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**Civil Society Committee  
on the Rights of the Child (CSC-RC)**

**Comité de la société civile  
sur les droits de l'enfant (CSC-DE)**

**2022 June 21<sup>st</sup> 9:30-12:30 Webinar**

**Evaluation and determination of the best interests of the child in parental separation and care proceedings**

Exchange of views and knowledge among specialists and professionals

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Tuesday June 21st (9:30-12:30 CET).

**Workshops' theme and summaries of speakers' presentations**

***Q1/ To what extent the recommendations from UN CRC GC 14 and 20 are implemented in the activities of family professionals.***

Speaker: **Benoît Van Keirsbilck**, Committee on the Rights of the Child

Facilitator: Katerina Melissari, Child Protection Coordinator, Hope For Children – CRC Policy Center – Cyprus

The presentation addresses the role and functioning of the UN CRC. It emphasises the main issues of General Comments 14 and 20 with regards of the BIC evaluation and determination. GC 14 provides important elements for evaluating and determining the BIC. GC 20 focuses on the development of the child and the evolving maturity of the adolescents. These documents establish the child both as a person to be protected and as a person who should be able to exercise his or her rights. From this perspective, supporting children's participation is a means of promoting the exercise of their rights. (summary to be confirmed)

***Q2/ The case of young children: elements to evaluate BIC of toddlers and infants (under 5-year-old).***

Speaker: **Fabien Bacro**, Psychologist, university of Nantes, co-author of the consensus article 'Attachment goes to court: child protection and custody issues'

Facilitator: Dagmar Kopčanová, – Educational psychologist and researcher – EUROCEF – Slovakia

**Summary**

Attachment and child custody arrangements: What does international research tell us?

Attachment theory and research are used in many settings, including family courts. However, misunderstandings sometimes lead to misapplication of this important work. The purpose of this conference is to present attachment theory and key research findings in order to improve our understanding of this phenomenon, to counter misinformation, and to guide the use of attachment theory and research in decisions about the custody arrangements of children from separated families. Thus, with reference to a consensus article co-authored with 69 other attachment scholars (Forslund et al., 2021), we will address the problems associated with the use of attachment theory in reference to the concept of the best interest of the child, outline the major misunderstandings about it, and identify the main causes that have prevented its proper use in family courts. In the second part, we will make recommendations for improving the application of attachment theory and research in decision making. To do this, we will outline three fundamental principles that have emerged from this work: (1) the child's need for familiar, non-violent attachment figures; (2) the importance of the stability of these relationships and "good enough" care; and (3) the beneficial role of developing and maintaining "networks" of multiple attachment relationships. We will also discuss the relevance of methods for assessing attachment quality and parenting behaviours to inform the decisions of family courts. Finally, we will conclude this presentation by emphasizing the need to develop new research promoting an interdisciplinary approach.

***Q3/ Promoting the rights and wellbeing of older children and adolescents experiencing the care system and separation from parents: good practice in resources, support and empowerment.***

Speaker: **Carolyn Willow**, Director, Article 39, United Kingdom

Facilitator: Ruth Allen, International Federation of Social Workers (IFSW) United Kingdom

**Summary**

Promoting the rights and well-being of older children and adolescents experiencing the care system in England

In England, at any one time, several thousand 16 and 17 year-olds in care are placed in properties where they do not receive care or consistent supervision. Carolyn Willow and Rebekah Pierre will share what is known about the views and experiences of older children living in 'care-less' accommodation, and which children are disproportionately placed in these neglectful environments. They will go through the formation, goals and main impact to date of the national #KeepCaringTo18 campaign, and reflect on challenging discriminatory age-based legislation through the courts. Workshop participants will be asked to reflect on what care meant to them in early and later childhood, and how important it is in their lives today.

***Q4/ The defence of children and their possibility of recourse and support in cases of violence against their needs in parental separation and care proceedings.***

Speaker: Ms. **Theoni Koufonikolakou**, Deputy Ombudsman on Children's Rights

Facilitator: Tapio Koivula, Junior Researcher and PhD student at the University of Lapland – International Council on Shared Parenting (ICSP) – Finland

### Summary

In care proceedings separation from the parents is considered and should be applied by the state as a measure of last resort and only if considered necessary for the child's best interests, while in parental separation the role of the state is secondary to that of the separating parents and focuses or should be primarily focused on ensuring that the rights of the child will be respected at all times in the context of the agreement or relationship of the separating parents.

This session will attempt -under the spectrum of the UNCRC and its general comments- to highlight the manifold aspects of defining and assessing the child's best interests in parental separation and care proceedings, as well as to underline provisions, measures and practices that aim at addressing the child's needs for support and recourse in cases of violations.

Emphasis will be placed on the empowerment of the child through -amongst others- child friendly information, the right of the child to be heard, the safeguards and guarantees that can prove essential in our collective efforts to minimize the traumatic impact of separation, and the necessity of periodical reviewing or revising decisions concerning children and following up of cases by community social services.

Furthermore, reference will be made to existing deficiencies and shortcomings -as identified by Independent Children's Rights Institutions - of our child protection systems that in some cases contribute to the child's secondary victimization and will explore ways of establishing effective mechanisms and procedures for complaints, remedy or redress for children.

