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## Child-Friendly Justice in Europe - Participation and Restorative Justice: Online event – 14 May 2020

### Conclusions by the Georgian Presidency of the Committee of Ministers of the Council of Europe

One of the priorities of Georgian Government during its Presidency of the Council of Europe Committee of Ministers was restorative justice and child friendly justice. A high-level Roundtable devoted to these topics scheduled to take place on 23 March 2020, had to be cancelled, due to the COVID-19 sanitary crisis. In close co-operation with the Council of Europe's Secretariat, it has been decided to create a special webpage where all contributions prepared and key resources will be grouped together.

The relatively recent term of **restorative justice** designates a specific mechanism within the context of broader criminal justice reforms. The process brings together the victim, the offender, his/her parents, guardians, or another appropriate adult, and can help in building reconciliation. Restorative justice provides a safe space for dialogue about the damage done and the reparation that needs to be made, in order to compensate the damage and/or reconciliation. The process must provide safeguards to children, including the presence of their parents, guardians or another appropriate adult, to ensure that their rights are respected. Special domestic regulations and safeguards applicable to children in traditional criminal justice proceedings apply to the restorative justice as well. It is proven that restorative justice reduces reoffending, ensures better victim recovery and it is cost effective.

One can only agree with the statement of Mr Schennach from the Parliamentary Assembly of the Council of Europe that, if used well, restorative justice has as an immense potential for making justice systems more humane, caring, truly transformative and a viable alternative or a supplement to the traditional criminal justice system. Already in 2014, the PACE Resolution 2010 (2014) called upon the Council of Europe member States, *inter alia*, to "develop a broad range of diversion programmes, respecting human rights standards and based, *inter alia*, on principles of restorative justice".

The Georgian Presidency informed of its progress achieved in the field of restorative justice since 2012, especially following the adoption of new Juvenile Justice Code in 2015. Consequently, application of the non-custodial measures to children in conflict with law is made a default and criminal sanction an exceptional rule. In 2019, only 10 accused juveniles were placed in the penitentiary system of Georgia compared to 46 in 2011. The number of convicted juveniles went drastically down from 160 in 2011 to 37 in 2019. The programme of diversion and mediation has been initiated, and children in conflict with the law are given the opportunity to understand the impact of their acts, and to learn and move on from their harmful behaviour, with the support of professionals. The rate of mediations in Georgia increased from 39% in 2016 to 54% in 2019, and the programme of diversion and mediation led to the low -9% rate of recidivism by diverted juveniles. The Georgian authorities were commended for their National Human Rights Strategy (2014-2020) and their work on the development of a solid modern child-friendly law system. Good national examples concerning restorative justice exist also in Albania, Belgium, Finland, Norway, as well as in Northern Ireland (United Kingdom).

The Presidency calls on and encourages Council of Europe member states to move away from purely or predominantly punitive approaches and towards one that fully embraces restorative justice. This implies a paradigm shift away from retributive models of justice, and a change of culture and attitude. Member states are therefore encouraged to make full use and implement the recent [Recommendation \(2018\)8](#) of the Committee of Ministers concerning restorative justice in criminal matters which includes detailed recommendations concerning criminal proceedings.

The second main topic of this Roundtable was **child-friendly justice** more broadly, as the number of children likely to come into contact with the justice system is increasing, due to family relationships breakdowns, which often turn into legal disputes. In family matters, the assessment process of the best interests of the child must be a primary consideration.

The Council of Europe has adopted the Strategy for the Rights of the Child (2016-2021) and identified the child-friendly justice is one of its five priority areas. The first three years of the strategy implementation was overseen by the ad hoc Committee for the Rights of the Child (CAHENF). Over the next biennium, the newly-established Steering Committee for the Rights of the Child (CDENF) will work to further implement the strategy, focussing in particular on systems for professionals to report violence against children, and on preventing peer violence and sexual abusive behaviour by children. A subordinate body will also work to provide guidance on the rights and best interests of the child in parental separation and care proceedings.

The organisation has adopted a number of landmark Conventions, such as the Lanzarote Convention (Convention on the Protection of children against sexual exploitation and sexual abuse) and Istanbul Convention (Convention on Preventing and combating violence against women and domestic violence). These oblige Parties to provide support and safeguards for upholding the rights of child victims and witnesses during legal proceedings.

