should be able to question the child without it being audio-visually recorded, provided that reasonable efforts have been made to overcome the technical problem, that it is not appropriate to postpone the questioning, and that it is compatible with the child's best interests.
- (44) Whether or not the questioning of children is audio-visually recorded, questioning should in any event be carried out in a manner that takes into account the age and maturity of the children concerned.
- (45) Children are in a particularly vulnerable position when they are deprived of liberty. Special efforts should therefore be undertaken to avoid deprivation of liberty and, in particular, detention of children at any stage of the proceedings before the final determination by a court of the question whether the child concerned has committed the criminal offence, given the possible risks for their physical, mental and social development, and because deprivation of liberty could lead to difficulties as regards their reintegration into society. Member States could make practical arrangements, such as guidelines or instructions to police officers, on the application of this requirement to situations of police custody. In any case, this requirement is without prejudice to the possibility for police officers or other law enforcement authorities to apprehend a child in situations where it seems, *prima facie*, to be necessary to do so, such as *in flagrante delicto* or immediately after a criminal offence has been committed.

- (46) The competent authorities should always consider measures alternative to detention (alternative measures) and should have recourse to such measures where possible. Such alternative measures could include a prohibition for the child to be in certain places, an obligation for the child to reside in a specific place, restrictions concerning contact with specific persons, reporting obligations to the competent authorities, participation in educational programmes, or, subject to the child's consent, participation in therapeutic or addiction programmes.
- (47) Detention of children should be subject to periodic review by a court, which could also be a judge sitting alone. It should be possible to carry out such periodic review *ex officio* by the court, or at the request of the child, of the child's lawyer or of a judicial authority which is not a court, in particular a prosecutor. Member States should provide for practical arrangements in that respect, including regarding the situation where a periodic review has already been carried out *ex officio* by the court and the child or the child's lawyer requests that another review be carried out.
- (48) Where children are detained they should benefit from special protection measures. In particular, they should be held separately from adults unless it is considered to be in the child's best interests not to do so, in accordance with Article 37(c) of the UN Convention on the Rights of the Child. When a detained child reaches the age of 18, it should be possible to continue separate detention where warranted, taking into account the circumstances of the person concerned. Particular attention should be paid to the manner in which detained children are treated given their inherent vulnerability. Children should have access to educational facilities according to their needs.
- (49) Member States should ensure that children who are suspects or accused persons and kept in police custody are held separately from adults, unless it is considered to be in the child's best interests not to do so, or unless, in exceptional circumstances, it is not possible in practice to do so, provided that children are held together with adults in a manner that is compatible with the child's best interests. For example, in sparsely populated areas, it should be possible, exceptionally, for children to be held in police custody with adults, unless this is contrary to the child's best interests. In such situations, particular vigilance should be required on the part of competent authorities in order to protect the child's physical integrity and well-being.
- (50) It should be possible to detain children with young adults unless this is contrary to the child's best interests. It is for Member States to determine which persons are considered to be young adults in accordance with their national law and procedures. Member States are encouraged to determine that persons older than 24 years do not qualify as young adults.
- (51) Where children are detained, Member States should take appropriate measures as set out in this Directive. Such measures should, inter alia, ensure the effective and regular exercise of the right to family life. Children should have the right to maintain regular contact with their parents, family and friends through visits and correspondence, unless exceptional restrictions are required in the child's best interests or in the interests of justice.
- (52) Member States should also take appropriate measures to ensure respect for the freedom of religion or belief of the child. In that regard, Member States should, in particular, refrain from interfering with the religion or belief of the child. Member States are not, however, required to take active steps to assist children in worshipping.
- (53) Where appropriate, Member States should also take appropriate measures in other situations of deprivation of liberty. The measures taken should be proportionate and appropriate to the nature of the deprivation of liberty, such as police custody or detention, and to its duration.
- (54) Professionals in direct contact with children should take into account the particular needs of children of different age groups and should ensure that the proceedings are adapted to them. For those purposes, those professionals should be specially trained in dealing with children.
- (55) Children should be treated in a manner appropriate to their age, maturity and level of understanding, taking into account any special needs, including any communication difficulties, that they may have.

- (56) Taking into account the differences between the legal traditions and systems across the Member States, the privacy of children during criminal proceedings should be ensured in the best possible way with a view, inter alia, to facilitating the reintegration of children into society. Member States should provide that court hearings involving children are usually held in the absence of the public, or allow courts or judges to decide to hold such hearings in the absence of the public. This is without prejudice to judgments being pronounced publicly in accordance with Article 6 ECHR.
- (57) Children should have the right to be accompanied by the holder of parental responsibility during court hearings in which they are involved. If more than one person holds parental responsibility for the same child, the child should have the right to be accompanied by all of them, unless this is not possible in practice despite the competent authorities' reasonable efforts. Member States should lay down practical arrangements for the exercise by children of the right to be accompanied by the holder of parental responsibility during court hearings in which they are involved and concerning the conditions under which an accompanying person may be temporarily excluded from court hearings. Such arrangements could, inter alia, address the situation where the holder of parental responsibility is temporarily not available to accompany the child or where the holder does not want to make use of the possibility to accompany the child, provided that the child's best interests are taken into account.
- (58) In certain circumstances, which can also relate to only one of the persons holding parental responsibility, the child should have the right to be accompanied during court hearings by an appropriate adult other than the holder of parental responsibility. One of those circumstances is where the holder of parental responsibility accompanying the child could substantially jeopardise the criminal proceedings, in particular where objective and factual circumstances indicate or give rise to the suspicion that evidence may be destroyed or altered, witnesses may be interfered with, or the holder of parental responsibility may have been involved with the child in the alleged criminal activity.
- (59) In accordance with this Directive, children should also have the right to be accompanied by the holder of parental responsibility during other stages of the proceedings at which they are present, such as during police questioning.
- (60) The right of an accused person to appear in person at the trial is based on the right to a fair trial provided for in Article 47 of the Charter and in Article 6 ECHR, as interpreted by the Court of Justice and by the European Court of Human Rights. Member States should take appropriate measures to provide incentives for children to attend their trial, including by summoning them in person and by sending a copy of the summons to the holder of parental responsibility or, where that would be contrary to the child's best interests, to another appropriate adult. Member States should provide for practical arrangements regarding the presence of a child at the trial. Those arrangements could include provisions concerning the conditions under which a child can be temporarily excluded from the trial.
- (61) Certain rights provided for by this Directive should apply to children who are requested persons from the time when they are arrested in the executing Member State.
- (62) The European arrest warrant proceedings are crucial for cooperation between the Member States in criminal matters. Compliance with the time-limits contained in Framework Decision 2002/584/JHA is essential for such cooperation. Therefore, while children who are requested persons should be able to exercise their rights fully under this Directive in European arrest warrant proceedings, those time-limits should be complied with.
- (63) Member States should take appropriate measures to ensure that judges and prosecutors who deal with criminal proceedings involving children have specific competence in that field or have effective access to specific training, in particular with regard to children's rights, appropriate questioning techniques, child psychology, and communication in a language adapted to children. Member States should also take appropriate measures to promote the provision of such specific training to lawyers who deal with criminal proceedings involving children.
- (64) In order to monitor and evaluate the effectiveness of this Directive, there is a need for collection of relevant data, from available data, with regard to the implementation of the rights set out in this Directive. Such data include data recorded by the judicial authorities and by law enforcement authorities and, as far as possible, administrative data compiled by healthcare and social welfare services as regards the rights set out in this Directive, in particular in relation to the number of children given access to a lawyer, the number of individual assessments carried out, the number of audiovisual recordings of questioning and the number of children deprived of liberty.

- (65) Member States should respect and guarantee the rights set out in this Directive, without any discrimination based on any ground such as race, colour, sex, sexual orientation, language, religion, political or other opinion, nationality, ethnic or social origin, property, disability or birth.
- (66) This Directive upholds the fundamental rights and principles as recognised by the Charter and by the ECHR, including the prohibition of torture and inhuman or degrading treatment, the right to liberty and security, respect for private and family life, the right to the integrity of the person, the rights of the child, the integration of persons with disabilities, the right to an effective remedy and to a fair trial, the presumption of innocence, and the rights of the defence. This Directive should be implemented in accordance with those rights and principles.
- (67) This Directive lays down minimum rules. Member States should be able to extend the rights laid down in this Directive in order to provide a higher level of protection. Such higher level of protection should not constitute an obstacle to the mutual recognition of judicial decisions that those minimum rules are designed to facilitate. The level of protection provided for by Member States should never fall below the standards provided by the Charter or the ECHR, as interpreted by the Court of Justice and by the European Court of Human Rights.
- (68) Since the objectives of this Directive, namely setting common minimum standards on procedural safeguards for children who are suspects or accused persons in criminal proceedings, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effect, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (69) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive and are not bound by it or subject to its application.
- (70) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive, and is not bound by it or subject to its application.
- (71) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents ⁽¹⁾, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive lays down common minimum rules concerning certain rights of children who are:

- (a) suspects or accused persons in criminal proceedings; or
- (b) subject to European arrest warrant proceedings pursuant to Framework Decision 2002/584/JHA (requested persons).

⁽¹⁾ OJ C 369, 17.12.2011, p. 14.

*Article 2***Scope**

1. This Directive applies to children who are suspects or accused persons in criminal proceedings. It applies until the final determination of the question whether the suspect or accused person has committed a criminal offence, including, where applicable, sentencing and the resolution of any appeal.
2. This Directive applies to children who are requested persons from the time of their arrest in the executing Member State, in accordance with Article 17.
3. With the exception of Article 5, point (b) of Article 8(3), and Article 15, insofar as those provisions refer to a holder of parental responsibility, this Directive, or certain provisions thereof, applies to persons as referred to in paragraphs 1 and 2 of this Article, where such persons were children when they became subject to the proceedings but have subsequently reached the age of 18, and the application of this Directive, or certain provisions thereof, is appropriate in the light of all the circumstances of the case, including the maturity and vulnerability of the person concerned. Member States may decide not to apply this Directive when the person concerned has reached the age of 21.
4. This Directive applies to children who were not initially suspects or accused persons but become suspects or accused persons in the course of questioning by the police or by another law enforcement authority.
5. This Directive does not affect national rules determining the age of criminal responsibility.
6. Without prejudice to the right to a fair trial, in respect of minor offences:
 - (a) where the law of a Member State provides for the imposition of a sanction by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed or referred to such a court; or
 - (b) where deprivation of liberty cannot be imposed as a sanction,

this Directive shall only apply to the proceedings before a court having jurisdiction in criminal matters.

In any event, this Directive shall fully apply where the child is deprived of liberty, irrespective of the stage of the criminal proceedings.

*Article 3***Definitions**

For the purposes of this Directive the following definitions apply:

- (1) 'child' means a person below the age of 18;
- (2) 'holder of parental responsibility' means any person having parental responsibility over a child;
- (3) 'parental responsibility' means all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effects, including rights of custody and rights of access.

With regard to point (1) of the first paragraph, where it is uncertain whether a person has reached the age of 18, that person shall be presumed to be a child.

*Article 4***Right to information**

1. Member States shall ensure that when children are made aware that they are suspects or accused persons in criminal proceedings, they are informed promptly about their rights in accordance with Directive 2012/13/EU and about general aspects of the conduct of the proceedings.

Member States shall also ensure that children are informed about the rights set out in this Directive. That information shall be provided as follows:

- (a) promptly when children are made aware that they are suspects or accused persons, in respect of:
 - (i) the right to have the holder of parental responsibility informed, as provided for in Article 5;
 - (ii) the right to be assisted by a lawyer, as provided for in Article 6;
 - (iii) the right to protection of privacy, as provided for in Article 14;
 - (iv) the right to be accompanied by the holder of parental responsibility during stages of the proceedings other than court hearings, as provided for in Article 15(4);
 - (v) the right to legal aid, as provided for in Article 18;
- (b) at the earliest appropriate stage in the proceedings, in respect of:
 - (i) the right to an individual assessment, as provided for in Article 7;
 - (ii) the right to a medical examination, including the right to medical assistance, as provided for in Article 8;
 - (iii) the right to limitation of deprivation of liberty and to the use of alternative measures, including the right to periodic review of detention, as provided for in Articles 10 and 11;
 - (iv) the right to be accompanied by the holder of parental responsibility during court hearings, as provided for in Article 15(1);
 - (v) the right to appear in person at trial, as provided for in Article 16;
 - (vi) the right to effective remedies, as provided for in Article 19;
- (c) upon deprivation of liberty in respect of the right to specific treatment during deprivation of liberty, as provided for in Article 12.

2. Member States shall ensure that the information referred to in paragraph 1 is given in writing, orally, or both, in simple and accessible language, and that the information given is noted, using the recording procedure in accordance with national law.

3. Where children are provided with a Letter of Rights pursuant to Directive 2012/13/EU, Member States shall ensure that such a Letter includes a reference to their rights under this Directive.

*Article 5***Right of the child to have the holder of parental responsibility informed**

1. Member States shall ensure that the holder of parental responsibility is provided, as soon as possible, with the information that the child has a right to receive in accordance with Article 4.

2. The information referred to in paragraph 1 shall be provided to another appropriate adult who is nominated by the child and accepted as such by the competent authority where providing that information to the holder of parental responsibility:

- (a) would be contrary to the child's best interests;
- (b) is not possible because, after reasonable efforts have been made, no holder of parental responsibility can be reached or his or her identity is unknown;
- (c) could, on the basis of objective and factual circumstances, substantially jeopardise the criminal proceedings.

Where the child has not nominated another appropriate adult, or where the adult that has been nominated by the child is not acceptable to the competent authority, the competent authority shall, taking into account the child's best interests, designate, and provide the information to, another person. That person may also be the representative of an authority or of another institution responsible for the protection or welfare of children.

3. Where the circumstances which led to the application of point (a), (b) or (c) of paragraph 2 cease to exist, any information that the child receives in accordance with Article 4, and which remains relevant in the course of the proceedings, shall be provided to the holder of parental responsibility.

Article 6

Assistance by a lawyer

1. Children who are suspects or accused persons in criminal proceedings have the right of access to a lawyer in accordance with Directive 2013/48/EU. Nothing in this Directive, in particular in this Article, shall affect that right.

2. Member States shall ensure that children are assisted by a lawyer in accordance with this Article in order to allow them to exercise the rights of the defence effectively.

3. Member States shall ensure that children are assisted by a lawyer without undue delay once they are made aware that they are suspects or accused persons. In any event, children shall be assisted by a lawyer from whichever of the following points in time is the earliest:

- (a) before they are questioned by the police or by another law enforcement or judicial authority;
- (b) upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act in accordance with point (c) of paragraph 4;
- (c) without undue delay after deprivation of liberty;
- (d) where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court.

4. Assistance by a lawyer shall include the following:

- (a) Member States shall ensure that children have the right to meet in private and communicate with the lawyer representing them, including prior to questioning by the police or by another law enforcement or judicial authority;
- (b) Member States shall ensure that children are assisted by a lawyer when they are questioned, and that the lawyer is able to participate effectively during questioning. Such participation shall be conducted in accordance with procedures under national law, provided that such procedures do not prejudice the effective exercise or essence of the right concerned. Where a lawyer participates during questioning, the fact that such participation has taken place shall be noted using the recording procedure under national law;

(c) Member States shall ensure that children are, as a minimum, assisted by a lawyer during the following investigative or evidence-gathering acts, where those acts are provided for under national law and if the suspect or accused person is required or permitted to attend the act concerned:

- (i) identity parades;
- (ii) confrontations;
- (iii) reconstructions of the scene of a crime.

5. Member States shall respect the confidentiality of communication between children and their lawyer in the exercise of the right to be assisted by a lawyer provided for under this Directive. Such communication shall include meetings, correspondence, telephone conversations and other forms of communication permitted under national law.

6. Provided that this complies with the right to a fair trial, Member States may derogate from paragraph 3 where assistance by a lawyer is not proportionate in the light of the circumstances of the case, taking into account the seriousness of the alleged criminal offence, the complexity of the case and the measures that could be taken in respect of such an offence, it being understood that the child's best interests shall always be a primary consideration.

In any event, Member States shall ensure that children are assisted by a lawyer:

- (a) when they are brought before a competent court or judge in order to decide on detention at any stage of the proceedings within the scope of this Directive; and
- (b) during detention.

Member States shall also ensure that deprivation of liberty is not imposed as a criminal sentence, unless the child has been assisted by a lawyer in such a way as to allow the child to exercise the rights of the defence effectively and, in any event, during the trial hearings before a court.

7. Where the child is to be assisted by a lawyer in accordance with this Article but no lawyer is present, the competent authorities shall postpone the questioning of the child, or other investigative or evidence-gathering acts provided for in point (c) of paragraph 4, for a reasonable period of time in order to allow for the arrival of the lawyer or, where the child has not nominated a lawyer, to arrange a lawyer for the child.

8. In exceptional circumstances, and only at the pre-trial stage, Member States may temporarily derogate from the application of the rights provided for in paragraph 3 to the extent justified in the light of the particular circumstances of the case, on the basis of one of the following compelling reasons:

- (a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;
- (b) where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings in relation to a serious criminal offence.

Member States shall ensure that the competent authorities, when applying this paragraph, shall take the child's best interests into account.

A decision to proceed to questioning in the absence of the lawyer under this paragraph may be taken only on a case-by-case basis, either by a judicial authority, or by another competent authority on condition that the decision can be submitted to judicial review.

Article 7

Right to an individual assessment

1. Member States shall ensure that the specific needs of children concerning protection, education, training and social integration are taken into account.

2. For that purpose children who are suspects or accused persons in criminal proceedings shall be individually assessed. The individual assessment shall, in particular, take into account the child's personality and maturity, the child's economic, social and family background, and any specific vulnerabilities that the child may have.
3. The extent and detail of the individual assessment may vary depending on the circumstances of the case, the measures that can be taken if the child is found guilty of the alleged criminal offence, and whether the child has, in the recent past, been the subject of an individual assessment.
4. The individual assessment shall serve to establish and to note, in accordance with the recording procedure in the Member State concerned, such information about the individual characteristics and circumstances of the child as might be of use to the competent authorities when:
 - (a) determining whether any specific measure to the benefit of the child is to be taken;
 - (b) assessing the appropriateness and effectiveness of any precautionary measures in respect of the child;
 - (c) taking any decision or course of action in the criminal proceedings, including when sentencing.
5. The individual assessment shall be carried out at the earliest appropriate stage of the proceedings and, subject to paragraph 6, before indictment.
6. In the absence of an individual assessment, an indictment may nevertheless be presented provided that this is in the child's best interests and that the individual assessment is in any event available at the beginning of the trial hearings before a court.
7. Individual assessments shall be carried out with the close involvement of the child. They shall be carried out by qualified personnel, following, as far as possible, a multidisciplinary approach and involving, where appropriate, the holder of parental responsibility, or another appropriate adult as referred to in Articles 5 and 15, and/or a specialised professional.
8. If the elements that form the basis of the individual assessment change significantly, Member States shall ensure that the individual assessment is updated throughout the criminal proceedings.
9. Member States may derogate from the obligation to carry out an individual assessment where such a derogation is warranted in the circumstances of the case, provided that it is compatible with the child's best interests.

