

# TOWARDS CHILD FRIENDLY JUSTICE IN EUROPE: FINDINGS AND RECOMMENDATIONS OF EUROPEAN EXPERTS

## WHO ARE WE ?

Composed of 19 organisations across 17 European countries, the Child Friendly Justice European Network's main objective is to ensure that justice systems are adapted to children's needs, specificities and vulnerabilities. More specifically, it aims to empower children to have their rights respected in legal proceedings, to have their voices heard in a participatory manner and to strengthen their capacity to advocate for their own rights.

On 14 October 2022, 65 experts from all over Europe gathered for the seminar A 360° View on Child Friendly Justice organised by the network. During this event, NGOs, academics, institutions and justice professionals reflected together on the major challenges in terms of child friendly justice, promising practices and proposed innovative methods to work with children in contact with the justice system. Specific attention was given to 6 specific issues: participation of children and young people in civil proceedings, the implementation of child-friendly justice principles in courts dealing with family matters in Germany, children in administrative proceedings, specific challenges concerning accused or suspected children, the definition and usefulness of interdisciplinary in child-friendly justice, the impact of online hearings on children.

Across Europe, around 2.5 million children are involved in legal proceedings each year, either as a result of divorce or as a victim or witness of crime. Hundreds of thousands of them are in contact with the justice system because they are involved in migration-related proceedings, removed from their families for protection or suspected or accused of a crime. **These procedures, still not child friendly enough, are too often a difficult and painful experience for children, causing trauma and putting them at risk of secondary victimisation.**

While the need for child friendly justice is recognised as a cornerstone of the overall respect for children's rights - being in particular a priority of the European Union and Council of Europe strategies on child friendly justice - strong measures and commitment are still needed.

"The concept of child friendly justice is strong today. What we now need is the practical implementation, and it needs people to lead the way, like torches in a tunnel."

Regina Jensdottir, Council of Europe Coordinator for the Rights of the Child, at the first Annual Seminar of the Child Friendly Justice - European Network entitled "A 360° View on Child Friendly Justice".

This policy brief draws on the results of the international conference A 360° view on Child Friendly Justice, organised by the Child Friendly Justice European Network in October 2022, to provide an overview of current issues in child friendly justice and recommendations for the development of policies and practices across Europe. This document is intended for anyone working on the development or implementation of justice laws and policies in Europe.

# CHALLENGES TOWARD CHILD FRIENDLY JUSTICE

Children can come into contact with the justice system in various situations: for family matters when involved in family separation disputes, administrative justice in relation to nationality or immigration issues, or criminal justice as victims, witnesses or (alleged) perpetrators of crimes. They may also need to reach a justice system seeking for legal remedies when their rights are not fully respected.

In Europe, despite a wide range of European legislations and standards in the field of justice and the ratification of the United Nations Convention on the Rights of the Child, the respect of children's rights in the field of justice for children still varies from one State to another and one procedure to another. The justice systems in European countries remain insufficiently child friendly.

A large number of obstacles prevent justice from being child friendly including:

**The views and opinions of children are not enough taken into consideration:** While children have a fundamental right to be heard and taken seriously in a manner appropriate to their age and maturity in all administrative or judicial proceedings affecting them, in most cases children are still not adequately heard in these proceedings. This is even more the case for young children and those in particularly vulnerable situations (e.g. Roma, migrant, LGBTI+ children). The consequences are, among others, that children are unaware of decisions made for them (and without them). They are even sometimes forgotten as individuals in favour of attention to a case; the best interests of the child are not taken into account.