### ***Q5/ The participation of children and, specifically, adolescents in expressing their views in situation of parental separation or in care proceedings.***

Speaker: **Nuala Mole**, Founder and Senior Lawyer, The AIRE Centre, Consultant for CJ/ENF-ISE

Facilitator: Margaret Tuite – Defence for Children International (DCI) – Belgium

### Summary

The UNCRC recognises that all children have rights from birth to 18 - that is from neonates through infants, young children, to adolescents and young persons but those rights are not homogenous and the UNCRC refers to "evolving capacities" "age and maturity" The CRC Committee has referenced the principle of "evolving capacities" more than eighty times in nineteen of its General Comments(GC's)

The UNCRC committee has adopted two particularly relevant GC's focussing on the extremities of the range of childhood: GC 7 on early childhood and GC 20 on adolescents . In the context of family environment and alternative care GC 20 (at para 50) specifically links the rights of adolescents to states obligations under the CRC Arts 18 (parental responsibilities and state assistance) and 27 (the right to a standards of living adequate for the child's development)

Perhaps additional mention might have been made of Art 5 – the right to parental direction and guidance consistent with a child’s evolving capacities. This provision affirms the role of the family in a child’s life but also makes clear that this is a right of the child- not of the parents and relates primarily to direction and guidance in exercising and enjoying.

This right assumes an enhanced role when parents separate and the child may be – and often is- receiving different “direction and guidance” from each parent- and perhaps additionally from step-parents or a new social parent. Art 5 anticipates that when a child reaches a sufficient level of maturity and capacity to exercise his or her rights independently there will no longer be a need or a justification for parental direction and guidance.

Important too for adolescents are are Arts 8 (the preservation of identity) art 9 (the right not to be separated from parents, and Arts 13, (freedom of expression) 14 (freedom of thought conscience and religion and 15 (freedom of association and peaceful assembly) Art 9(1) and (2) are particularly important both for situations of parental separation and for the taking of children into care (see also UN guidelines specifically paras 47 and 57).

At this point the importance of art 12 (hearing the child’s views) increases exponentially. The older a child is the more weight is to be given to child’s own views when making both the best interests assessment and the best interests determination which are the necessary prior steps to their best interests being made a primary consideration in all administrative and judicial decision making.

The adolescent child’s growing autonomy may have an impact on whole range of situations. – relocation and choice of residence , schooling,( and the choice to continue education or not ) personal identity and relationships, employment , consent to medical treatment – all of which can be subject to disputes between separated parents and between those parents and the children.

Irrespective of the legal frameworks regulating each of these issues, and of the age at which the adolescent’ autonomy in these matters is recognised, even without legal autonomy hearing the views of the adolescent and giving them due weight becomes increasingly important. Some thoughtful judgment have been delivered after the views of the affected children have been heard ( see e.g <http://www.bailii.org/ew/cases/EWFC/HCI/2017/48.html> where the judge - having heard the 14 year old child separately from his parents and step-parents gave his judgment in the form of a letter directly to the child saying expressly “ as this case is about you and your future”

The Hague Convention on Child Abduction 1980 only applies to children up to the age of 16 It cannot be applied to order the return of an older child. Even for children under that age , it expressly provides for a child’s objection to being returned as a ground for refusing a return under Art 13 (if the child is old enough.) The 1996 Hague Convention on Parental Responsibility and Child Protection applies to children up to the age of 18. The new BiiB Regulation coming into force on 1st August 2022 will require the child to have been heard before recognition is given to a national decision

The ECtHR and adolescents in situations of parental separation: PS can occur by choice or by administrative action such as imprisonment or deportation and the consequences for the child can be dictated by judicial authorities. Or their endorsement of administrative action . Concepts such as custody contact and access are increasingly inappropriate as adolescents get older.

GC 20 notes that adolescents leaving care need special support and preparation for transition. What is equally important is that children between the ages of 15 and 18 who are in “alternative care” are actually receiving the “care” to which their placement entitles them. (already discussed in other sessions) ECTHR found a violation in MD v Malta as there was no possibility to go to court to contest a care order after it had been made even up to the age of 18. The DGD recently held by UNCRC Committee examined alternative care in detail.

***Q6/ Education of parents to raise awareness of the consequences of parental separation on children and to help parents in cooperating after parental break-up.***

Speaker: **Galina Markova**, doctor of social work, Director of the Know How Centre for Alternative Care for Children, New Bulgarian University.

Facilitator: Bénédicte Colin – Federation of Catholic Family Associations (FAFCE) – Belgium.

**Summary**

Who are the parents who are the most vulnerable regarding family-child separation? Who is to “blame” for child-family separation: Parents? Communities? Social services? Policies? How can we involve parents in addressing family breakups? The author will address the questions above by presenting: 1/ the findings of the study on psychological characteristics of parents who place their children in institutions, 2/ key environmental influence on parenting; 3/ interventions at individual, group, and community-based work for preventing parent-child separation and awareness-raising. The key message of the presentation is: that positive change can happen through a (new) experience that can happen in a trusting relationship. Specialists are responsible and privileged to form those.