Article 8

Right to a medical examination

1. Member States shall ensure that children who are deprived of liberty have the right to a medical examination without undue delay with a view, in particular, to assessing their general mental and physical condition. The medical examination shall be as non-invasive as possible and shall be carried out by a physician or another qualified professional.
2. The results of the medical examination shall be taken into account when determining the capacity of the child to be subject to questioning, other investigative or evidence-gathering acts, or any measures taken or envisaged against the child.
3. The medical examination shall be carried out either on the initiative of the competent authorities, in particular where specific health indications call for such an examination, or on a request by any of the following:
 - (a) the child;
 - (b) the holder of parental responsibility, or another appropriate adult as referred to in Articles 5 and 15;
 - (c) the child's lawyer.

4. The conclusion of the medical examination shall be recorded in writing. Where required, medical assistance shall be provided.
5. Member States shall ensure that another medical examination is carried out where the circumstances so require.

Article 9

Audiovisual recording of questioning

1. Member States shall ensure that questioning of children by police or other law enforcement authorities during the criminal proceedings is audio-visually recorded where this is proportionate in the circumstances of the case, taking into account, *inter alia*, whether a lawyer is present or not and whether the child is deprived of liberty or not, provided that the child's best interests are always a primary consideration.
2. In the absence of audiovisual recording, questioning shall be recorded in another appropriate manner, such as by written minutes which are duly verified.
3. This Article shall be without prejudice to the possibility to ask questions for the sole purpose of the identification of the child without audiovisual recording.

Article 10

Limitation of deprivation of liberty

1. Member States shall ensure that deprivation of liberty of a child at any stage of the proceedings is limited to the shortest appropriate period of time. Due account shall be taken of the age and individual situation of the child, and of the particular circumstances of the case.
2. Member States shall ensure that deprivation of liberty, in particular detention, shall be imposed on children only as a measure of last resort. Member States shall ensure that any detention is based on a reasoned decision, subject to judicial review by a court. Such a decision shall also be subject to periodic review, at reasonable intervals of time, by a court, either *ex officio* or at the request of the child, of the child's lawyer, or of a judicial authority which is not a court. Without prejudice to judicial independence, Member States shall ensure that decisions to be taken pursuant to this paragraph are taken without undue delay.

Article 11

Alternative measures

Member States shall ensure that, where possible, the competent authorities have recourse to measures alternative to detention (alternative measures).

Article 12

Specific treatment in the case of deprivation of liberty

1. Member States shall ensure that children who are detained are held separately from adults, unless it is considered to be in the child's best interests not to do so.

2. Member States shall also ensure that children who are kept in police custody are held separately from adults, unless:

- (a) it is considered to be in the child's best interests not to do so; or
- (b) in exceptional circumstances, it is not possible in practice to do so, provided that children are held together with adults in a manner that is compatible with the child's best interests.

3. Without prejudice to paragraph 1, when a detained child reaches the age of 18, Member States shall provide for the possibility to continue to hold that person separately from other detained adults where warranted, taking into account the circumstances of the person concerned, provided that this is compatible with the best interests of children who are detained with that person.

4. Without prejudice to paragraph 1, and taking into account paragraph 3, children may be detained with young adults, unless this is contrary to the child's best interests.

5. When children are detained, Member States shall take appropriate measures to:

- (a) ensure and preserve their health and their physical and mental development;
- (b) ensure their right to education and training, including where the children have physical, sensory or learning disabilities;
- (c) ensure the effective and regular exercise of their right to family life;
- (d) ensure access to programmes that foster their development and their reintegration into society; and
- (e) ensure respect for their freedom of religion or belief.

The measures taken pursuant to this paragraph shall be proportionate and appropriate to the duration of the detention.

Points (a) and (e) of the first subparagraph shall also apply to situations of deprivation of liberty other than detention. The measures taken shall be proportionate and appropriate to such situations of deprivation of liberty.

Points (b), (c), and (d) of the first subparagraph shall apply to situations of deprivation of liberty other than detention only to the extent that is appropriate and proportionate in the light of the nature and duration of such situations.

6. Member States shall endeavour to ensure that children who are deprived of liberty can meet with the holder of parental responsibility as soon as possible, where such a meeting is compatible with investigative and operational requirements. This paragraph shall be without prejudice to the nomination or designation of another appropriate adult pursuant to Article 5 or 15.

Article 13

Timely and diligent treatment of cases

1. Member States shall take all appropriate measures to ensure that criminal proceedings involving children are treated as a matter of urgency and with due diligence.

2. Member States shall take appropriate measures to ensure that children are always treated in a manner which protects their dignity and which is appropriate to their age, maturity and level of understanding, and which takes into account any special needs, including any communication difficulties, that they may have.

*Article 14***Right to protection of privacy**

1. Member States shall ensure that the privacy of children during criminal proceedings is protected.
2. To that end, Member States shall either provide that court hearings involving children are usually held in the absence of the public, or allow courts or judges to decide to hold such hearings in the absence of the public.
3. Member States shall take appropriate measures to ensure that the records referred to in Article 9 are not publicly disseminated.
4. Member States shall, while respecting freedom of expression and information, and freedom and pluralism of the media, encourage the media to take self-regulatory measures in order to achieve the objectives set out in this Article.

*Article 15***Right of the child to be accompanied by the holder of parental responsibility during the proceedings**

1. Member States shall ensure that children have the right to be accompanied by the holder of parental responsibility during court hearings in which they are involved.
2. A child shall have the right to be accompanied by another appropriate adult who is nominated by the child and accepted as such by the competent authority where the presence of the holder of parental responsibility accompanying the child during court hearings:
 - (a) would be contrary to the child's best interests;
 - (b) is not possible because, after reasonable efforts have been made, no holder of parental responsibility can be reached or his or her identity is unknown; or
 - (c) would, on the basis of objective and factual circumstances, substantially jeopardise the criminal proceedings.

Where the child has not nominated another appropriate adult, or where the adult that has been nominated by the child is not acceptable to the competent authority, the competent authority shall, taking into account the child's best interests, designate another person to accompany the child. That person may also be the representative of an authority or of another institution responsible for the protection or welfare of children.

3. Where the circumstances which led to an application of point (a), (b) or (c) of paragraph 2 cease to exist, the child shall have the right to be accompanied by the holder of parental responsibility during any remaining court hearings.
4. In addition to the right provided for under paragraph 1, Member States shall ensure that children have the right to be accompanied by the holder of parental responsibility, or by another appropriate adult as referred to in paragraph 2, during stages of the proceedings other than court hearings at which the child is present where the competent authority considers that:
 - (a) it is in the child's best interests to be accompanied by that person; and
 - (b) the presence of that person will not prejudice the criminal proceedings.

*Article 16***Right of children to appear in person at, and participate in, their trial**

1. Member States shall ensure that children have the right to be present at their trial and shall take all necessary measures to enable them to participate effectively in the trial, including by giving them the opportunity to be heard and to express their views.
2. Member States shall ensure that children who were not present at their trial have the right to a new trial or to another legal remedy, in accordance with, and under the conditions set out in, Directive (EU) 2016/343.

*Article 17***European arrest warrant proceedings**

Member States shall ensure that the rights referred to in Articles 4, 5, 6 and 8, Articles 10 to 15 and Article 18 apply *mutatis mutandis*, in respect of children who are requested persons, upon their arrest pursuant to European arrest warrant proceedings in the executing Member State.

*Article 18***Right to legal aid**

Member States shall ensure that national law in relation to legal aid guarantees the effective exercise of the right to be assisted by a lawyer pursuant to Article 6.

*Article 19***Remedies**

Member States shall ensure that children who are suspects or accused persons in criminal proceedings and children who are requested persons have an effective remedy under national law in the event of a breach of their rights under this Directive.

*Article 20***Training**

1. Member States shall ensure that staff of law enforcement authorities and of detention facilities who handle cases involving children, receive specific training to a level appropriate to their contact with children with regard to children's rights, appropriate questioning techniques, child psychology, and communication in a language adapted to the child.
2. Without prejudice to judicial independence and differences in the organisation of the judiciary across the Member States, and with due respect for the role of those responsible for the training of judges and prosecutors, Member States shall take appropriate measures to ensure that judges and prosecutors who deal with criminal proceedings involving children have specific competence in that field, effective access to specific training, or both.

3. With due respect for the independence of the legal profession and for the role of those responsible for the training of lawyers, Member States shall take appropriate measures to promote the provision of specific training as referred to in paragraph 2 to lawyers who deal with criminal proceedings involving children.

4. Through their public services or by funding child support organisations, Member States shall encourage initiatives enabling those providing children with support and restorative justice services to receive adequate training to a level appropriate to their contact with children and observe professional standards to ensure such services are provided in an impartial, respectful and professional manner.

Article 21

Data collection

Member States shall by 11 June 2021 and every three years thereafter, send to the Commission available data showing how the rights set out in this Directive have been implemented.

Article 22

Costs

Member States shall meet the costs resulting from the application of Articles 7, 8 and 9 irrespective of the outcome of the proceedings, unless, as regards the costs resulting from the application of Article 8, they are covered by medical insurance.

Article 23

Non-regression

Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the Charter, the ECHR, or other relevant provisions of international law, in particular the UN Convention on the Rights of the Child, or the law of any Member State which provides a higher level of protection.

Article 24

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 11 June 2019. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the measures of national law which they adopt in the field covered by this Directive.

*Article 25***Report**

The Commission shall, by 11 June 2022, submit a report to the European Parliament and to the Council assessing the extent to which the Member States have taken the necessary measures to comply with this Directive, including an evaluation of the application of Article 6, accompanied, if necessary, by legislative proposals.

*Article 26***Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 27***Addressees**

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 11 May 2016.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

J.A. HENNIS-PLASSCHAERT

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ANNEX 5: GUIDELINES
OF THE COMMITTEE
OF MINISTERS OF THE
COUNCIL OF EUROPE ON
CHILD FRIENDLY JUSTICE

.....



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

Publishing
Editions



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

*adopted by the Committee of Ministers
of the Council of Europe
on 17 November 2010
and explanatory memorandum*

The Council of Europe programme
“Building a Europe for and with children”

www.coe.int/children

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Lignes directrices du Comité des Ministres du Conseil de l'Europe sur une justice adaptée aux enfants

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The Council of Europe programme “Building a Europe for and with children” was set up to secure and promote children’s human rights, and protect children from all forms of violence.

www.coe.int/children

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Foreword

*Don't walk in front of me; I may not follow.
Don't walk behind me; I may not lead.
Walk beside me and be my friend.*

Attributed to Albert Camus

Divorce, adoption, migration, violence. Nowadays, every child is likely to come into contact with the justice system in one way or another. For many, it is a very unpleasant experience, when it could be and should be otherwise and when many obstacles and sources of unnecessary distress could be lifted. Although core principles have been successfully set at international and European levels, it cannot be said that justice is always friendly to children and youth. In direct response to a broad consultation instigated by the Council of Europe, children and youth reported a general mistrust of the system, and pointed out many shortcomings such as intimidating settings, lack of age-appropriate information and explanations, a weak approach to the family as well as proceedings that are either too long or, on the contrary, too expeditious.

The Council of Europe adopted the guidelines on child-friendly justice specifically to ensure that justice is always friendly towards children, no matter who they are or what they have done. Considering that a friend is someone who treats you well, who trusts you and whom you can trust, who listens to what you say and to whom you listen, who understands you and whom you understand. A true friend also has the courage to tell you when you are in the wrong and stands by you to help you work out a solution. A child-friendly justice system should endeavour to replicate these ideals.

A child-friendly justice system must not “walk” in front of children; it must not leave them behind

It treats children with dignity, respect, care and fairness. It is accessible, understandable and reliable. It listens to children, takes their views seriously and makes sure that the interests of those who cannot express themselves (such as babies) are also protected. It adjusts its pace to children: it is neither expeditious nor lengthy, but reasonably speedy. The guidelines on child-friendly justice are intended to ensure all this and to guarantee that all children have adequate access to and treatment in justice in a respectful and responsive manner.

Kindness and friendliness towards children aid in their protection

Repeated interviews, intimidating settings and procedures, discrimination: a plethora of such practices augment the pain and trauma of children who may already be in great distress and in need of protection. A child-friendly justice system brings relief and redress; it does not inflict additional pain and hardship and it does not violate children’s rights. Above all, children between birth and the age of 17 – be they a party to proceedings, a victim, a witness or an offender – should benefit from the “children first” approach. The guidelines on child-friendly justice were drafted to protect children and youth from secondary victimisation by the justice system, notably by fostering a holistic approach to the child, based on concerted multidisciplinary working methods.

If a child-friendly justice system does not “walk” in front of children, it does not “walk” behind them either

Europe has witnessed tragic miscarriages of justice where children’s views were given disproportionate weight, to the detriment of other parties’ rights or of the children’s own best interests. In such cases, the better became the enemy of the good. As children and youth themselves declare, child-friendly justice is not about being over-friendly or overprotective. Nor is it about leaving children alone with the burden of making decisions in lieu of adults. A child-friendly system protects the young from hardship, makes sure that they have a place and say, gives due consideration and interpretation to their

words without endangering the reliability of justice or the best interests of the child. It is age-sensitive, tailored to children's needs and guarantees an individualised approach without stigmatising or labelling children. Child-friendly justice is about fostering a responsible system solidly anchored in a professionalism that safeguards the good administration of justice and thereby inspires trust among all parties and actors involved in the proceedings.

A child-friendly justice system is on the side of children offering help provided by competent professionals

Justice systems throughout Europe are full of competent and caring policy makers and legal professionals – judges, law enforcement officials, social and health workers, child-rights advocates, parents and caregivers – eager to receive and exchange guidance in order to enhance their daily practice in the best interests of children. Because they stand on the frontline of children's rights and they can make a genuine difference for children on a daily basis, this publication contains – in addition to the core text of the guidelines – an explanatory memorandum setting out samples of case law from the European Court of Human Rights and concrete examples of good practice inspired by and for professionals working with children in justice.

The adoption of the guidelines on child-friendly justice is a significant step forward. However, the task will only be complete when change can be witnessed in practice. To achieve this, it is of paramount importance that the guidelines are promoted, disseminated and monitored, and that they underpin policy making at national level. Key international partners such as the European Union and UNICEF are already involved in the first steps to promote the guidelines, as are a number of national actors and civil society, who are picking up speed in raising awareness of the guidelines among major stakeholders.

It is my hope that this publication will provide encouragement for, and facilitate, the task of the widest possible circle of professionals and policy makers at national and local levels who carry the responsibility of making the justice system more child friendly.

Justice should be children's friend. It should not walk in front of them, as they may not follow. It should not walk behind children, as they should not be burdened with the responsibility to lead. It should just walk beside them and be their friend.

The 47 member states of the Council of Europe adopted the guidelines on child-friendly justice as a promise of justice and friendship to every child. Now is the time to make every effort to honour this promise.

*Maud de Boer Buquicchio
Deputy Secretary General
Council of Europe*



First part

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

Guidelines

*(Adopted by the Committee of Ministers on 17 November 2010
at the 1098th meeting of the Ministers' Deputies)*

Preamble

The Committee of Ministers,

Considering that the aim of the Council of Europe is to achieve a greater unity between the member states, in particular by promoting the adoption of common rules in legal matters;

Considering the necessity of ensuring the effective implementation of existing binding universal and European standards protecting and promoting children's rights, including in particular:

- the 1951 United Nations Convention Relating to the Status of Refugees;
- the 1966 International Covenant on Civil and Political Rights;
- the 1966 International Covenant on Economic, Social and Cultural Rights;
- the 1989 United Nations Convention on the Rights of the Child;
- the 2006 United Nations Convention on the Rights of Persons with Disabilities;
- the Convention for the Protection of Human Rights and Fundamental Freedoms (1950, ETS No. 5) (hereafter the "ECHR");
- the European Convention on the Exercise of Children's Rights (1996, ETS No. 160);
- the revised European Social Charter (1996, ETS No. 163);
- the Council of Europe Convention on Contact concerning Children (2003, ETS No. 192);

- the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007, CETS No. 201);
- the European Convention on the Adoption of Children (Revised) (2008, CETS No. 202);

Considering that, as guaranteed under the ECHR and in line with the case law of the European Court of Human Rights, the right of any person to have access to justice and to a fair trial – in all its components (including in particular the right to be informed, the right to be heard, the right to a legal defence, and the right to be represented) – is necessary in a democratic society and equally applies to children, taking however into account their capacity to form their own views;

Recalling relevant case law of the European Court of Human Rights, decisions, reports or other documents of other Council of Europe institutions and bodies including recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), and statements and opinions of the Council of Europe Commissioner for Human Rights and various recommendations of the Parliamentary Assembly of the Council of Europe;

Noting various recommendations of the Committee of Ministers to member states in the area of children's rights, including Recommendation Rec(2003)5 on measures of detention of asylum seekers, Recommendation Rec(2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, Recommendation Rec(2005)5 on the rights of children living in residential institutions, Recommendation Rec(2006)2 on the European Prison Rules, Recommendation CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures and Recommendation CM/Rec(2009)10 on integrated national strategies for the protection of children from violence;

Recalling Resolution No. 2 on child-friendly justice, adopted at the 28th Conference of European Ministers of Justice (Lanzarote, October 2007);

Considering the importance of safeguarding children's rights by United Nations instruments such as:

- the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules", 1985);
- the United Nations Rules for the Protection of Juveniles Deprived of their Liberty ("The Havana Rules", 1990);
- the United Nations Guidelines for the Prevention of Juvenile Delinquency ("The Riyadh Guidelines", 1990);
- the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC Res 2005/20, 2005);
- the Guidance Note of the United Nations Secretary-General: United Nations Approach to Justice for Children (2008);
- the United Nations Guidelines for the Appropriate Use and Conditions of Alternative Care for Children (2009);
- the Principles relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights ("The Paris Principles");

Recalling the need to guarantee the effective implementation of existing binding norms concerning children's rights, without preventing member states from introducing or applying higher standards or more favourable measures;

Referring to the Council of Europe Programme "Building a Europe for and with children";

Acknowledging the progress made in member states towards implementing child-friendly justice;

Noting, nonetheless, existing obstacles for children within the justice system such as, among others, the non-existing, partial or conditional legal right to access to justice, the diversity in and complexity of procedures, possible discrimination on various grounds;

Recalling the need to prevent possible secondary victimisation of children by the judicial system in procedures involving or affecting them;

Inviting member states to investigate existing lacunae and problems and identify areas where child-friendly justice principles and practices could be introduced;

Acknowledging the views and opinions of consulted children throughout the member states of the Council of Europe;

Noting that the guidelines aim to contribute to the identification of practical remedies to existing shortcomings in law and in practice;

Adopts the following guidelines to serve as a practical tool for member states in adapting their judicial and non-judicial systems to the specific rights, interests and needs of children and invites member states to ensure that they are widely disseminated among all authorities responsible for or otherwise involved with children's rights in justice.