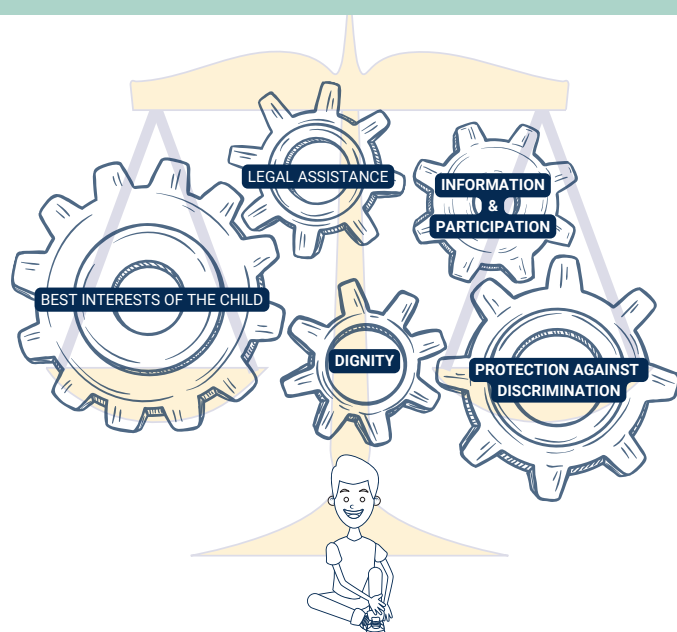
**Professionals are not adequately trained:** shortcomings in the training of professionals working with children in proceedings persist. Lack of training on specific children's rights or on appropriate communication is an important obstacle preventing children from knowing and understanding their rights and the procedure itself.

**Child friendly justice is not well known:** the lack of data and information on child friendly justice is a central challenge that needs to be addressed in order to understand where we are at, 12 years after the adoption of the Council of Europe's Guidelines. Stakeholders in the justice system usually know and try to follow the national law but are often not aware of the international framework.

**For children in migration, procedures often do not respect their rights and generate institutional violence:** children in migration face obstacles to access information about their rights and legal assistance. They face restrictions preventing them to accessing courts. They lack adequate protection due to system failures and disappearances. They are impacted by the lack of respect of the legality of procedures. Several countries have pointed out the breaches to their procedural rights in relation to: age assessments, appointment of a guardian, Dublin procedures or family reunification procedures. These procedures are too often inaccessible (because they are costly or too bureaucratic) and do not take into account the best interests of the child.

**The use of digital technology in justice proceedings raises certain challenges in terms children's rights:** the integration of digital technology in the justice system can be an opportunity but raises many questions for children's rights, safeguarding and ethical standards, particularly when online hearings are carried out. A major concern is that not all children and families have stable and secure access to the Internet nor sufficient knowledge of the digital tool, which can lead to communication difficulties.

## CHILD FRIENDLY JUSTICE ILLUSTRATED



### WHAT IS CHILD FRIENDLY JUSTICE?

The Council of Europe Guidelines - the most comprehensive international standard on the subject - define it as justice systems which guarantee the respect and the effective implementation of all children's rights at the highest attainable level, i.e. justice that is accessible, age-appropriate, speedy, diligent, child-sensitive and rights-based, and respectful of children's rights.

Justice refers to all situations in which children may come into contact with all competent bodies and services involved in implementing criminal, civil or administrative law.

# RECOMMENDATIONS: TOWARDS A 360° VIEW ON CHILD FRIENDLY JUSTICE

Numerous recommendations emerged during the European seminar. They should guide public policies for an enhanced child friendly justice.

**In general, national and European justice authorities should adopt a rights-based approach, i.e. integrate and aim at implementing international standards, in particular the United Nations Convention on the Rights of the Child.**

## CHILD PARTICIPATION AND INFORMATION

Children should be properly heard during the proceedings and have the final decision explained to them by the judge, lawyer, other professionals or parents. National and European regulations determining procedures should take this into account by incorporating the right (not the duty) of the child concerned to be heard, without setting a fixed age limit, but rather based on the maturity and level of understanding of the child and by providing for these concrete moments of participation. If children are not heard, this must be substantiated.

Children's participation should be conducted in a child- and age-appropriate manner. Information and actions should be carried out in a way that the child can understand and should be designed in a way that is appropriate for the child's perspective (e.g. setting, time, quality). Time and resources should be available for individualizing the process for the child's specific needs.