I. Scope and purpose

- 1.** The guidelines deal with the issue of the place and role, and the views, rights and needs of the child in judicial proceedings and in alternatives to such proceedings.
- 2.** The guidelines should apply to all ways in which children are likely to be, for whatever reason and in whatever capacity, brought into contact with all competent bodies and services involved in implementing criminal, civil or administrative law.
- 3.** The guidelines aim to ensure that, in any such proceedings, all rights of children, among which the right to information, to representation, to participation and to protection, are fully respected with due consideration to the child's level of maturity and understanding and to the circumstances of the case. Respecting children's rights should not jeopardise the rights of other parties involved.

II. Definitions

For the purposes of these guidelines on child-friendly justice (hereafter “the guidelines”):

- a.** a “child” means any person under the age of 18 years;
- b.** a “parent” refers to the person(s) with parental responsibility, according to national law. In case the parent(s) is/are absent or no longer holding parental responsibility, this can be a guardian or an appointed legal representative;
- c.** “child-friendly justice” refers to justice systems which guarantee the respect and the effective implementation of all children’s rights at the highest attainable level, bearing in mind the principles listed below and giving due consideration to the child’s level of maturity and understanding and the circumstances of the case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity.

III. Fundamental principles

- 1.** The guidelines build on the existing principles enshrined in the instruments referred to in the preamble and the case law of the European Court of Human Rights.
- 2.** These principles are further developed in the following sections and should apply to all chapters of these guidelines.

A. Participation

- 1.** The right of all children to be informed about their rights, to be given appropriate ways to access justice and to be consulted and heard in proceedings involving or affecting them should be respected. This includes giving due weight to the children’s views bearing in mind their maturity and any communication difficulties they may have in order to make this participation meaningful.

2. Children should be considered and treated as full bearers of rights and should be entitled to exercise all their rights in a manner that takes into account their capacity to form their own views and the circumstances of the case.

B. Best interests of the child

1. Member states should guarantee the effective implementation of the right of children to have their best interests be a primary consideration in all matters involving or affecting them.
2. In assessing the best interests of the involved or affected children:
 - 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. a comprehensive approach should be adopted by all relevant authorities so as to take due account of all interests at stake, including psychological and physical well-being and legal, social and economic interests of the child.
3. The best interests of all children involved in the same procedure or case should be separately assessed and balanced with a view to reconciling possible conflicting interests of the children.
4. While the judicial authorities have the ultimate competence and responsibility for making the final decisions, member states should make, where necessary, concerted efforts to establish multidisciplinary approaches with the objective of assessing the best interests of children in procedures involving them.

C. Dignity

1. Children should be treated with care, sensitivity, fairness and respect throughout any procedure or case, with special attention for their personal situation, well-being and specific needs, and with full respect for their physical and psychological integrity. This treatment should be given to them, in whichever way they have come into contact with judicial or non-judicial proceedings or other interventions, and regardless of their legal status and capacity in any procedure or case.

2. Children shall not be subjected to torture or inhuman or degrading treatment or punishment.

D. Protection from discrimination

1. The rights of children shall be secured without discrimination on any grounds such as sex, race, colour or ethnic background, age, language, religion, political or other opinion, national or social origin, socio-economic background, status of their parent(s), association with a national minority, property, birth, sexual orientation, gender identity or other status.
2. Specific protection and assistance may need to be granted to more vulnerable children, such as migrant children, refugee and asylum-seeking children, unaccompanied children, children with disabilities, homeless and street children, Roma children, and children in residential institutions.

E. Rule of law

1. The rule of law principle should apply fully to children as it does to adults.
2. Elements of due process such as the principles of legality and proportionality, the presumption of innocence, the right to a fair trial, the right to legal advice, the right to access to courts and the right to appeal, should be guaranteed for children as they are for adults and should not be minimised or denied under the pretext of the child's best interests. This applies to all judicial and non-judicial and administrative proceedings.
3. Children should have the right to access appropriate independent and effective complaints mechanisms.

IV. Child-friendly justice before, during and after judicial proceedings

A. General elements of child-friendly justice

1. Information and advice

1. From their first involvement with the justice system or other competent authorities (such as the police, immigration, educational, social or health care services) and throughout that process, children and their parents should be promptly and adequately informed of, *inter alia*:

- a.** their rights, in particular the specific rights children have with regard to judicial or non-judicial proceedings in which they are or might be involved, and the instruments available to remedy possible violations of their rights including the opportunity to have recourse to either a judicial or non-judicial proceeding or other interventions. This may include information on the likely duration of proceedings, possible access to appeals and independent complaints mechanisms;
- b.** the system and procedures involved, taking into consideration the particular place the child will have and the role he or she may play in it and the different procedural steps;
- c.** the existing support mechanisms for the child when participating in the judicial or non-judicial procedures;
- d.** the appropriateness and possible consequences of given in-court or out-of-court proceedings;
- e.** where applicable, the charges or the follow-up given to their complaint;
- f.** the time and place of court proceedings and other relevant events, such as hearings, if the child is personally affected;
- g.** the general progress and outcome of the proceedings or intervention;

- h.* the availability of protective measures;
 - i.* the existing mechanisms for review of decisions affecting the child;
 - j.* the existing opportunities to obtain reparation from the offender or from the state through the justice process, through alternative civil proceedings or through other processes;
 - k.* the availability of the services (health, psychological, social, interpretation and translation, and other) or organisations which can provide support and the means of accessing such services along with emergency financial support, where applicable;
 - l.* any special arrangements available in order to protect as far as possible their best interests if they are resident in another state.
- 2.** The information and advice should be provided to children in a manner adapted to their age and maturity, in a language which they can understand and which is gender and culture sensitive.
 - 3.** As a rule, both the child and parents or legal representatives should directly receive the information. Provision of the information to the parents should not be an alternative to communicating the information to the child.
 - 4.** Child-friendly materials containing relevant legal information should be made available and widely distributed, and special information services for children such as specialised websites and helplines established.
 - 5.** Information on any charges against the child must be given promptly and directly after the charges are brought. This information should be given to both the child and the parents in such a way that they understand the exact charge and the possible consequences.

2. Protection of private and family life

6. The privacy and personal data of children who are or have been involved in judicial or non-judicial proceedings and other interventions should be protected in accordance with national law. This generally implies that no information or personal data may be made available or published, particularly in the media, which could reveal or indirectly enable the disclosure of the child's identity, including images, detailed descriptions of the child or the child's family, names or addresses, audio and video records, etc.
7. Member states should prevent violations of the privacy rights as mentioned under guideline 6 above by the media through legislative measures or monitoring self-regulation by the media.
8. Member states should stipulate limited access to all records or documents containing personal and sensitive data of children, in particular in proceedings involving them. If the transfer of personal and sensitive data is necessary, while taking into account the best interests of the child, member states should regulate this transfer in line with relevant data protection legislation.
9. Whenever children are being heard or giving evidence in judicial or non-judicial proceedings or other interventions, where appropriate, this should preferably take place in camera. As a rule, only those directly involved should be present, provided that they do not obstruct children in giving evidence.
10. Professionals working with and for children should abide by the strict rules of confidentiality, except where there is a risk of harm to the child.

3. Safety (special preventive measures)

11. In all judicial and non-judicial proceedings or other interventions, children should be protected from harm, including intimidation, reprisals and secondary victimisation.

- 12.** Professionals working with and for children should, where necessary, be subject to regular vetting, according to national law and without prejudice to the independence of the judiciary, to ensure their suitability to work with children.
- 13.** Special precautionary measures should apply to children when the alleged perpetrator is a parent, a member of the family or a primary caregiver.

4. Training of professionals

- 14.** All professionals working with and for children should receive necessary interdisciplinary training on the rights and needs of children of different age groups, and on proceedings that are adapted to them.
- 15.** Professionals having direct contact with children should also be trained in communicating with them at all ages and stages of development, and with children in situations of particular vulnerability.

5. Multidisciplinary approach

- 16.** With full respect of the child's right to private and family life, close co-operation between different professionals should be encouraged in order to obtain a comprehensive understanding of the child, and an assessment of his or her legal, psychological, social, emotional, physical and cognitive situation.
- 17.** A common assessment framework should be established for professionals working with or for children (such as lawyers, psychologists, physicians, police, immigration officials, social workers and mediators) in proceedings or interventions that involve or affect children to provide any necessary support to those taking decisions, enabling them to best serve children's interests in a given case.
- 18.** While implementing a multidisciplinary approach, professional rules on confidentiality should be respected.

6. Deprivation of liberty

- 19.** Any form of deprivation of liberty of children should be a measure of last resort and be for the shortest appropriate period of time.
- 20.** When deprivation of liberty is imposed, children should, as a rule, be held separately from adults. When children are detained with adults, this should be for exceptional reasons and based solely on the best interests of the child. In all circumstances, children should be detained in premises suited to their needs.
- 21.** Given the vulnerability of children deprived of liberty, the importance of family ties and promoting the reintegration into society, competent authorities should ensure respect and actively support the fulfilment of the rights of the child as set out in universal and European instruments. In addition to other rights, children in particular should have the right to:
 - a.** maintain regular and meaningful contact with parents, family and friends through visits and correspondence, except when restrictions are required in the interests of justice and the interests of the child. Restrictions on this right should never be used as a punishment;
 - b.** receive appropriate education, vocational guidance and training, medical care, and enjoy freedom of thought, conscience and religion and access to leisure, including physical education and sport;
 - c.** access programmes that prepare children in advance for their return to their communities, with full attention given to them in respect of their emotional and physical needs, their family relationships, housing, schooling and employment possibilities and socio-economic status.
- 22.** The deprivation of liberty of unaccompanied minors, including those seeking asylum, and separated children should never be motivated or based solely on the absence of residence status.

B. Child-friendly justice before judicial proceedings

- 23.** The minimum age of criminal responsibility should not be too low and should be determined by law.
- 24.** Alternatives to judicial proceedings such as mediation, diversion (of judicial mechanisms) and alternative dispute resolution should be encouraged whenever these may best serve the child's best interests. The preliminary use of such alternatives should not be used as an obstacle to the child's access to justice.
- 25.** Children should be thoroughly informed and consulted on the opportunity to have recourse to either a court proceeding or alternatives outside court settings. This information should also explain the possible consequences of each option. Based on adequate information, both legal and otherwise, a choice should be available to use either court procedures or alternatives for these proceedings whenever they exist. Children should be given the opportunity to obtain legal advice and other assistance in determining the appropriateness and desirability of the proposed alternatives. In making this decision, the views of the child should be taken into account.
- 26.** Alternatives to court proceedings should guarantee an equivalent level of legal safeguards. Respect for children's rights as described in these guidelines and in all relevant legal instruments on the rights of the child should be guaranteed to the same extent in both in-court and out-of-court proceedings.

C. Children and the police

- 27.** Police should respect the personal rights and dignity of all children and have regard to their vulnerability, that is, take account of their age and maturity and any special needs of those who may be under a physical or mental disability or have communication difficulties.

- 28.** Whenever a child is apprehended by the police, the child should be informed in a manner and in language that is appropriate to his or her age and level of understanding of the reason for which he or she has been taken into custody. Children should be provided with access to a lawyer and be given the opportunity to contact their parents or a person whom they trust.
- 29.** Save in exceptional circumstances, the parent(s) should be informed of the child's presence in the police station, given details of the reason why the child has been taken into custody and be asked to come to the station.
- 30.** A child who has been taken into custody should not be questioned in respect of criminal behaviour, or asked to make or sign a statement concerning such involvement, except in the presence of a lawyer or one of the child's parents or, if no parent is available, another person whom the child trusts. The parent or this person may be excluded if suspected of involvement in the criminal behaviour or if engaging in conduct which amounts to an obstruction of justice.
- 31.** Police should ensure that, as far as possible, no child in their custody is detained together with adults.
- 32.** Authorities should ensure that children in police custody are kept in conditions that are safe and appropriate to their needs.
- 33.** In member states where this falls under their mandate, prosecutors should ensure that child-friendly approaches are used throughout the investigation process.

D. Child-friendly justice during judicial proceedings

1. Access to court and to the judicial process

- 34.** As bearers of rights, children should have recourse to remedies to effectively exercise their rights or act upon violations of their rights. The domestic law should facilitate where appropriate the possibility of access to court for children who have sufficient understanding of their rights and of the use of remedies to protect these rights, based on adequately given legal advice.

- 35.** Any obstacles to access to court, such as the cost of the proceedings or the lack of legal counsel, should be removed.
- 36.** In cases of certain specific crimes committed against children, or certain aspects of civil or family law, access to court should be granted for a period of time after the child has reached the age of majority where necessary. Member states are encouraged to review their statutes of limitations.

2. Legal counsel and representation

- 37.** Children should have the right to their own legal counsel and representation, in their own name, in proceedings where there is, or could be, a conflict of interest between the child and the parents or other involved parties.
- 38.** Children should have access to free legal aid, under the same or more lenient conditions as adults.
- 39.** Lawyers representing children should be trained in and knowledgeable on children's rights and related issues, receive ongoing and in-depth training and be capable of communicating with children at their level of understanding.
- 40.** Children should be considered as fully fledged clients with their own rights and lawyers representing children should bring forward the opinion of the child.
- 41.** Lawyers should provide the child with all necessary information and explanations concerning the possible consequences of the child's views and/or opinions.
- 42.** In cases where there are conflicting interests between parents and children, the competent authority should appoint either a guardian *ad litem* or another independent representative to represent the views and interests of the child.
- 43.** Adequate representation and the right to be represented independently from the parents should be guaranteed, especially in proceedings where the parents, members of the family or caregivers are the alleged offenders.

3. Right to be heard and to express views

44. Judges should respect the right of children to be heard in all matters that affect them or at least to be heard when they are deemed to have a sufficient understanding of the matters in question. Means used for this purpose should be adapted to the child's level of understanding and ability to communicate and take into account the circumstances of the case. Children should be consulted on the manner in which they wish to be heard.
45. Due weight should be given to the child's views and opinion in accordance with his or her age and maturity.
46. The right to be heard is a right of the child, not a duty of the child.
47. A child should not be precluded from being heard solely on the basis of age. Whenever a child takes the initiative to be heard in a case that affects him or her, the judge should not, unless it is in the child's best interests, refuse to hear the child and should listen to his or her views and opinion on matters concerning him or her in the case.
48. Children should be provided with all necessary information on how effectively to use the right to be heard. However, it should be explained to them that their right to be heard and to have their views taken into consideration may not necessarily determine the final decision.
49. Judgments and court rulings affecting children should be duly reasoned and explained to them in language that children can understand, particularly those decisions in which the child's views and opinions have not been followed.

4. Avoiding undue delay

50. In all proceedings involving children, the urgency principle should be applied to provide a speedy response and protect the best interests of the child, while respecting the rule of law.

- 51.** In family law cases (for example parentage, custody, parental abduction), courts should exercise exceptional diligence to avoid any risk of adverse consequences on the family relations.
- 52.** When necessary, judicial authorities should consider the possibility of taking provisional decisions or making preliminary judgments to be monitored for a certain period of time in order to be reviewed later.
- 53.** In accordance with the law, judicial authorities should have the possibility to take decisions which are immediately enforceable in cases where this would be in the best interests of the child.

5. Organisation of the proceedings, child-friendly environment and child-friendly language

- 54.** In all proceedings, children should be treated with respect for their age, their special needs, their maturity and level of understanding, and bearing in mind any communication difficulties they may have. Cases involving children should be dealt with in non-intimidating and child-sensitive settings.
- 55.** Before proceedings begin, children should be familiarised with the layout of the court or other facilities and the roles and identities of the officials involved.
- 56.** Language appropriate to children's age and level of understanding should be used.
- 57.** When children are heard or interviewed in judicial and non-judicial proceedings and during other interventions, judges and other professionals should interact with them with respect and sensitivity.
- 58.** Children should be allowed to be accompanied by their parents or, where appropriate, an adult of their choice, unless a reasoned decision has been made to the contrary in respect of that person.

- 59.** Interview methods, such as video or audio-recording or pre-trial hearings in camera, should be used and considered as admissible evidence.
- 60.** Children should be protected, as far as possible, against images or information that could be harmful to their welfare. In deciding on disclosure of possibly harmful images or information to the child, the judge should seek advice from other professionals, such as psychologists and social workers.
- 61.** Court sessions involving children should be adapted to the child's pace and attention span: regular breaks should be planned and hearings should not last too long. To facilitate the participation of children to their full cognitive capacity and to support their emotional stability, disruption and distractions during court sessions should be kept to a minimum.
- 62.** As far as appropriate and possible, interviewing and waiting rooms should be arranged for children in a child-friendly environment.
- 63.** As far as possible, specialist courts (or court chambers), procedures and institutions should be established for children in conflict with the law. This could include the establishment of specialised units within the police, the judiciary, the court system and the prosecutor's office.

6. Evidence/statements by children

- 64.** Interviews of and the gathering of statements from children should, as far as possible, be carried out by trained professionals. Every effort should be made for children to give evidence in the most favourable settings and under the most suitable conditions, having regard to their age, maturity and level of understanding and any communication difficulties they may have.
- 65.** Audiovisual statements from children who are victims or witnesses should be encouraged, while respecting the right of other parties to contest the content of such statements.

- 66.** When more than one interview is necessary, they should preferably be carried out by the same person, in order to ensure coherence of approach in the best interests of the child.
- 67.** The number of interviews should be as limited as possible and their length should be adapted to the child's age and attention span.
- 68.** Direct contact, confrontation or interaction between a child victim or witness with alleged perpetrators should, as far as possible, be avoided unless at the request of the child victim.
- 69.** Children should have the opportunity to give evidence in criminal cases without the presence of the alleged perpetrator.
- 70.** The existence of less strict rules on giving evidence such as absence of the requirement for oath or other similar declarations, or other child-friendly procedural measures, should not in itself diminish the value given to a child's testimony or evidence.
- 71.** Interview protocols that take into account different stages of the child's development should be designed and implemented to underpin the validity of children's evidence. These should avoid leading questions and thereby enhance reliability.
- 72.** With regard to the best interests and well-being of children, it should be possible for a judge to allow a child not to testify.
- 73.** A child's statements and evidence should never be presumed invalid or untrustworthy by reason only of the child's age.
- 74.** The possibility of taking statements of child victims and witnesses in specially designed child-friendly facilities and a child-friendly environment should be examined.

E. Child-friendly justice after judicial proceedings

- 75.** The child's lawyer, guardian *ad litem* or legal representative should communicate and explain the given decision or judgment to the child in a language adapted to the child's level of understanding and should give the necessary information on possible measures that could be taken, such as appeal or independent complaint mechanisms.

- 76.** National authorities should take all necessary steps to facilitate the execution of judicial decisions/rulings involving and affecting children without delay.
- 77.** When a decision has not been enforced, children should be informed, possibly through their lawyer, guardian *ad litem* or legal representative, of available remedies either through non-judicial mechanisms or access to justice.
- 78.** Implementation of judgments by force should be a measure of last resort in family cases when children are involved.
- 79.** After judgments in highly conflictual proceedings, guidance and support should be offered, ideally free of charge, to children and their families by specialised services.
- 80.** Particular health care and appropriate social and therapeutic intervention programmes or measures for victims of neglect, violence, abuse or other crimes should be provided, ideally free of charge, and children and their caregivers should be promptly and adequately informed of the availability of such services.
- 81.** The child's lawyer, guardian or legal representative should have a mandate to take all necessary steps to claim for damages during or after criminal proceedings in which the child was a victim. Where appropriate, the costs could be covered by the state and recovered from the perpetrator.
- 82.** Measures and sanctions for children in conflict with the law should always be constructive and individualised responses to the committed acts, bearing in mind the principle of proportionality, the child's age, physical and mental well-being and development and the circumstances of the case. The right to education, vocational training, employment, rehabilitation and reintegration should be guaranteed.
- 83.** In order to promote the reintegration within society, and in accordance with the national law, criminal records of children should be non-disclosable outside the justice system on reaching the age of majority. Exceptions for the disclosure of such information can be permitted in cases of serious offences, *inter alia* for reasons of public safety or when employment with children is concerned.

V. Promoting other child-friendly actions

Member states are encouraged to:

- a.** promote research into all aspects of child-friendly justice, including child-sensitive interviewing techniques and dissemination of information and training on such techniques;
- b.** exchange practice and promote co-operation in the field of child-friendly justice internationally;
- c.** promote the publication and widest possible dissemination of child-friendly versions of relevant legal instruments;
- d.** set up, or maintain and reinforce where necessary, information offices for children's rights, possibly linked to bar associations, welfare services, (children's) ombudsmen, Non-governmental Organisations (NGOs), etc.;
- e.** facilitate children's access to courts and complaint mechanisms and further recognise and facilitate the role of NGOs and other independent bodies or institutions such as children's ombudsmen in supporting children's effective access to courts and independent complaint mechanisms, both on a national and international level;
- f.** consider the establishment of a system of specialised judges and lawyers for children and further develop courts in which both legal and social measures can be taken in favour of children and their families;
- g.** develop and facilitate the use by children and others acting on their behalf of universal and European human and children's rights protection mechanisms for the pursuit of justice and protection of rights when domestic remedies do not exist or have been exhausted;
- h.** make human rights, including children's rights, a mandatory component in the school curricula and for professionals working with children;
- i.** develop and support systems aimed at raising the awareness of parents on children's rights;

- j.* set up child-friendly, multi-agency and interdisciplinary centres for child victims and witnesses where children could be interviewed and medically examined for forensic purposes, comprehensively assessed and receive all relevant therapeutic services from appropriate professionals;
- k.* set up specialised and accessible support and information services, such as online consultation, help lines and local community services free of charge;
- l.* ensure that all concerned professionals working in contact with children in justice systems receive appropriate support and training, and practical guidance in order to guarantee and implement adequately the rights of children, in particular while assessing children's best interests in all types of procedures involving or affecting them.

VI. Monitoring and assessment

Member states are also encouraged to:

- a.* review domestic legislation, policies and practices to ensure the necessary reforms to implement these guidelines;
- b.* to speedily ratify, if not yet done so, relevant Council of Europe conventions concerning children's rights;
- c.* periodically review and evaluate their working methods within the child-friendly justice setting;
- d.* maintain or establish a framework, including one or more independent mechanisms, as appropriate, to promote and monitor implementation of the present guidelines, in accordance with their judicial and administrative systems;
- e.* ensure that civil society, in particular organisations, institutions and bodies which aim to promote and to protect the rights of the child, participate fully in the monitoring process.



Second part

Explanatory memorandum

General comments

Why a new instrument?

- 1.** For the Council of Europe, protecting children’s rights and promoting child-friendly justice is a priority. The issue of protection of children was addressed by the Action Plan of the 3rd Summit of Heads of State and Government of the Council of Europe in Warsaw in 2005.
- 2.** While a number of legal instruments exist at the international, European and national levels, gaps remain both in law and in practice, and governments and professionals working with children are requesting guidance to ensure the effective implementation of their standards. In the well-known cases opposing V. and T. and the United Kingdom, two 10-year-old boys who had kidnapped and battered to death a 2-year-old, were tried as adults, under massive press coverage. The European Court of Human Rights (hereinafter “the Court”) later found that the trial had been incomprehensible and intimidating for the children who had thus been unable to participate effectively in the proceedings against them, and established a breach of Article 6 of the European Convention on Human Rights (hereinafter the “ECHR”), which guarantees the right to a fair trial. In the *Sahin v. Germany* case, the Court found that the substantive violation was the failure to hear the child’s own views, and indicated that the national court had to take considerable steps to ensure direct contact with the child and that, by this means only, can the best interests of the child be ascertained.

3. These cases could have occurred in almost any Council of Europe member state. They illustrate the need to enhance access to justice and improve the treatment of children in judicial and non-judicial proceedings, the importance of raising the knowledge and awareness of professionals working with children in such proceedings and of providing them with adapted training in order to guarantee the best interests of the child, and the good administration of justice.

Background

4. The following guidelines are the Council of Europe's direct response to Resolution No. 2 on child-friendly justice adopted at the 28th Conference of European Ministers of Justice (Lanzarote, 25-26 October 2007), which requested concrete guidance for the member states in this field. The Committee of Ministers thus instructed four Council of Europe bodies to prepare guidelines on child-friendly justice (hereafter "the guidelines") proposing solutions to assist member states in establishing judicial systems responding to the specific needs of children, with a view to ensuring children's effective and adequate access to and treatment in justice, in any sphere: civil, administrative or criminal.

Working method

5. With that transversal perspective in mind, the Council of Europe adopted an innovative integrated approach bringing together three of its major intergovernmental committees dealing with civil and administrative law (the European Committee on Legal Co-operation – CDCJ), criminal law (the European Committee on Crime Problems – CDPC), general human rights (the Steering Committee for Human Rights – CDDH), and the European Commission for the Efficiency of Justice (CEPEJ). The guidelines were also drafted in close co-operation with the programme "Building a Europe for and with children", which made child-friendly justice one of the core pillars of the Council of Europe's strategy on children's rights for 2009-11.

6. The Council of Europe started this work in 2008 with the preparation of four expert reports assessing the challenges and obstacles faced by children in accessing justice at national level in all sectors of the judicial system. These reports were presented and used as a basis for discussions at high-level Council of Europe conferences held under the auspices of the Swedish chairmanship of the Committee of Ministers, “Building a Europe for and with Children – Towards a strategy for 2009-2011”, (Stockholm, 8-10 September 2008), and Spanish chairmanship of the Committee of Ministers, “The protection of children in European justice systems”, (Toledo, 12-13 March 2009). The findings of the reports and the conclusions of the conferences paved the way for the drafting of the guidelines and provided valuable material for the Group of Specialists on child-friendly justice (CJ-S-CH) which was established to prepare the guidelines in 2009-10.

Drafting process

7. This Group of Specialists was composed of 17 independent specialists selected by the Council of Europe in consultation with the CDCJ, CDPC and CDDH on the basis of their personal expertise in children’s rights, while respecting a specialisation balance (between civil and administrative, criminal and human rights law), as well as a geographical and a gender balance. The group had Mr Seamus Carroll (Ireland) – Chair of the CDCJ – as Chair, Ms Ksenija Turković (Croatia) – appointed by the CDPC – as Vice-Chair, and Ms Ankie Vandekerckhove, children’s rights specialist from Belgium, as scientific expert.
8. The group included judges, attorneys, prosecutors, academics, psychologists, police officers, social workers and representatives of the governments of the member states, and was therefore characterised by its multidisciplinary composition. A wide range of observers, including representatives of leading international intergovernmental and non-governmental organisations, also contributed to its work.

9. The draft guidelines and their explanatory memorandum were examined and approved by the CDCJ during its 85th plenary meeting held from 11 to 14 October 2010, before their transmission to the Committee of Ministers for adoption on 17 November 2010. Before that, the CDPC and the CDDH took note of the text and supported it at their plenary sessions (7-10 June and 15-18 June 2010 respectively).

Consultation of stakeholders

10. The consultation of various stakeholders on the draft guidelines was ensured throughout the drafting process through continuous public consultation on the successive drafts of the text from October 2009 to May 2010. A hearing with leading international NGOs and other stakeholders specialised in children's rights was organised on 7 December 2009 in Strasbourg. The 4th draft of the guidelines was specifically submitted to the member states and focal points for comments, and to a number of internal and external partners, between January and May 2010. The comments were subsequently taken into consideration by the group when finalising the text, thus ensuring a transparent and inclusive process of adoption.

Consultation of children and young people

11. In accordance with the terms of reference of this Group of Specialists, the Council of Europe also organised a direct consultation of children and young people on the topic of justice in 2010. Around 30 partners throughout Europe contributed to it, drafting, translating and disseminating a questionnaire in 11 languages and organising focus groups. Exactly 3 721 replies from 25 countries were analysed by Dr Ursula Kilkelly, an Irish children's rights expert, and taken into account by the CJ-S-CH in the finalisation of the guidelines. Key themes included family, (mis)trust of authority, need for respect and the importance for children and young people of being listened to.¹

1. The report is available on the website: www.coe.int/childjustice.

12. This consultation was the first attempt of the Council of Europe to directly involve children and young people when drafting a legal instrument and will be extended to further similar activities with a view to ensuring the meaningful participation of children and young people in the normative work of the Organisation. It was carried out with the generous financial support of the Government of Finland.
13. During the drafting process, numerous changes were made to ensure that the guidelines met the needs of children and responded to what children recounted about the justice system. Overall, a very genuine effort was made to ensure that these views were taken into account in the detail, scope and strength of the guidelines.
14. In particular, the views of children have been used to:
 - support the extent and manner in which the guidelines recognise the right of children to be heard, to receive information about their rights, to enjoy independent representation and to participate effectively in decisions made about them. The wording in all relevant sections was strengthened in these respects. For example, the guidelines now require judges to respect the right of all children to be heard in all matters affecting them and require that the means used shall be adapted to the child's understanding and ability to communicate and take into account the circumstances of the case;
 - ensure that adequate provision is made in the guidelines for children to understand and receive feedback on the weight attached to their views;
 - strengthen the provision in the guidelines for support to children before, during and after contact with the justice system. Particular consideration was given to the role of parents and those trusted by children (for example, section on children and the police);
 - support provision for an unequivocal right to access independent and effective complaints mechanisms for all parts of the justice system, support specialisation among all professionals and demand appropriate training for all professionals who come into contact with children in the justice system. These issues were considered central to addressing the lack of trust in authority expressed by children during the consultation;

- strengthen provision with regard to confidentiality in professionals' dealings with children;
- promote consultation and partnership with children, where appropriate, with regard to the operation of children's justice systems, and the development and review of law, policy and practice.

Structure and content

- 15.** The guidelines are a non-binding instrument. While in these guidelines the conditional “should” is frequently used where the relevant principles are taken from a binding legal instrument, whether a Council of Europe instrument or other international instrument, the use of the conditional “should” must not be understood as reducing the legal effect of the binding instrument concerned.
- 16.** The guidelines build on existing international, European and national standards. The best interests of the child are their guiding thread, as they take into account the basic principles set out in the ECHR and the related case law of the Court and the United Nations Convention on the Rights of the Child. The guidelines promote and protect, among other things, the rights to information, representation and participation of children in judicial and non-judicial proceedings, and give a place and voice to the child in justice at all stages of the procedures. As a practical tool, they also present good practices and propose practical solutions to remedy legal inconsistencies and lacunae. For instance, specific techniques for listening to the child (including in a courtroom environment) are addressed. The guidelines are not only a declaration of principles, but aspire to be a practical guide to the implementation and advancement of internationally agreed and binding standards.

17. In line with the terms of reference of the CJ-S-CH, the text of the guidelines is structured around various principles applicable before, during and after the proceedings.
18. The attention of those Council of Europe member states that are considering drafting legislation concerning children in judicial and non-judicial proceedings is drawn to the guidelines' relevant principles, standards and recognised good practices.²

2. Information about the Council of Europe's work on child-friendly justice and its progress is available on the website: www.coe.int/childjustice.

Introduction

- 19.** Over the last few decades, many public and private organisations, ombudspersons, policy makers and others have been seeking to ensure that children³ are aware of their rights and that these rights are reinforced in their daily lives. While we recently celebrated 60 years of the ECHR and 20 years of the United Nations Convention on the Rights of the Child, reality at national, regional and international levels demonstrates too often that children’s rights are still violated.
- 20.** Children may come into contact with judicial or non-judicial proceedings in many ways: when their parents get divorced or fight custody battles over them, when they commit offences, witness crimes or are victims of crimes, request asylum, etc. Children are bearers of rights and in this context it is necessary that procedures are made more child friendly in order to support them in the best possible way should they need to invoke judicial or non-judicial proceedings to have their rights protected.⁴
- 21.** For children, there are many legal, social, cultural and economic obstacles to their access to court, the lack of legal capacity probably being the most important one. Very often, parents or guardians legally represent them. But when the legal representative does not want to act on their behalf, or is unable to do so, and when competent public authorities do not instigate a procedure, children often have no way to defend their rights or act against violations. In those cases, and if a special representative has not been appointed by the competent authority, they cannot enjoy the

3. Persons up to 18 years of age.

4. U. Kilkelly, “Youth courts and children’s rights: the Irish experience”, in *Youth Justice*, p. 41: “The Convention of the Rights of the Child, adopted in 1989, strengthened this protection by providing for a range of due process standards that both recognised the child’s right to a fair trial, but went further in recognising the need to adapt the trial process to the needs and rights of children.”

basic right to bring a matter to court, even though the ECHR contains several fundamental principles to this effect (see Article 6, which includes, *inter alia*, the right to a fair trial). And while the Convention includes human rights for “everyone”, bringing a case to court is particularly difficult for children. Despite the fact that the Court has some case law on children’s rights issues, courts, both national and international, are rarely accessible to children, and adults remain the ones who usually initiate proceedings on their behalf.⁵ Therefore, children’s access to justice needs to be addressed in the guidelines on child-friendly justice.⁶

- 22.** The guidelines on child-friendly justice aim to deal with the status and position of children and the way in which they are treated in judicial and non-judicial proceedings. However, before bringing cases to court, it may be in the child’s best interests to turn to methods of alternative dispute resolution, such as mediation. These guidelines cover proceedings both in and outside court.
- 23.** They are meant to stimulate discussion on children’s rights in practice and encourage member states to take further steps in turning them into reality and filling in existing lacunae. They are not intended to affect issues of substantive law or substantive rights of children nor are they of a legally binding nature. Most of the guidelines will only necessitate a change in approach in addressing the views and needs of children.
- 24.** They also aim to serve as a practical means for member states in adapting their judicial and non-judicial systems to specific needs of children in criminal, administrative and civil justice procedures, irrespective of their status or capacity. They should also be used in very specific areas of law, such as youth protection legislation existing in several member states.

5. F. Tulkens, “The European Convention on Human Rights and children’s rights”, *International justice for children*, Monograph No. 3, Council of Europe Publishing, 2009, p. 17-33.

6. This is all the more necessary given that the terms of reference of the Group of Specialists on child-friendly justice include looking for lacunae in these matters.

- 25.** In this context, the guidelines seek to facilitate the implementation of the guiding principles of the United Nations Convention on the Rights of the Child. Equally, all rights stipulated by the ECHR and confirmed by the Court shall apply with equal force to children as they do to adults.
- 26.** As the gap between these provisions and children's actual rights is striking, the explanatory memorandum makes frequent references to good practices, factual and legal, found in member states and in the case law. They may serve as useful information and inspiration.

Explanatory memorandum

Preamble

27. Major international organisations dealing with human rights, such as the United Nations and the Council of Europe, have already developed significant standards and guidelines referring to children’s rights. They will be considered in the appropriate place. The preamble mentions those standards which are particularly relevant in this area without preventing member states from introducing or applying higher standards or more favourable measures. It also calls upon member states to speedily ratify relevant Council of Europe conventions concerning children’s rights. This is a practical measure as several of these instruments have not been ratified by a high number of states.⁷

I. Scope and purpose

28. The scope and the purpose of the instrument are dealt with in paragraphs 1 to 3. As already indicated, the guidelines apply to criminal, civil or administrative law, and aim to ensure that all of the rights of children in such proceedings are fully respected, while striking the right balance with the rights of other parties involved.

II. Definitions

29. The definition of “child” is formulated in accordance with Article 1 of the United Nations Convention on the Rights of the Child, and Article 1.1 of the European Convention on the Exercise of Children’s Rights (ETS No. 160). The ECHR grants rights to “everyone”, and does not exclude persons under the age of 18. There may be cases where a person under the age of 18 is not considered a child, for example in cases of emancipation, existing in several member states.

7. PACE document (AS/Jur (2009)40) “The specificity and added value of the *acquis* of the Council of Europe treaty law”.

- 30.** The definition of “parent” in paragraph b encompasses all persons with parental responsibilities, who may not always be the biological parents, but also other persons holding parental responsibilities, such as guardians or appointed legal representatives.
- 31.** While “child-friendly” justice is defined in paragraph c, the text also insists that its scope is broader than the actual justice system and court proceedings. It is aimed at all professionals dealing with children in and outside judicial proceedings. Sectors such as police, social and mental health services are also responsible for making justice more child friendly. The guidelines strive to ensure that children’s rights are known and scrupulously respected by all these professionals.

III. Fundamental principles

A. Participation⁸

- 32.** The principle of participation, that is, that children have the right to speak their mind and give their views in all matters that affect them is one of the guiding principles of the United Nations Convention on the Rights of the Child.⁹ While this does not mean that their opinion will always be adhered to, the guidelines require that their opinions be taken into account seriously and given due respect, according to their age, maturity and the circumstances of the case, subject to national procedural law.