In administrative and judicial proceedings, children and their lawyers must have access to their file and to decisions so that they can check whether the best interests of the child have been taken into account in the decision and, if necessary, challenge the decision. National law must therefore provide for the right of access to the file, for the best interests of the child to be taken into account in any decision affecting him or her, and for appeals against such decisions (not only limited to the legality of the decision).

With regard to remote hearings, authorities should establish clear criteria on when and how to use them, based on an assessment of the type of hearing that will safeguard the best interests of the child and ensuring that remote hearings are never the only mode of hearing available. The new rules must be established with the input of children. Safeguarding procedures should also be defined and implemented taking into account the needs of children with particular vulnerabilities, including children with disabilities.

Authorities should ensure the right of children to have access to appropriate legal counsel and other assistance in all proceedings affecting them in order to promote the information and participation of the child.

Effective and independent complaint procedures shall be established to protect the rights of the child, taking into consideration the age and mental maturity of the child. A child who wants to report a concrete violation of his or her rights - and cannot find a hearing in his or her own country - can complain to the United Nations or the UN Committee on the Rights of the Child, if the country has signed the 3rd Optional Protocol to the Convention on the Rights of the Child.

## TRAINING OF PROFESSIONALS

All professionals of justice, in particular judges, lawyers and child protection services, should be able to benefit from training, not only on children's rights, but also on communication methods and child and adolescent psychology and development. To facilitate this, public policies must ensure both the accessibility and availability of such training, including through funding.

Legal and non legal professionals in contact with children working with children should be specialised, so that children are heard by people with sufficient experience and ongoing training. To achieve this, training must be available and accreditation systems could be put in place.

Enhance individual assessments by creating supervisory or collegial decision-making mechanisms for people working with children and young people in contact with the law - such as judges, lawyers, social workers, psychologists, police - is very important in order not to be influenced by their own experience.

## DEPRIVATION OF LIBERTY

Too many children are still deprived of liberty in contexts related to justice – including migration or because they are accused or convicted for an offence

States should implement recommendations of the [UN Global Study on children deprived of liberty](#) and aim that deprivation of liberty is effectively a measure only used in last resort, i.e. only in certain contexts, and as short as possible.

National and European authorities should support cooperation between organisations working with children in different European countries to strengthen their action in cases involving cross-border cooperation for children (on issues such as family reunification in the application of the EU Dublin III Regulation) in order to make these procedures more effective, child friendly and less bureaucratic.

Work should be done to prevent the justice process from creating further trauma or secondary victimisation while ensuring access to justice for child victims. To this end, the authorities should support the establishment of interdisciplinary procedures for dealing with children in family court proceedings and criminal proceedings in which children are involved as victims, witnesses, suspects, or defendants, such as the the Barnahus model, i.e. a model based on multidisciplinary and cooperation between professionals involved in the justice process (police, social services, child protection, physical and mental health), a child-friendly and safe location where children can meet all these professionals.

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National authorities should measure the effective implementation of children's legal rights such as the appointment of a guardian, access to legal aid, freedom from pushbacks or arbitrary detention, etc., evaluate and adopt the necessary measures to promote their effectiveness.

The child's sense of time should be taken into account during the procedure. Procedures should be carried out speedy and diligent.

All justice services, including social services, investigation services and legal aid services, should be adequately funded and supported by the state budget to carry out their work with children in accordance with their rights.

States should collect data on the situation of children who have been involved in judicial proceedings, especially for those who were suspected, accused or convicted, in order to ensure better follow-up of these children and to avoid secondary victimisation.

States should ensure that children have access to justice, including international remedies, by ratifying the Optional Protocol to the Convention on the Rights of the Child establishing a communications procedure.

Within the Council of Europe, States should promote the recast of CoE Guidelines on Child Friendly Justice. Such an update should aim to ensure that they are adapted to today's challenges and thus that they remain the most relevant tools to guide States toward a justice system that really respects the rights of the child.



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