8. For more information, see General Comment No. 12 on the Right of the Child to be heard (CRC/C/GC/12, 1 July 2009) and comments under IV, D, 3, the right to be heard. See also Committee of Ministers’ Recommendation No. R (98) 8 on children’s participation in family and social life, 18 September 1998, paragraph 4: “participation is a decisive factor for securing social cohesion and for living in a democracy in accordance with the values of a multicultural society and the principles of tolerance”; paragraph 5: “participation of children is crucial in influencing the conditions of their own lives, in that participation is not only involvement in institutions and decision-making but above all a general pattern of democracy relevant to all areas of family and social life”. See furthermore European Court of Human Rights (Grand Chamber) judgment of 16 December 1999, *T. v. UK*, No. 24724/94, paragraph 83, and judgment of 16 December 1999, *V. v. UK*, No. 24888/94, paragraph 85: “[...] Article 6, read as a whole, guarantees the right of an accused to participate effectively in his criminal trial”.

9. United Nations Convention on the Rights of the Child, Article 12.

- 33.** The reference made to the term “capable of forming his or her own views”¹⁰ should not be seen as a limitation, but rather a duty on the authorities to fully assess the child’s capacity as far as possible. Instead of assuming too easily that the child is unable to form an opinion, states should presume that a child has, in fact, this capacity. It is not up to the child to prove this. In line with children’s rights legislation, the text of Part III A.2 underlines the essential message that children are bearers of rights.
- 34.** States are discouraged from introducing standardised age limits.¹¹ The United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime also state that “age should not be a barrier to a child’s right to participate fully in the justice process.”¹²
- 35.** In family cases, children should be included in the discussions prior to any decision which affects their present and/or future well-being. All measures to ensure that children are included in the judicial proceedings should be the responsibility of the judge, who should verify that children have been effectively included in the process and are absent only when children themselves have declined to participate or are of such maturity and understanding that their involvement is not possible. Voluntary organisations and ombudspersons for children should also make all efforts to ensure that children are included in family law proceedings and are not faced with a *fait accompli*.¹³

10. *Ibid.*, Article 12.1.

11. General Comment No. 12 on the Right of the Child to be heard, paragraphs 20-21 (CRC/C/GC/12, 1 July 2009).

12. United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC Res 2005/20, 22 July 2005), paragraph 18.

13. Some member states penalise parents who fail to honour custody and access commitments notwithstanding the fact that it may be the child who refuses to comply. In other states, parents may receive custodial sentences for failing to adhere to a court decision while such eventuality could be avoided by including the child in any decision made on his or her behalf.

In a case dealing with an accused minor with a low level of understanding, the Court found that “effective participation in this context presupposes that the accused has a broad understanding of the nature of the trial process and of what is at stake for him or her, including the significance of any penalty which may be imposed. It means that he or she, if necessary with the assistance of, for example, an interpreter, lawyer, social worker or friend, should be able to understand the general thrust of what is said in court. The defendant should be able to follow what is said by the prosecution witnesses and, if represented, to explain to his own lawyers his version of events, point out any statements with which he disagrees and make them aware of any facts which should be put forward in his defence.”¹⁴ Moreover, it is “essential that he be tried in a specialist tribunal which is able to give full consideration to, and make proper allowance for, the handicaps under which he labours, and adapt its procedure accordingly”.¹⁵

Similarly, in the case of *Sahin v. Germany*, the Court concluded in a custody case that “it would be going too far to say that domestic courts are always required to hear a child in court on the issue of access to a parent not having custody, but this issue depends on the specific circumstances of each case, having due regard to the age and maturity of the child concerned”.¹⁶

Lastly, in another custody case, *Hokkannen v. Finland*, the Court judged a 12-year-old girl “sufficiently mature for her views to be taken into account and that access therefore should not be accorded against her wishes”.¹⁷

14. European Court of Human Rights (Fourth Section), judgment of 15 June 2004, *S.C. v. UK*, No. 60958/00, paragraph 29.

15. European Court of Human Rights, *ibid.*, paragraph 35.

16. European Court of Human Rights (Grand Chamber), judgment of 8 July 2003, *Sahin v. Germany*, No. 30943/96, paragraph 73.

17. European Court of Human Rights (Chamber), judgment of 23 September 1994, *Hokkanen v. Finland*, No. 19823/92, paragraph 61.

B. Best interests of the child

- 36.** The child’s best interests should be a primary consideration in all cases involving children. The assessment of the situation needs to be done accurately. These guidelines promote the development of multidisciplinary methods for assessing the best interests of the child acknowledging that this is a complex exercise. This assessment becomes even more difficult when these interests need to be balanced with the interests of other involved parties, such as other children, parents, victims, etc. This should be done professionally, on a case-by-case basis.
- 37.** The best interests of the child must always be considered in combination with other children’s rights, for example, the right to be heard, the right to be protected from violence, the right not to be separated from parents, etc.¹⁸ A comprehensive approach must be the rule.
- 38.** It is remarkable how little use is made of the “best interests” principle in cases of juvenile justice, contrary to family law matters. There is a worrying trend in many Council of Europe member states towards treating young offenders like adults.¹⁹ It goes without saying that the rights of all children need to be respected, including the rights of those children who breach the law. A strictly punitive approach is not in accordance with the leading principles of juvenile justice as formulated in Article 40 of the United Nations Convention on the Rights of the Child.²⁰ Interventions of a more socio-educational nature are much more in line with this instrument and have proven to be more effective in practice as well.²¹

18. For practical suggestions see UNHCR Guidelines on Determining the Best Interests of the Child, 2008 (www.unhcr.org/refworld/docid/148480c342.html).

19. See T. Hammarberg (www.coe.int/t/commissioner/Viewpoints)(2009).

20. General Comment No. 10 on Children’s Rights in Juvenile Justice (CRC/C/GC/10, 25 April 2007), paragraph 71. Also see Committee of Ministers Recommendation No. R (87) 20 on social reactions to juvenile delinquency.

21. General Comment No. 10 on Children’s Rights in Juvenile Justice (CRC/C/GC/10, 25 April 2007).

In several family law cases, the European Court of Human Rights has stated that domestic courts should assess the difficult question of the child's best interests on the basis of a reasoned, independent and up-to-date psychological report, and that the child, if possible and according to his or her maturity and age, should be heard by the psychologist and the court in access, residence and custody matters.²²

In the case of *Bronda v. Italy*, the interests of the child were deemed to override that of other parties involved: “[...] while a fair balance has to be struck between S.’s interest in remaining with her foster parents and her natural family’s interest in having her to live with them, the Court attaches special weight to the overriding interests of the child, who, now aged 14, has always firmly indicated that she does not wish to leave her foster home. In the present case, S.’s interest outweighs that of her grandparents.”²³

A similar statement was made by the Court in the already mentioned case of *Sahin v. Germany*: “Article 8 requires that the domestic authorities should strike a fair balance between the interests of the child and those of the parents and that, in the balancing process, particular importance should be attached to the best interests of the child, which, depending on their nature and seriousness, may override those of the parents. In particular, a parent cannot be entitled under Article 8 to have such measures taken as would harm the child’s health and development.”²⁴

22. Cf. particularly European Court of Human Rights (Grand Chamber), judgment of 13 July 2000, *Elsholz v. Germany*, No. 25735/94, paragraph 53, and judgment of 8 July 2003, *Sommerfeld v. Germany*, No. 31871/96, paragraphs 67-72. See also the partly dissenting opinion of Judge Ress joined by Judges Pastor Ridurejo and Türmen in *Sommerfeld v. Germany* (ibid.), paragraph 2.

23. European Court of Human Rights (Chamber), judgment of 9 June 1998, *Bronda v. Italy*, No. 22430/93, paragraph 62.

24. European Court of Human Rights (Grand Chamber), judgment of 8 July 2003, *Sahin v. Germany*, No. 30943/96, paragraph 66

In the adoption case of *Pini and Others v. Romania*, the Court ruled with regard to the child's refusal to be adopted by a foreign family: "In such matters [...] the child's interests may, depending on their nature and seriousness, override those of the parent."²⁵

C. Dignity

- 39.** Respecting dignity is a basic human rights requirement, underlying many existing legal instruments.²⁶ Although various provisions of the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime are relevant in this context, 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".²⁷
- 40.** The text of C.2 repeats the provision of Article 3 of the ECHR.

D. Protection from discrimination

- 41.** The prohibition of discrimination is also a well-established principle in international human rights law. Article 2 of the United Nations Convention on the Rights of the Child is viewed as one of its guiding principles. The text of D.1 mentions several well-known grounds for discrimination.

25. European Court of Human Rights (second section), judgment of 22 June 2004, *Pini and Others v. Romania*, Nos. 78028/01 and 78030/01, paragraph 155.

26. See, for example, the preamble to the International Covenant on Civil and Political Rights, and the preamble to and Article 40, paragraph 1 of the United Nations Convention on the Rights of the Child.

27. United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC Res 2005/20, 22 July 2005), III.8.a and I.6.

- 42.** On the specific question of “race”, the Council of Europe’s European Commission against Racism and Intolerance (ECRI) in its General Policy Recommendation No. 7 on national legislation to combat racism and discrimination, indicates: “Since all human beings belong to the same species, ECRI rejects theories based on the existence of different ‘races’. However, in this recommendation, ECRI uses this term in order to ensure that those persons who are generally and erroneously perceived as belonging to ‘another race’ are not excluded from the protection provided for by the legislation.”
- 43.** Some categories of particularly vulnerable children may be in need of special protection in this respect. The text lists some of these categories; however, the list does not purport to be exhaustive, as other grounds for discrimination cannot be excluded.
- 44.** Another important factor of discrimination in the area of children’s rights is age and capacity. Very young children or children without full capacity to pursue their rights are also bearers of rights. For these children, alternative systems of representation need to be developed in order to avoid discrimination.

E. Rule of law²⁸

- 45.** Without trying to define the concept of “the rule of law”,²⁹ several of its elements are pointed out in E.1 and E.2. The whole text has been influenced by the opinion of the Court that “the rule of law, one of the fundamental principles of a democratic society, is inherent in all the articles of the Convention”.³⁰ Therefore, its impact should be felt in all proceedings involving children.

28. See also the report by the Registry of the European Court of Human Rights, “Access of children to justice – Specific focus on the access of children to the European Court of Human Rights” and its case law related to children’s access to national jurisdictions in the “Compilation of texts related to child-friendly justice”, Directorate General of Human Rights and Legal Affairs, 2009, p. 11-19.

29. Brian Z. Tamanaha traced the idea back to Aristotle: “It is better for the rule of law to rule than one of the citizens”, and continues: “so even the guardians of the laws are obeying the laws”. Cited from Tom Bingham, *The Rule of Law*, Allen Lane, Penguin Group, 2010, page 3.

30. *Ukraine-Tyumen v. Ukraine*, no. 22603/02, paragraph 49, 22 November 2007.

- 46.** The rule of law establishes, *inter alia*, the fundamental principle that everyone is accountable to clearly established and publicised laws and has enforceable rights. This principle applies irrespective of age so that member states are expected to respect and support fundamental rights for all, including children. The application of the rule of law with respect to children necessitates, *inter alia*, enforcement of the right to the presumption of innocence and the 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.
- 47.** For children, the principles of *nullum crimen sine lege* and *nulla poena sine lege* are just as valid as they are for adults and are a cornerstone of a democracy’s criminal law system.³¹ However, when dealing with anti-social – although not criminal – behaviour of children, there has been a trend in some member states to apply far-reaching interventions, including deprivation of liberty. Under the pretext of the protection of society from anti-social behaviour, children are drawn into intervention schemes in a manner that would not be tolerated if applied to adults. Standard legal guarantees, such as the burden of proof attributable to the state and the right to a fair trial, are not always present. In many countries, the basic principles of law in criminal matters are not applied as fully for children as they are for adults. Children are still punished for so-called “status” offences (acts that are not defined as crimes in law and would go unpunished when committed by an adult).³²
- 48.** In order for the rule of law to be effectively and adequately observed, particularly in relation to children, member states are required under E.3 to introduce and/or maintain independent and effective complaints mechanisms, bearing in mind their suitability to the age and understanding of the child.

31. ECHR, Article 7; United Nations Convention on the Rights of the Child, Article 40, paragraph 2.a.

32. See CRIN “Report on Status Offences” on http://www.crin.org/docs/Status_Offenses_doc_2_final.pdf.

IV. Child-friendly justice before, during and after judicial proceedings

A. General elements of child-friendly justice

49. These elements of child-friendly justice are 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

50. In every individual case, from the very first contact with the justice system and on each and every step of the way, all relevant and necessary information should be given to the child.³³ This right applies equally to children as victims, alleged perpetrators of offences or as any involved or affected party.³⁴ Although it is not always practical to provide information at the beginning of the child's involvement with the competent authorities, this should be done as soon as possible. However, there might be situations where information should not be provided to children (when contrary to their best interests).

51. Children need to be informed of their rights,³⁵ but also of instruments they can use to actually exercise their rights or defend them where necessary.³⁶ This is the first condition for protecting these rights. In Part IV.A.1., Guideline 1 provides a detailed, but not exhaustive, list of information that children and their parents should receive.

52. Children may experience a lack of objective and complete information. Parents may not always share all pertinent

33. This is an important task of children's ombudspersons and children's rights organisations.

34. This right is also covered in a variety of instruments such as the United Nations Convention on the Rights of the Child, (Articles 13, paragraph 1; 37, paragraph d; 40, paragraph 2.b(ii), 42), the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC Res. 2005/20, 22 July 2005, VII) and the European Convention on the Exercise of Children's Rights (ETS No. 160, Article 3).

35. Article 42, United Nations Convention on the Rights of the Child.

36. This should not be limited to legal information, but should also, for example, include information on the existence of an ombudsperson or other services for children.

information, and what they give may be biased. In this context, the role of children's lawyers, ombudspersons and legal services for children is very important.

- 53.** Guideline 2 reaffirms the right of the child to receive the information and advice in understandable language, adapted to age, maturity and abilities.
- 54.** Information on the procedural system includes the need for detailed information on how the procedure will take place, what the standing and role of the child will be, how the questioning will be carried out, what the expected timing will be, the importance and impact of any given testimony, the consequences of a certain act, etc. Children need to understand what is happening, how things could or would move forward, what options they have and what the consequences of these options are. They need to be informed of possible alternatives to proceedings. In some cases, mediation instead of court intervention may be more appropriate, while in other circumstances recourse to a court may offer more guarantees to a child. The different consequences of such a choice need to be clearly explained to the child, so that a well-informed decision can be made, although the child may not necessarily be the decision maker in each case. This information could also be provided via a variety of child-friendly material containing relevant legal information (Guideline 4).
- 55.** Guideline 5 imposes the obligation to provide information on all charges against the child, promptly and directly, both to the child and to the parents, and the rights the child shall enjoy in such cases. The child also needs to be given information about prosecutorial decisions, relevant post-trial developments and on how the outcome of the case will be determined. Information should also be given regarding possible complaints mechanisms, available systems of legal aid, representation or other possible advice they may be entitled to. When a judgment is delivered, the motivation ought to be provided in a way that the child can fully understand. This becomes even more important for children with special educational needs or low levels of literacy.³⁷

37. The information may have to be translated in a language the child understands (a foreign language, Braille or other) as is the case for adults, and the formal legal terminology will have to be explained so that the child can fully understand its meaning.

- 56.** In the case of cross-border civil law and family disputes, depending on maturity and understanding, the child should be provided with professional information relating to access to justice in the various jurisdictions and the implications of the proceedings on his or her life. Children face particular challenges where there is a history of family conflict and/or abuse.

In the cases of both *V. and T. against the United Kingdom*, the Court noted that effective participation in the courtroom presupposes that the accused has a broad understanding of the nature of the trial process, including the significance of any penalty which may be imposed. Therefore, juvenile defendants must be, in any case, represented by skilled lawyers experienced in dealing with children.³⁸

In some Council of Europe member states, private or subsidised services are available for children and young people where they can get information on children's rights in general or basic information on the legal issues of their own case or situation. In certain member states, such as Belgium and the Netherlands, there are "children's rights shops",³⁹ which can refer them to a lawyer, provide them with assistance in exercising their rights (for example, writing to a judge to be heard in a case), etc.

38. European Court of Human Rights (Grand Chamber), judgment of 16 December 1999, *T. v. UK*, No. 24724/94, paragraph 88, and judgment of 16 December 1999, *V. v. UK*, No. 24888/94, paragraph 90.

39. The "Kinderrechtswinkel" in Ghent and Bruges and the "Service droit des jeunes" in most major cities in the French-speaking community in Belgium.

2. Protection of private and family life

57. Anonymity and protection of personal data in relation to the mass media may be necessary for the child, as stipulated by several instruments.⁴⁰ In this respect, special mention should be made of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108),⁴¹ which lists the set of commonly accepted standards concerning in particular the collection and processing of data and data quality. As in the case of the ECHR, children enjoy all rights under this convention even though it does not explicitly refer to children's rights. Additionally, its Article 6 provides for special safeguards when it comes to sensitive data, such as personal data related to criminal convictions. Other categories of data could be defined as sensitive by domestic law or treated as such by public authorities allowing for the better protection of children's privacy. By way of example, one instrument⁴² lists the following categories: disciplinary proceedings, recording cases of violence, medical treatment in school, school orientation, special education for disabled people and social aid to pupils from poor families.

40. By way of example, Article 11.3 of the Convention on Action against Trafficking in Human Beings (CETS No. 197) deals with privacy and protects personal data while urging states to set up regulatory measures for the press. The United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC Res 2005/20, 22 July 2005), paragraph X, 27, states: "Information related to a child's involvement in the justice process should be protected. This can be achieved through maintaining confidentiality and restricting disclosure of information that may lead to identification of a child who is a victim or a witness in the justice process." This is also described in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules, 1985, Article 8): "The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling. In principle, no information that may lead to the identification of a juvenile offender shall be published."

41. This instrument has a global vocation as it is open to the accession of non-member states of the Council of Europe, if their legislation meets the convention's requirements.

42. Opinion 2/2009 of the EU Data Protection Working Party on the Protection of Children's Personal Data (General guidelines and the special case of schools).

- 58.** In its General Comment No. 10 on Children’s Rights in Juvenile Justice,⁴³ the United Nations Committee on the Rights of the Child recommends, among others, proceedings in camera, preserving confidentiality of records, delivering judgment which will not reveal the child’s identity, etc. The Court includes the possibility of having cases tried behind closed doors when the interests of the child or his or her privacy require it,⁴⁴ and Guideline 9 reminds member states of this good practice. This principle should, however, be reconciled with the principle of free access to judicial proceedings, which exists in many member states.
- 59.** Other possible ways to protect the privacy in the media are, *inter alia*, granting anonymity or a pseudonym, using screens or disguising voices, deletion of names and other elements that can lead to the identification of a child from all documents, prohibiting any form of recording (photo, audio, video), etc.
- 60.** Member states have positive obligations in this respect. Guideline 7 reiterates that monitoring on either legally binding or professional codes of conduct for the press is essential, given the fact that any damage made after publication of names and/or photos is often irreparable.
- 61.** Although the principle of keeping identifiable information inaccessible to the general public and the press remains the guiding one, there might be cases where exceptionally the child may benefit if the case is revealed or even publicised widely, for example, where a child has been abducted. Equally, the issue at stake may benefit from public exposure to stimulate advocacy or awareness raising.

43. General Comment No. 10 on Children’s Rights in Juvenile Justice (CRC/C/GC/10, 25 April 2007).

44. Rules of the European Court of Human Rights, Article 63.

62. The issue of privacy is particularly relevant in some measures intended to tackle anti-social behaviour of children. More specifically, the implementation of so-called Anti-Social Behaviour Orders (ASBOs) in the United Kingdom, including the policy of “naming and shaming”, shows that in such cases personal data is not always kept away from the general public. Guideline 10 imposes a strict obligation in this respect on all professionals working with children except where there is a risk of harm to the child (see Article 12 of the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse, CETS No. 201).

In the case of *B. and P. v. the United Kingdom*, the Court decided that proceedings concerning the residence of children after divorce or separation are prime examples of cases where the exclusion of the press and public may be justified in order to protect the privacy of the child and other parties and to avoid prejudicing the interests of justice.⁴⁵

Furthermore, in the case of *V. v. the United Kingdom* the Court stated: “It follows that, in respect of a young child charged with a grave offence attracting high levels of media and public interest, it would be necessary to conduct the hearing in such a way as to reduce as far as possible his or her feelings of intimidation and inhibition.”⁴⁶

45. European Court of Human Rights *B. and P. v. UK*, judgment of 24 April 2001, Nos. 36337/97 et 35974/97, paragraph 38.

46. European Court of Human Rights (Grand Chamber), judgment of 16 December 1999, *V. v. UK*, No. 24888/94, paragraph 87.

In the above-mentioned cases of V. and T. against the United Kingdom, of criminal proceedings against two young boys who murdered a toddler, the court stated, *inter alia.*: “[...] it is essential that a child charged with an offence is dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his ability to understand and participate in the proceedings.”⁴⁷ Furthermore, “it follows that, in respect of a young child charged with a grave offence attracting high levels of media and public interest, it would be necessary to conduct the hearing in such a way as to reduce as far as possible his or her feelings of intimidation and inhibition”.⁴⁸

3. Safety (special preventive measures)

- 63.** Concerning children as victims, these guidelines are inspired by the principles of the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime,⁴⁹ and the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, which calls for providing for the safety of children, their families and witnesses on their behalf from intimidation, retaliation and repeated victimisation.⁵⁰
- 64.** Guideline 11 recalls that children, particularly vulnerable ones, should be protected from harm, whatever form it takes. It is inspired by many existing provisions to this effect.
- 65.** Vetting of personnel in children’s services for child protection, as recommended by Guideline 12 has been introduced in certain member states, involving a check of criminal records and preliminary measures to be taken when a person has allegedly committed criminal offences against children. This exercise should obviously respect the presumption of innocence and the independence of the judicial system.

47. European Court of Human Rights (Grand Chamber), judgments of 16 December 1999, *T. v. UK*, No. 24724/94, paragraph 84, and *V. v. UK*, No. 24888/94, paragraph 86.

48. European Court of Human Rights (Grand Chamber), judgments of 16 December 1999, *T. v. UK*, No. 24724/94, paragraph 85, and *V. v. UK*, No. 24888/94, paragraph 87.

49. United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC Res 2005/20, 22 July 2005).

50. Article 31. 1.f.

- 66.** Guideline 13 recalls the fundamental principle of the special need for protection when the alleged perpetrator is a parent, another member of the family or a primary caregiver.

4. Training of professionals

- 67.** Training in communication skills, in using child-friendly language and developing knowledge on child psychology, is necessary for all professionals working with children (police, lawyers, judges, mediators, social workers and other experts), as stipulated by Guideline 14. However, few of them have knowledge of children's rights and procedural matters in this context.
- 68.** Children's rights could and should be part of the curriculum, in schools and in specific fields of higher education (law, psychology, social work, police training, etc.). This should cover the specifics of children's rights and legislation pertaining to children's issues, such as family law, juvenile justice, asylum and immigration law, etc. Member states are encouraged to set up specific training courses.
- 69.** The aforementioned conference in Toledo (see paragraph 6 above) concluded: "All professionals – in particular judges, psychologists and lawyers – dealing with children in justice should receive appropriate information, awareness raising and training on appropriate interviewing techniques."⁵¹

For several years now, the Flemish Bar Association and its Youth Lawyer Commission has been offering its members a two-year course on children's rights. The legal information is complemented with basic training in child psychology and development and practical training such as communicating with children. Attendance of all modules is obligatory in order to obtain a certificate as a "youth lawyer". In 2010, some 400 youth lawyers were trained.⁵²

51. www.coe.int/t/dghl/standardsetting/children/Toledoconference_en.asp

52. More information (in Flemish) at www.jeugdadvocaat.be.

5. Multidisciplinary approach

- 70.** The text of the guidelines as a whole, and in particular Guidelines 16 to 18, encourage member states to strengthen the interdisciplinary approach when working with children.
- 71.** In cases involving children, judges and other legal professionals should benefit from support and advice from other professionals of different disciplines when taking decisions which will impact directly or indirectly on the present or future well-being of the child, for example, assessment of the best interests of the child, possible harmful effects of the procedure on the child, etc.
- 72.** 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.

In Iceland, Norway and Sweden, cases of abuse and violence can be dealt with in so-called “children’s houses”. Professionals from social services, forensic medical experts, paediatricians, the police and prosecutors’ offices work together, primarily in the initial stages of a police or social services investigation. They organise and allocate the different tasks to be carried out. Interviews with the children concerned take place in these houses, with the possibility of a third party listening in by video link in an adjacent room. There are also rooms for medical examination and counselling.

6. Deprivation of liberty

- 73.** Particular attention should be paid to the way detained children are treated given their inherent vulnerability. Practical measures for detention of children are suggested in many Council of Europe instruments, for example, Recommendation CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures, or the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or

Punishment.⁵³ As indicated in the former instrument, special efforts must be undertaken to avoid pre-trial detention. International children's rights bodies are very critical about its use and are seeking to reduce it.⁵⁴ However, pre-trial detention might in certain cases still be necessary, for example, to avoid the risk of tampering with evidence, influencing witnesses, or when there is a risk of collusion or flight, etc.

- 74.** Since there are already numerous standards on the rights of juveniles deprived of their liberty,⁵⁵ the guidelines do not need to repeat them. The main principle is that no other children's right shall be restricted except the right to liberty, as a consequence of the deprivation of liberty. As Guidelines 19 and 20 clearly stipulate, remedies that involve detention, in whatever form, need to be avoided as much as possible and should only be a measure of last resort, used for the shortest time possible and restricted to serious cases.⁵⁶ This is a vital legal obligation. In addition, it is common knowledge that detention does not diminish the risk of recidivism.
- 75.** As already indicated, the sections on the deprivation of liberty and the police do not purport to compile an exhaustive list of rights and safeguards, but represent an absolute minimum of rights children should enjoy. Guideline 21 should be read in this sense.
- 76.** The issue of whether or not to detain children with adults is not a new one. In some cases, such as those involving infants, it can be in their best interests not to be separated from a detained parent, or in the case of children of immigration detainees who should not be separated from their family. Several Council of

53. CPT standards (CPT/inf/E (2002) 1, Rev 2009 on www.cpt.coe.int/en/docsstandards.htm).

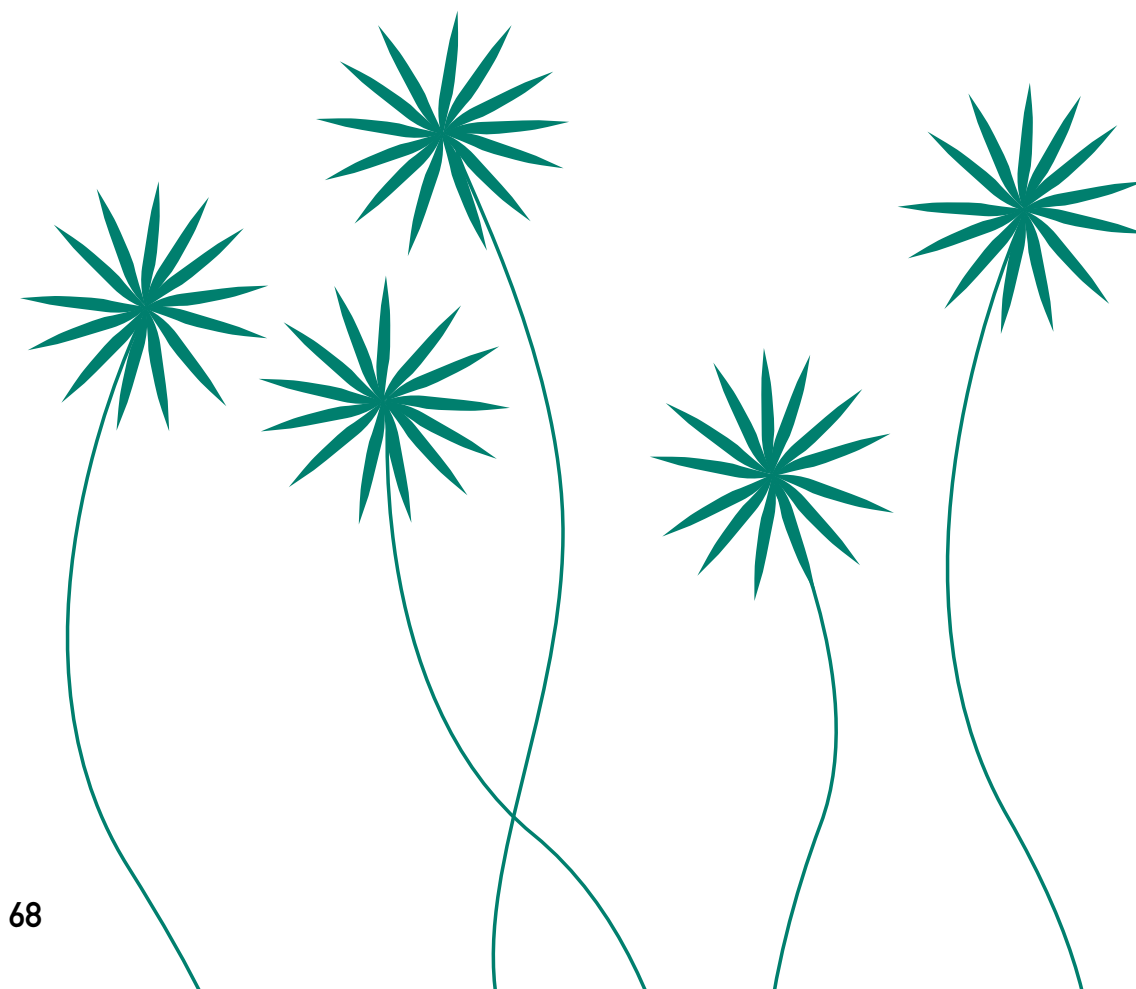
54. See, for example, the Concluding Observations for Belgium: "The Committee recommends that the state party: [...] (c) [...] ensure, in accordance with Article 37 of the Convention, that the deprivation of liberty is only used as a measure of last resort, for the shortest possible time, that guarantees of due process are fully respected and that persons under 18 are not detained with adults." (CRC/C/15/Add. 178, paragraph 32, c, 13 June 2002),

55. United Nations Convention on the Rights of the Child, Articles 37 and 40.

56. Recommendation of the Committee of Ministers, CM/Rec(2008) 11, paragraph 59.1.

Europe member states believe that in large, sparsely populated areas, it may exceptionally be in the best interests of the child to be detained in adult facilities (facilitating visits from parents who may reside hundreds of kilometres away, for example). However, such cases require particular vigilance on the part of detaining authorities, in order to prevent the abuse of children by adults.

- 77.** However, the United Nations Committee on the Rights of the Child has been very clear on this issue, based on Article 37.c, of the United Nations Convention on the Rights of the Child. The above-mentioned Recommendation CM/Rec(2008)11 also states that juveniles shall not be detained in institutions for adults, but in institutions specially designed for them.
- 78.** Several references recall that the guidelines do apply to children seeking asylum and that specific attention should be given to this particularly vulnerable group; unaccompanied minors, whether or not they are asylum seekers, should not be deprived of their liberty solely as a result of the absence of residence status (Guideline 22).



In the case of *Guvec v. Turkey*, the Court reiterated its comments on excessive periods of detention. It expressly stated: “In at least three judgments concerning Turkey, the Court has expressed its misgivings about the practice of detaining children in pre-trial detention (see *Selçuk v. Turkey*, No. 21768/02, paragraph 35, 10 January 2006; *Koştı and Others v. Turkey*, No. 74321/01, paragraph 30, 3 May 2007; the aforementioned case of *Nart v. Turkey*, 20817/04, paragraph 34) and found violations of Article 5, paragraph 3 of the Convention for considerably shorter periods than that spent by the applicant in the present case. For example, in *Selçuk* the applicant had spent some four months in pre-trial detention when he was 16 years old and in *Nart* the applicant had spent 48 days in detention when he was 17 years old. In the present case, the applicant was detained from the age of 15 and was kept in pre-trial detention for a period in excess of four and a half years. In the light of the foregoing, the Court considers that the length of the applicant’s detention on remand was excessive and in violation of Article 5, paragraph 3 of the Convention.”⁵⁷

B. Child-friendly justice before judicial proceedings

79. A complex but important issue is that of the minimum age of criminal responsibility. This age ranges among the member states of the Council of Europe from as young as 8 to the age of majority. The text of Guideline 23 was inspired by Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures. The United Nations Convention of the Rights of the Child does not set any age, but General Comment No. 10 on Children’s Rights in Juvenile Justice advises member states not to set this minimum age too low. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice conveys a similar message. The European Network of Children’s Ombudspersons (ENOC) advocates that the age be raised to 18 and recommends the development of innovative systems to respond to all offenders under the age of majority that genuinely focus on their (re)education, reintegration and rehabilitation.

⁵⁷ European Court of Human Rights (Second Section), judgment of 20 January 2009, *Guvec v. Turkey*, No. 70337/01, paragraphs 109-110.

- 80.** In general, a preventive and reintegrating approach should be promoted and implemented in matters of juvenile justice. The criminal law system should not automatically be set in motion by minor offences committed by children, when more constructive and educational measures can be more successful. Moreover, member states should react to offences in proportion not only to the circumstances and gravity of an offence, but also to age, lesser culpability and needs of the child, and the needs of society.
- 81.** Guidelines 24 to 26 recall that in several member states attention has been focused on the settlement of conflicts outside courts, *inter alia* by family mediation, diversion and restorative justice. This is a positive development and member states are encouraged to ensure that children can benefit from these procedures, providing that they are not used as an obstacle to the child's access to justice.
- 82.** Such practices already exist in many Council of Europe member states and may refer to practices before, during and after judicial proceedings. They become particularly relevant in the area of juvenile justice. These guidelines do not give preference to any non-judicial alternatives, and should also be implemented within them, in particular in family conflicts, which involve not only strictly legal issues. The law has its limitations in this area and may have harmful effects in the long run. Mediated arrangements are reported to be more respected because the concerned parties are actively involved. Children may be able to play a role in them as well. Mandatory referral to mediation services, prior to court procedures, could also be considered: this is not to force people to mediate (which would be contradictory to the whole idea of mediation), but to give everyone the opportunity to be aware of such a possibility.
- 83.** 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. Just like court settings, alternatives can also involve risks with regard to children's rights, such as the risk of diminished respect for fundamental principles like the presumption of innocence, the right to legal counsel, etc. Any choice made should therefore look into the distinct quality of a given system.

- 84.** In General Comment No. 12, the United Nations Committee on the Rights of the Child recommended that:⁵⁸ “In case of diversion, including mediation, a child must have the opportunity to give free and voluntary consent and must be given the opportunity to obtain legal and other advice and assistance in determining the appropriateness and desirability of the diversion proposed.” Guideline 26, however, requires that children should be guaranteed equivalent levels of safeguards in both judicial and out-of-court proceedings.
- 85.** To sum up, the text of the guidelines encourages access to national courts for children as bearers of rights, in accordance with the jurisprudence of the Court, to which they have access if they so wish. However, such access is balanced and reconciled with alternatives to judicial proceedings.

In the canton of Fribourg, Switzerland, a mediation scheme has been worked out for children in conflict with the law. Searching for a balance between restoration and retribution, mediation considers the rights and interests of the victim and of the offender. In cases where certain criteria are met, the judge can refer the case to the mediator. While the mediator is in charge of the mediation as such, it is the judge who remains in charge of the criminal case. Whether or not an agreement is found between the parties, the outcome of the mediation would be communicated to the judge, who can either pronounce the agreement (in writing) or continue the proceedings, in case no agreement was reached.

In Norway, couples filing for a divorce with children under 16 must attempt mediation before being able to start a court procedure. The purpose is to help parents to reach an amicable agreement regarding where children should live, concerning the exercise of parental responsibilities and visiting rights, to ensure that the children’s best interests are taken into account.

⁵⁸. General Comment No. 12 on the right of the child to be heard (CRC/C/GC/12, 1 July 2009), paragraph 59.

C. Children and the police

- 86.** The police should also apply the guidelines on child-friendly justice. This applies to all situations where children might come in contact with the police, and it is, as stipulated by Guideline 27, of particular importance when dealing with vulnerable children.
- 87.** It is obvious that a child-friendly attitude should also be present in potentially risky situations, such as the arrest or questioning of children, covered by Guidelines 28 and 29. Save in exceptional cases, parents need to be promptly notified of the arrest of their child, and the child should always have access to a lawyer or any other entity which according to national law is responsible for defending children's rights, and the right to notify parents or a person whom they trust. Contact with youth protection services should be granted as from the moment of arrest.⁵⁹ Only if the parents are not available should another person whom the child trusts be contacted (for example, his or her grandparents).
- 88.** The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has developed a series of standards which apply to detention of children by the police. In addition, in its comments on the European draft rules for juvenile offenders,⁶⁰ it has pointed out that these rules should expressly stipulate that children detained by the police should not be required to make any statement or sign any document related to the offence of which they are suspected without a lawyer or trusted person being present to assist them. These standards are supported by Guideline 30. States might usefully consider introducing special police units that have been trained for these tasks.

59. A recent judgment by a Belgian juvenile court (Antwerp, 15 February 2010) acquitted a juvenile offender because the judge found that his defence rights had been violated since he had not received legal counsel at the police hearing, where he claimed to have been forced to admit to the said offences. The judge concluded that Article 6 of the ECHR had been violated.

60. CPT, 18th General Report (2007-2008), paragraph 24.

In *Okkali v. Turkey*, the Court reviewed the case of a 12-year-old boy under police arrest, who claimed he had suffered ill-treatment. The Court considered that he should have enjoyed greater protection as a minor and that the authorities had failed to take account of his particular vulnerability. The Court added that in cases like this, a lawyer should be assigned to assist the child and the parents (or legal representatives) need to be informed of the detention.⁶¹

In the case of *Salduz v. Turkey*, the Court considered Article 6, paragraph 1, of the ECHR to have been violated since a 17-year-old suspect did not have access to a lawyer during five days in police custody. The Court found that, “in order for the right to a fair trial under Article 6, paragraph 1, to remain sufficiently ‘practical and effective’, access to a lawyer should be provided, as a rule, from the first interrogation of a suspect by the police [...]”.⁶² The Court also noted that one of the specific elements of this case was the applicant’s age. Having regard to a significant number of relevant international legal instruments concerning legal assistance to minors in police custody, the Court stressed the fundamental importance of providing access to a lawyer where the person in police custody was a minor.⁶³

D. Child-friendly justice during judicial proceedings

- 89.** These elements of child-friendly justice should be applied in all proceedings: civil, criminal and administrative.

61. European Court of Human Rights (Second Section), judgment of 17 October 2006, *Okkali v. Turkey*, No. 52067/99, paragraph 69 *et seq.*

62. European Court of Human Rights (Grand Chamber), judgment of 27 November 2008, *Salduz v. Turkey*, No. 36391/02, paragraph 55.

63. *Ibid.*, paragraphs 56-62.

1. Access to court and to the judicial process

- 90.** Although children are legally considered to be bearers of rights, as stipulated by Guideline 34, they are often not capable of exercising them effectively. In 1990, the Parliamentary Assembly of the Council of Europe underlined in its Recommendation 1121 (1990) on the rights of children that “children have rights they may independently exercise themselves even against opposing adults.”⁶⁴ The United Nations Convention on the Rights of the Child contains a certain right of initiative for court action by the child in Article 37.d, where a child can challenge the legality of his or her deprivation of liberty. At present, there is strong support for the establishment of a complaints procedure under this convention.⁶⁵ This will hopefully give children the same kind of remedies to fight violations of their rights as granted to adults under several other universal human rights conventions.
- 91.** In the same context, the ECHR gives “everyone” whose human rights are violated, the right to “an effective remedy before a national authority”.⁶⁶ This wording clearly includes children. The result is that children can bring their cases to the Court, although they are often not entitled to bring legal proceedings under their domestic law.⁶⁷
- 92.** Given the fact that most legislation on legal incapacity of children is drafted with a view to protecting the children, it is nevertheless essential that this lack of capacity is not used against them when their rights are being violated or when no one else defends these rights.
- 93.** Guideline 34 also recommends that member states’ legislation facilitate, where appropriate, access to court for children with sufficient understanding of their rights. It also recommends the use of remedies to protect these rights, upon receiving adequate legal advice.

64. Recommendation 1121 (1990) on the rights of children, paragraph 6.

65. The campaign for a complaints mechanisms for the United Nations Convention on the Rights of the Child.

66. Article 13.

67. See report by the Court’s Registry, *op. cit.*, p. 5: “Children may thus apply to the Court even when they are not entitled, in domestic law, to bring legal proceedings.”

- 94.** Attention must be given to the strong link between issues of access to justice, proper legal counselling⁶⁸ and the right to voice an opinion in court procedures. It is not the aim of these guidelines to encourage children to address the courts for no apparent reason or legal ground. It goes without saying that children, like adults, should have a solid legal basis to bring a case to court. Where the child's rights have been violated or need defending and whenever the legal representative does not do so on behalf of the child, there should be the possibility to have the case reviewed by a judicial authority. Access to court for children may also be necessary in cases where there can be a conflict of interests between the child and the legal representative.
- 95.** Access to court can be based on a set age limit or on the notion of a certain discernment, maturity or level of understanding. Both systems have advantages and disadvantages. A clear age limit has the advantage of objectivity for all children and guarantees legal certainty. However, granting children access based on their own individual discernment gives the opportunity for adaptation to every single child, according to their levels of maturity. This system can pose risks due to the wide margin of appreciation left to the judge in question. A third possibility is a combination of both: a set legal age limit with a possibility for a child under this age to challenge this.⁶⁹ This may, however, raise the additional problem that the burden of proof of capacity or discernment lies with the child.
- 96.** No age limit is set in these guidelines, as it tends to be too rigid and arbitrary and can have truly unjust consequences. It also cannot fully take into account the diversity in capacities and levels of understanding between children. These can vary greatly depending on the individual child's development capacities, life experiences, cognitive and other skills. A 15-year-old can be less mature than a 12-year-old, while very young children may be intelligent enough to assess and understand their own specific situation. The capability, maturity and level of understanding are more representative of the child's real capacities than his or her age.

68. This also serves to convince the child not to start a procedure where there is in fact no legal ground or chance of succeeding.

69. By way of example, Belgian legislation sometimes uses an age limit, and sometimes the level of discernment.

- 97.** While recognising that all children, regardless of age or capacities, are bearers of rights, age is in fact a major issue in practice, as very young children, or children with certain disabilities, will not be able to effectively protect their rights on their own. Member states should therefore set up systems in which designated adults are able to act on behalf of the child: they can be either parents, lawyers, or other institutions or entities which, according to national law, would be responsible for defending children's rights. These persons or institutions should not only become involved or recognised when procedures are already pending, but they should also have the mandate to actively initiate cases whenever a child's right has been violated or is in danger of being violated.
- 98.** Guideline 35 recommends that member states remove all obstacles for children's access to court. It gives examples such as the cost of proceedings and the lack of legal counsel, but recommends that other obstacles also be removed. Such obstacles may be of a different nature. In case of a possible conflict of interests between children and their parents, the requirement of parental consent should be avoided. A system needs to be developed whereby the undue refusal of a parent cannot keep a child from having recourse to justice. Other obstacles to access to justice may be of a financial or psychological nature. Procedural requirements should be limited as far as possible.⁷⁰
- 99.** In some cases, a child cannot challenge certain acts or decisions during his or her childhood due to trauma in cases of, for example, sexual abuse or highly conflictual family matters.
- 100.** In such cases, Guideline 36 recommends that access to court should be granted for a period of time after the child has reached the age of majority. It therefore encourages member states to review their statutes of limitations. The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201) could usefully serve as an inspiration in this regard.⁷¹

70. A too restrictive or purely technical approach on representation should be avoided. See I. Berro-Lefèvre, "Improving children's access to the European Court of Human Rights", *International justice for children*, Monograph No. 3, Strasbourg, Council of Europe Publishing, 2008, p. 69-78.

71. Article 33.

The Court, in the case of *Stubbings and Others v. the United Kingdom*,⁷² considered that “there has been a developing awareness in recent years of the range of problems caused by child abuse and its psychological effects on victims, and it is possible that the rules on limitation of actions applying in member states of the Council of Europe may have to be amended to make special provision for this group of claimants in the near future.”⁷³

2. Legal counsel and representation⁷⁴

- 101.** If children are to have access to justice which is genuinely child friendly, member states should facilitate access to a lawyer or other institution or entity which according to national law is responsible for defending children’s rights, and be represented in their own name where there is, or could be, a conflict of interest between the child and the parents or other involved parties. This is the main message of the Guideline 37. The European Convention on the Exercise of Children’s Rights (ETS No. 160)⁷⁵ states: “Parties shall consider granting children additional procedural rights in relation to proceedings before a judicial authority affecting them, in particular [...] a separate representative [...] a lawyer”.⁷⁶
- 102.** Guideline 38 recommends providing children with access to free legal aid. This should not necessarily require a completely separate system of legal aid. It might be provided in the same way as legal aid for adults, or under more lenient conditions, and be dependent on the financial means of the holder of the parental responsibility or the child him or herself. In any case, the legal aid system has to be effective in practice.

72. European Court of Human Rights (Chamber), judgment of 22 October 1996, *Stubbings and Others v. UK*, Nos. 22083/93; 22095/93, paragraph 56. <http://www.coe.int/t/dghl/>.

73. Paragraph 56.

74. See ChildONEurope, *Survey on the national systems of children’s legal representation*, March 2008 (www.childoneurope.org). Several models are illustrated in this survey.

75. ETS No. 160.

76. Article 5.b.

- 103.** Guideline 39 describes the professional requirements for the lawyers representing children. It is also important that the legal fees of the child’s lawyer are not charged to his or her parents, either directly or indirectly. If a lawyer is paid by the parents, in particular in cases with conflicting interests, there is no guarantee that he or she will be able to independently defend the child’s views.
- 104.** A system of specialised youth lawyers is recommended, while respecting the child’s free choice of a lawyer. It is important to clarify the exact role of the child’s lawyer. The lawyer does not have to bring forward what he or she considers to be in the best interests of the child (as does a guardian or a public defender), but should determine and defend the child’s views and opinions, as in the case of an adult client. The lawyer should seek the child’s informed consent on the best strategy to use. If the lawyer disagrees with the child’s opinion, he or she should try to convince the child, as he or she would with any other client.
- 105.** The lawyer’s role is different from the guardian *ad litem*, introduced by Guideline 42, as the latter is appointed by the court, not by “a client” as such, and should help the court in defining what is in the best interests of the child. However, combining the functions of a lawyer and a guardian *ad litem* in one person should be avoided, because of the potential conflict of interests that may arise. The competent authority should in certain cases appoint either a guardian *ad litem* or another independent representative to represent the views of the child. This could be done on the request of the child or another relevant party.

In Georgia, the right to legal aid for persons under the age of 18 in criminal cases is granted *ex officio*, since they are considered to be “socially vulnerable”. No other condition is required for those children to benefit from this service.

3. Right to be heard and to express views

- 106.** General Comment No. 12 of the United Nations Committee on the Rights of the Child interprets the right of the child to be heard, which is one of the four guiding principles of the United Nations Convention on the Rights of the Child, using the words “shall assure” which is a legal term of special strength which leaves no leeway for states parties’ discretion.⁷⁷ This comment elaborates on the fact that age alone cannot determine the significance of a child’s views.⁷⁸ In its General Comment No. 5, the committee rightly notes that “appearing to listen to children is relatively unchallenging; giving due weight to their views requires real change”.⁷⁹
- 107.** Article 3 of the European Convention on the Exercise of Children’s Rights (ETS No. 160) combines the right to be heard with the right to be informed: in judicial proceedings, children should receive all relevant information, be consulted and express their views and be informed of the possible consequences of compliance with these views and the possible consequences of any decision.
- 108.** In these guidelines, reference is made to concepts such as “age and maturity” and “sufficient understanding”, which implies a certain level of comprehension, but does not go as far as to demand from the child a full comprehensive knowledge of all aspects of the matter at hand.⁸⁰ Children have the right to give their views freely, without any pressure and without manipulation.⁸¹

77. General Comment No. 12 on the right of the child to be heard (CRC/C/GC/12, 1 July 2009), paragraph 19.

78. *Ibid.*, paragraph 28-31.

79. General Comment No. 5 on General measures of implementation of the United Nations Convention on the Rights of the Child (CRC/GC/2003/5), Article 12.

80. For more information, see CRIN Review: “Measuring maturity. Understanding children’s ‘evolving capacities’”, 2009.

81. General Comment No. 12 on the right of the child to be heard (CRC/C/GC/12, 1 July 2009), paragraph 22.

- 109.** The United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime use the wording “child sensitive” as “an approach that balances the child’s right to protection and that takes into account the child’s individual needs and views”.⁸²
- 110.** Laws should be clearly formulated in order to ensure legal equality for all children. Irrespective of age, in particular when a child takes the initiative to be heard, a sufficient level of understanding should be presumed. Age, however, still plays a major role in “granting” children their basic right to be heard in matters that affect them (Guideline 45). However, it must be pointed out that, in some circumstances, it is the child’s duty to be heard (that is, to give evidence).
- 111.** Children need to know precisely what will happen and what the status of their given opinion or statement will be.⁸³ The judge should not refuse to hear the child without good reasons unless this is in the best interests of the child (Guideline 47). They should be clearly informed that if a judge does hear them, this does not mean they will “win” the case. In order to gain or obtain the trust and respect for the given judgment, particular effort should be made by the child’s lawyer to explain why the child’s opinion has not been followed or why the given decision has been made, as is done for adults (Guideline 48).
- 112.** Furthermore, children have the right to express their views and opinion on any issue or case that involves or affects them. They should be able to do so regardless of their age, in a safe environment, respectful of their person. They have to feel at ease when they talk to a judge or other officials. This may require the judge to omit certain formalities, such as wearing a wig and gown or hearing the child in the courtroom itself; by way of example, it can be helpful to hear a child in the judge’s chambers.

82. United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC Res 2005/20, 22 July 2005).

83. European Convention on the Exercise of Children’s Rights, Article 3. *c*.

- 113.** It is important that the child can speak freely and that there is no disruption. This may in practice mean that no other people should be allowed in the room (for example, the parents or the alleged perpetrator), and that the atmosphere is not disturbed by unwarranted interruption, unruly behaviour or transit of people in and out of the room.
- 114.** Judges are often untrained in communicating with children and specialised professionals are seldom called upon to support them in this task. As already indicated (paragraph 96 above), even young children can state their views clearly, if they are assisted and supported correctly. Judges and other professionals should actually look for the child's own views, opinions and perspective on a case.
- 115.** Depending on the wishes and the interests of the child, serious consideration should be given to who will listen to the child, presumably either the judge or an appointed expert.⁸⁴ Some children may prefer to be heard by a "specialist" who would then convey his or her point of view to the judge. Others, however, make it clear that they prefer to talk to the judge himself or herself, since he or she is the one who will make the decision.
- 116.** While it is true that there is a risk of children being manipulated when they are heard and express their views (for example, by one parent against the other), all efforts should be made not to let this risk undermine this fundamental right.
- 117.** The United Nations Committee on the Rights of the Child warns against a tokenistic approach and unethical practices,⁸⁵ and lists the basic requirements for effective and meaningful

84. The United Nations Committee on the Rights of the Child recommends that children are heard directly. General Comment No. 12 on the Right of the Child to be heard (CRC/C/GC/12, 1 July 2009), paragraph 35.

85. General Comment No. 12 on the Right of the Child to be heard (CRC/C/GC/12, 1 July 2009), paragraph 132: "The Committee urges States parties to avoid tokenistic approaches, which limit children's expression of views, or which allow children to be heard, but fail to give their views due weight. It emphasizes that adult manipulation of children, placing children in situations where they are told what they can say, or exposing children to risk of harm through participation are not ethical practices and cannot be understood as implementing Article 12."

implementation of the right to be heard.⁸⁶ Processes for hearing children should be transparent and informative, voluntary, respectful, relevant, child friendly, inclusive, carried out by trained staff, safe and sensitive to risk and, finally, accountable.

In a case of inter-country adoption with Italian adopters of Romanian children (case of *Pini and Others v. Romania*), the Court was very clear on the right of the children to be heard and that their views be taken seriously: “It must be pointed out that in the instant case the children rejected the idea of joining their adoptive parents in Italy once they had reached an age at which it could be reasonably considered that their personality was sufficiently formed and they had attained the necessary maturity to express their opinion as to the surroundings in which they wished to be brought up.”⁸⁷ “The children’s interests dictated that their opinions on the subject should have been taken into account once they had attained the necessary maturity to express them. The children’s constant refusal, after they had reached the age of 10, to travel to Italy and join their adoptive parents carries a certain weight in this regard.”⁸⁸

In the case of *Hokkanen v. Finland*, a father claimed custody of his daughter who had been living with her grandparents for years. The child did not want to live with her father and the Court agreed that “the child had become sufficiently mature for her views to be taken into account and that access should therefore not be accorded against her wishes”.⁸⁹

86. General Comment No. 12 on the Right of the Child to be heard (CRC/C/GC/12, 1 July 2009), paragraph 133-134.

87. European Court of Human Rights (Second Section), judgment of 22 June 2004, *Pini and Others v. Romania*, Nos. 78028/01 and 78030/01, paragraph 157.

88. *Ibid.*, paragraph 164.

89. (Chamber), judgment of 23 September 1994, *Hokkanen v. Finland*, No. 19823/92; paragraph 61.

4. Avoiding undue delay

- 118.** Cases in which children are involved need to be dealt with expeditiously and a system of prioritising them could be considered.⁹⁰ The urgency principle is set out in Guideline 50. It should be borne in mind that children have a different perception of time from adults and that the time element is very important for them: for example, one year of proceedings in a custody case may seem much longer to a 10-year-old than to an adult. The rules of court should allow for such a system of prioritising in serious and urgent cases, or when possibly irreversible consequences could arise if no immediate action is taken (Guideline 51 covering family law cases).
- 119.** Other examples of this principle can be found in relevant Council of Europe instruments. One of them demands that states ensure that the investigations and criminal proceedings are treated as a priority and carried out without any unjustified delays.⁹¹ This is also very important to allow victims to be able to start their recovery. Another instrument specifically recommends “ensuring that minors are treated more rapidly, avoiding undue delay, so as to ensure effective educational action.”⁹²
- 120.** Respecting the best interests of the child might require flexibility on the part of judicial authorities, while enforcing certain decisions, in accordance with the national law, as indicated by Guideline 53.

90. Cf. Art 41 of the Rules of the European Court of Human Rights. This should be used more frequently according to I. Berro-Lefevre, *op.cit.*, p. 76.

91. Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, (CETS No. 201, Article 30, paragraph 3).

92. Council of Europe Committee of Ministers Recommendation No. R (87) 20 on social reactions to juvenile delinquency, paragraph 4.

In two cases against Germany, the time element was discussed by the Court, which found that in cases of parent–child relationships there is a duty to exercise exceptional diligence in view of the fact that the risk of passage of time may result in a *de facto* determination of the matter and that the relation of a child with one of his or her parents might be curtailed.⁹³

In the case of *Paulsen-Medalen and Svensson v. Sweden*, the Court found that Article 6, paragraph 1 of the ECHR had been violated since the authorities had not acted with the required exceptional diligence when handling a dispute on access.⁹⁴

Avoiding undue delay is also important in criminal cases. In the case of *Bouamar v. Belgium*, an especially speedy judicial review was demanded in cases of detention of minors. Unjustified lapses of time were hardly considered to be compatible with the speed required by the terms of Article 5, paragraph 4 of the ECHR.⁹⁵

5. Organisation of the proceedings, child-friendly environment and child-friendly language

121. Child-friendly working methods⁹⁶ should enable children to feel safe. Being accompanied by a person whom they can trust can make them feel more comfortable in the proceedings. The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201)⁹⁷ stipulates that a child may be accompanied by his or her legal representative or an adult of his or her choice, but that the person should be considered to be suitable. A reasoned decision can be taken against the presence of a given accompanying person.

93. See European Court of Human Rights (Grand Chamber), judgment of 13 July 2000, *Elsholz v. Germany*, No. 25735/94, paragraph 49, and judgment of 8 July 2003, *Sommerfeld v. Germany*, No. 31871/96, paragraph 63.

94. European Court of Human Rights (Chamber), judgment of 19 February 1998, *Paulsen-Medalen and Svensson v. Sweden*, No. 16817/90, paragraph 42.

95. European Court of Human Rights (Chamber), judgment of 29 February 1988, *Bouamar v. Belgium*, No. 9106/80, paragraph 63.

96. See W. McCarney, “The principles of child-friendly justice at international level”, *International justice for children*, Monograph No. 3, Council of Europe Publishing, 2008, pp. 119-127.

97. Article 35. 1. f.

- 122.** The architectural surroundings can make children very uncomfortable. Court officials should familiarise children, *inter alia*, with the layout of the court, and identities of the officials involved (Guideline 55). Even for adults, courthouses can be rather oppressive or intimidating (Guideline 62). While this is difficult to change, at least for existing court facilities, there are ways in which treatment of children in these courthouses can be improved by working with children in a more child-sensitive way.
- 123.** Court facilities may include, where possible, special interview rooms, which take the best interests of the child into account. Equally, child-friendly court settings may mean that no wigs or gowns or other official uniforms and clothing are worn. This can be implemented in view of the child's age or the function of the official. Depending on the circumstances and on the views of the child, it may well be that, for example, uniforms make it clear to the child that he or she is talking to a police officer and not to a social worker, which has its relevance. This could also add to the feeling of the child that matters affecting him or her are taken seriously by the competent authority. To sum up, the setting may be relatively formal, but the behaviour of officials should be less formal and, in any case, should be child friendly.
- 124.** More importantly, child-friendly justice also implies that children understand the nature and scope of the decision taken, and its effects. While the judgment and the motivation thereof cannot always be recorded and explained in child-friendly wording, due to legal requirements, children should have those decisions explained to them, either by their lawyer or another appropriate person (parent, social worker, etc.).
- 125.** Specific youth courts, or at least youth chambers, could be set up for offences committed by children.⁹⁸ As far as possible, any referral of children to adult courts, adult procedures or adult sentencing should not be allowed.⁹⁹ In line with the requirement of the specialisation in this area, specialised units could be established within law enforcement authorities (Guideline 63).

98. United Nations Convention on the Rights of the Child, Article 40.3.

99. Council of Europe Committee of Ministers Recommendation No. R (87) 20 on social reactions to juvenile delinquency, proceedings against minors, paragraph 5.

In several cases against the United Kingdom involving juvenile offenders, the Court stressed that special measures have to be taken to modify the adult courts' procedure in order to attenuate the rigours of an adult trial in view of the defendant's young age. For example, the legal professionals should not wear wigs and gowns and the juvenile defendant should not be seated in a raised dock, but instead be allowed to sit next to his legal representative or social worker. Hearings should be conducted in a way that their feelings of intimidation and inhibition could be reduced as far as possible.

Following the cases of *T. v. the United Kingdom* and *V. v. the United Kingdom*, where the national court settings were considered to be intimidating for a child, a Practice Direction for Trial of Children and Young Persons in the Crown Court was drafted. The aim is to avoid intimidation, humiliation or distress for the child on trial. Elements of this practice direction are, *inter alia*: the possibility for the child to visit the courtroom before the trial to become familiarised with it, the possibility of police support to avoid intimidation or abuse by the press, no wigs or gowns to be worn, the explanation of the procedure in terms the child can understand, restricted attendance of court's hearings, etc.

The Polish Ministry of Justice promotes and implements the concept of child-friendly interview rooms in co-operation with an NGO. The main goal is to protect child witnesses and victims of crime, especially crimes involving sexual and domestic violence, through putting into practice principles of interviewing children in child-friendly conditions and by competent staff. The procedure ensures that children are interviewed by a judge in the presence of a psychologist. Other persons involved (prosecutor, lawyer, the accused, the private complainant) are present in a separate room and have the possibility to participate in the interview thanks to communication systems between rooms, one-way mirrors and/or live broadcasting. Important details to make children feel more

comfortable include, *inter alia*: guaranteed privacy (soundproof door between interviewing room and other rooms/premises); rooms equipped in accordance with the child's needs in order to ensure physical and mental safety of the child during the interview, in the use of neutral colours and furnishings in the room which ensure that children can spend time comfortably (two sizes of tables and chairs, a sofa or armchair, soft carpet); rooms equipped with materials and other items useful in gathering information from a child (coloured pencils, paper, dolls, etc.).

6. Evidence/statements by children

- 126.** The issue of collecting evidence/statements from children is far from being simple. As standards are rare in this area (such as the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime),¹⁰⁰ the need was felt to address these issues, as the conduct of such interviews with regard to evidence/statements requires practical guidance.
- 127.** As stipulated by Guideline 64, this should as far as possible be carried out by trained professionals. In the same context, Guideline 66 recommends that when more than one interview is needed, they should be carried out preferably by the same person for reasons of consistency and mutual trust, but that the number of interviews should be as limited as possible (Guideline 67).

100. United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC Res 2005/20, 22 July 2005), paragraph XI, 30, *d.*: "Use child-sensitive procedures, including interview rooms designed for children, interdisciplinary services for child victims integrated in the same location, modified court environments that take child witnesses into consideration, recesses during a child's testimony, hearings scheduled at times of day appropriate to the age and maturity of the child, an appropriate notification system to ensure the child goes to court only when necessary and other appropriate measures to facilitate the child's testimony." It should be borne in mind that these guidelines are about giving testimony in general, and not only criminal proceedings.

128. For obvious reasons, specific arrangements should be made for gathering evidence, especially from child victims, in the most favourable conditions. Allowing evidence to be given via audio, video or TV link are examples of these practices, as is providing testimony to experts prior to the trial, and avoiding visual or other contact between the victim and the alleged perpetrator (Guideline 68), or giving evidence without the presence of the alleged perpetrator (Guideline 69). However, in particular cases, such as sexual exploitation, video recordings for interviews may be traumatic for victims. The possible harm or secondary victimisation resulting from such recordings therefore needs to be carefully assessed and other methods, such as audio recording, will need to be considered to avoid revictimisation and secondary trauma.

129. Member states' procedural laws and legislation in this domain vary considerably, and there might be less strict rules on giving evidence by the children. In any case, member states should give priority to the child's best interests in the application of legislation regarding evidence. Examples provided by Guideline 70 include the absence of the requirement for the child to take an oath or other similar declarations. These guidelines do not intend to affect the guarantees of the right to a defence in the different legal systems; however, they do invite member states to adapt, where necessary, some elements of the rules on evidence so as to avoid additional trauma for children. In the end, it will always be the judge who will consider the seriousness and validity of any given testimony or evidence.

130. Guideline 70 also indicates that these adaptations for children should not in themselves diminish the value of a given testimony. However, preparing a child witness to testify should be avoided because of the risk of influencing the child too much. Establishing model interview protocols (Guideline 71) should not necessarily be the task of the judges, but more that of national judicial authorities.

- 131.** Although using audio or video recording of children's statements has some advantages, as it serves to avoid repetition of often traumatic experiences, direct testimony in front of an interrogating judge may be more appropriate for children who are not victims, but alleged perpetrators of crimes.
- 132.** As already indicated, age should not be a barrier for the child's right to fully participate in the judicial process.¹⁰¹ Their testimonies should not be presumed to be invalid or untrustworthy simply on the basis of their age, according to Guideline 73.
- 133.** Where children are to be asked or they express the wish to give evidence in family proceedings, due regard should be given to their vulnerable position in that family and to the effect such testimony may have on present and future relationships. All possible efforts should be made to ensure that the child is made aware of the consequences of the testimony and supported in giving evidence by any of the means already referred to.

The Court has recognised the specific features of proceedings concerning sexual offences. In the case of *S.N. v. Sweden*, the Court found that: "Such proceedings are often conceived of as an ordeal by the victim, in particular when the latter is unwillingly confronted with the defendant. These features are even more prominent in a case involving a minor. In the assessment of the question of whether or not in such proceedings an accused has received a fair trial, account must be taken of the right of respect for the private life of the perceived victim. Therefore, the Court accepts that in criminal proceedings concerning sexual abuse certain measures may be taken for the purpose of protecting the victim, provided that such measures can be reconciled with an adequate and effective exercise of the rights of the defence."¹⁰²

101. *Ibid.*, paragraph VI, 18.

102. European Court of Human Rights (First Section), judgment of 2 July 2002, *S.N. v. Sweden*, No. 34209/96, paragraph 47.

In the same case, attention was also given to the possibly leading nature of some questions. To avoid the negative effects thereof, forensic psychology experts, with specific training and knowledge, could be called upon.¹⁰³

In the case of *W.S. v. Poland*, the Court suggested possible ways to test the reliability of a young child victim and pointed out that this could be done in a less invasive manner than via direct questioning. Several sophisticated methods might be applied, such as having the child interviewed in the presence of a psychologist with questions being put in writing by the defence, or in a studio enabling the applicant or his lawyer to be present at such an interview, via video-link or one-way mirror.¹⁰⁴

E. Child-friendly justice after judicial proceedings

134. There are many measures which may be taken to make justice child friendly after judicial proceedings have taken place. This starts with the communication and explanation of the given decision or judgment to the child (Guideline 75). This information should be supplemented with an explanation of possible measures to be taken, including an appeal or address to an independent complaint mechanism. This should be done by the child's representative, that is, the lawyer, guardian *ad litem* or legal representative, depending on the legal system. Guidelines 75, 77 and 81 refer to those representatives.

135. Guideline 76 recommends that steps be taken without delay to facilitate the execution of decisions/rulings involving and affecting children.

103. *Ibid.*, paragraph 53.

104. European Court of Human Rights (Fourth Section), judgment of 19 June 2007, *W.S. v. Poland*, No. 21508/02, paragraph 61.

136. In many cases, and in particular in civil cases, the judgment does not necessarily mean that the conflict or problem is definitely settled: family matters are a good example, and they are dealt with by Guidelines 78 and 79. In this sensitive area, there should be clear rules on avoiding force, coercion or violence in the implementation of decisions, for example, visitation arrangements, to avoid further traumatisation. Therefore, parents should rather be referred to mediating services or neutral visitation centres to end their disputes instead of having court decisions executed by police. The only exception is when there is a risk to the well-being of the child. Other services, such as family support services, also have a role to play in the follow-up of family conflicts, to ensure the best interests of the child.

In cases of enforcement of decisions on family law issues, such as access and custody rights, the Court held on several occasions that what is decisive is the question of whether national authorities have taken all necessary steps to facilitate the execution as can reasonably be demanded in the special circumstances of each case.

In Austria, the “Besuchsafe” offers children the possibility to stay in touch with both parents after a divorce or separation in a safe and supportive setting. The right of access can be provided in special premises under the supervision of trained staff, to avoid conflicts between the parents, whenever a visitation right is exercised. This kind of accompanied visitation can be ordered by the court or requested by one or both parents. The central issue is the well-being of the child and avoiding a situation where the child is caught in the middle of a conflict between the parents.

137. Guidelines 82 and 83 deal with children in conflict with the law. Particular attention is paid to successful reintegration into society, the importance of non-disclosure of criminal records outside the justice system, and legitimate exceptions to this important

principle. Exceptions could be made for serious offences, *inter alia*, for reasons of public safety, and, when employment of people for jobs working with children is concerned, if a person has a history of committing child abuse, for example. Guideline 83 aims at protecting all categories of children, not only the particularly vulnerable ones.

138. In the case of *Bouamar v. Belgium*, the Court reviewed the issue of a juvenile offender who was put in and out of an adult prison nine times. Although detaining minors in adult prisons was at the time allowed under the youth protection law, the European Court of Human Rights concluded that: “The nine placement orders, taken together, were not compatible with under sub-paragraph *d*, Article 5.1. The repeated incarceration had the effect of making each placement order less and less ‘lawful’ under sub-paragraph *d*, Article 5.1, especially as the Crown Counsel never instituted criminal proceedings against the applicant in respect of the offences alleged against him.”¹⁰⁵

The British foundation Barnardo’s developed the Children’s Advocacy Service for young people in several institutions for young offenders throughout the United Kingdom, providing them with independent advocacy, assisting them with issues relating to welfare, care, treatment and planning for resettlement while they are detained. Besides face-to-face meetings within one week of incarceration, young people can contact the service or rely on a free helpline. The advocacy service helps young people to understand the system and get in contact with the relevant professionals to help them solve their problems.

105. European Court of Human Rights (Chamber), judgment of 29 February 1988, *Bouamar v. Belgium*, No. 9106/80, paragraphs 52-53.

V. Promoting other child-friendly actions

- 139.** It goes without saying that a real improvement in the area of children’s rights and child-friendly justice requires a proactive approach by the Council of Europe member states, which are being encouraged to carry out a number of different measures.
- 140.** Sub-paragraphs *a* to *d* encourage research into this area, exchange of practices, co-operation and awareness-raising activities in particular by creating child-friendly versions of legal instruments. They also express support for well-functioning information offices for children’s rights.
- 141.** Investing in children’s rights education and the dissemination of children’s rights information is not only an obligation under the United Nations Convention on the Rights of the Child,¹⁰⁶ but is also a preventive measure against violations of children’s rights. Knowing one’s rights is the first prerequisite of “living” one’s rights and being able to recognise their violation or potential violation.¹⁰⁷

Many organisations have been making child-friendly versions of the United Nations Convention on the Rights of the Child and other relevant documents on children’s rights. One example is the child-friendly version of the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, by UNICEF and the United Nations Office on Drugs and Crime.

106. Article 42: “States parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.”

107. See also Berro-Lefèvre, *op.cit.*, pp. 74-75.

- 142.** Measures envisaged under sub-paragraphs *e* to *g* aim to facilitate children's access to courts and complaints mechanisms, and consider a number of possible measures in this respect (establishment of specialised judges and lawyers, facilitation of the role of civil society and independent bodies at national, regional and universal level). In this domain, states should envisage the use of collective complaints. A good example of the collective complaints mechanism of the revised European Social Charter (ETS No. 163) is that it is accessible, no individual victim is needed and not all domestic remedies need to be exhausted. Children's ombudspersons, children's rights NGOs, social services, etc. should be able to lodge complaints or start procedures in the name of a specific child.
- 143.** It is worth noting that new strategies are also promoted at international level, such as the aforementioned campaign in favour of a complaints procedure under the United Nations Convention on the Rights of the Child.
- 144.** Sub-paragraphs *h* to *i* focus attention on the need for appropriate education, training and awareness-raising measures, while sub-paragraphs *j* to *k* express support for appropriate specialised structures and services.

VI. Monitoring and assessment

- 145.** Member states are encouraged to carry out a number of measures to implement these guidelines. They should ensure their wide dissemination among all authorities responsible for or otherwise involved with the defence of children's rights. One possibility would be the dissemination of the guidelines in its child-friendly versions.
- 146.** Member states should also ensure a review of domestic legislation, policies and practice in keeping with these guidelines, and a periodic review of working methods in this area. They are also invited to prescribe specific measures for complying with the letter and spirit of these guidelines.

- 147.** In this respect, the maintenance or establishment of a framework, including one or more independent mechanisms (such as ombudspersons or children's ombudspersons) is of paramount importance for the promotion and monitoring of the implementation of these guidelines.
- 148.** Lastly, it is plain that the civil society organisations, institutions and bodies promoting and protecting the right of the child should be given an active role in the monitoring process.

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The guidelines on child-friendly justice, and their explanatory memorandum, were adopted by the Council of Europe in 2010. Based on existing international and European standards, in particular the United Nations Convention on the Rights of the Child and the European Convention on Human Rights, the guidelines are designed to guarantee children's effective access to and adequate treatment in justice. They apply to all the circumstances in which children are likely, on any ground and in any capacity, to be in contact with the criminal, civil or administrative justice system. They recall and promote the principles of the best interests of the child, care and respect, participation, equal treatment and the rule of law. The guidelines address issues such as information, representation and participation rights, protection of privacy, safety, a multidisciplinary approach and training, safeguards at all stages of proceedings and deprivation of liberty.

The 47 Council of Europe member states are encouraged to adapt their legal systems to the specific needs of children, bridging the gap between internationally agreed principles and reality. To that end, the explanatory memorandum offers examples of good practices and proposes solutions to address and remedy legal and practical gaps in justice for children.

These guidelines form an integral part of the Council of Europe's strategy on children's rights and its programme "Building a Europe for and with children". A series of promotion, co-operation and monitoring activities are planned in member states in view of ensuring effective implementation of the guidelines for the benefit of all children.



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This Toolkit has the purpose of providing knowledge to professionals working with children who are in conflict with the law, specifically geared towards improving the communication with juveniles. In this Toolkit topics relating to children’s legal rights, interviewing techniques, communication, child psychology and pedagogical skills are touched upon in the various chapters. The Toolkit aims to provide information and to give further guidance to the implementation of the provisions of the Directive of the European Parliament and of the Council on procedural safeguards for children who are suspects or accused persons in criminal proceedings. Information is provided with regard to the content of the directive and how to implement the directive in congruence with other relevant international and European standards in juvenile justice. It is part of a training package composed of a Manual, a Toolkit for professionals and a series of videos featuring young people in conflict with the law.

The Publication *Can anyone hear me? Improving juvenile justice systems in Europe : A toolkit for the training of professionals* has been prepared by the Department of Child Law of Leiden University and is part of the project **Improving Juvenile Justice Systems in Europe: Training for Professionals** (JUST/2013/FRC/AG) led by the International Juvenile Justice Observatory and carried out in partnership with the Ludwig Boltzmann Institute of Human Rights (Austria); Hope for Children - UNCR Policy Centre (Cyprus); Rubikon Centrum (Czech Republic); Association Diagrama (France); Greek Ministry of Justice (Greece); Istituto Don Calabria (Italy); Providus Center (Latvia); Portuguese Ministry of Justice (Portugal); Fundación Diagrama (Spain); Include Youth (N.I., United Kingdom); Finish Forum for Mediation (Finland); University College Cork (Ireland).

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