However, the most comprehensive instrument in this field remains the **2010 [Child-friendly justice Guidelines](#)**, which also considered the views of over 3.800 children consulted in 25 Council of Europe member States. These Guidelines contain principles and safeguards upholding the rights of children in conflict or in contact with law, before, during and after judicial proceedings. The guidelines have become an influential tool for further standard-setting and implementation. They have been widely disseminated (including in Latin America and the Middle East), and taken into account in judgments by the European Court of Human Rights, and in EU legislation (in this respect particular reference can be made to the EU directive 2016/800/EU on special safeguards for children suspected or accused in criminal proceedings), as well as in the recent General Comment No 24 (2019) of the UN Committee of the Rights of the Child.

The 2010 Guidelines are also applicable to the area of migration, where the goal of a child-friendly approach is to embed **children's rights in migration procedures** and to protect those rights by wider application of child-friendly good practices.

Large-scale migration in 2015-2016 across Europe revealed insufficient understanding of their protection needs, and guardianship for refugee and migrant unaccompanied and separated children in many countries needed to be created or adapted. It is in this spirit that the 2019 Committee of Ministers adopted the first international instrument dedicated to an **effective guardianship**.

The most comprehensive Organisation's response to challenges in this context is the Action Plan on Protecting Refugee and Migrant Children (2017-2019), supporting Council of Europe member states in promoting children's access to their rights. The 2019 publication "[Promoting child-friendly approaches in the area of migration](#)", as well as the [Handbook for frontline professionals](#), include examples of promising practices on how to communicate with children in migration about - and uphold - their rights.

The continued **deprivation of liberty of children** remains an issue of particular concern. Its effects upon children are grave: as Mr Manfred Nowak, Independent Expert for the United Nations Global Study on Children Deprived of their Liberty stated, "for children, deprivation of liberty means depriving them of their childhood". The **Global Study on Children deprived of their liberty** documented that a minimum of between 1.3 and 1.5 million children are deprived of their liberty every year across the world.<sup>1</sup> Contrary to international law, deprivation of liberty of children is not used only for the "shortest appropriate period of time" and "as a measure of last resort". Further, in some European states, the age of criminal responsibility of children is still excessively low (10 years), although the UN Children's Rights Committee – among other voices - advocates that this age shall be raised to at least 14 years of age.

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<sup>1</sup> United Nations Global study on children deprived of liberty (2019), available at: <file:///C:/Users/werne/Documents/PACE/UN%20study%20on%20children%20in%20detention.pdf>

The Strasbourg Court has repeatedly found that **immigration detention of children** was in breach of Article 3 of the ECHR, which prohibits inhuman and degrading treatment.<sup>2</sup> Other bodies or institutions of the Council of Europe condemn the detention of migrant children, such as the Committee for the Prevention of Torture (CPT), the Commissioner for Human Rights, the Special Representative of the Secretary General on Migration and Refugees, and the Parliamentary Assembly.<sup>3</sup> Creating systems of foster care would make detention of children unnecessary and irrelevant as a migration management tool. In this context, attention should be also paid to the work of the Steering Committee on Human Rights (CDDH) on alternatives to detention.

As explained in detail by the former President of the European Court of Human Rights, **the Strasbourg Court** has developed a large case-law concerning the rights of the child, treating them as holders of rights, rather than simply objects of protection.

While examining how juvenile defendants are treated in **criminal trials**, the Court has elaborated under Article 6 of the ECHR specific requirements for ensuring their effective participation by ensuring the child's presence during hearings, the holding of private hearings, limiting publicity, ensuring that the child understands what is at stake and that the proceedings are not unduly formal.<sup>4</sup> A child charged with an offence should be 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.<sup>5</sup> Further, steps must be taken to reduce the child's feelings of intimidation and inhibition and ensure his/her broad understanding of the nature of the investigation, of what is at stake for them, including the significance of any sanction which may be imposed as well as of their rights of defence and of his right to remain silent.<sup>6</sup> He or she may be assisted by an interpreter, lawyer, social worker or friend to understand the proceedings.

Secondly, the Court considered that children can also be **victims or witnesses** of sexual offences in which they are called upon to testify against the alleged perpetrator.<sup>7</sup> The Court therefore established a positive obligation on the State under Articles 3 and 8 of the Convention to protect the rights of victims in criminal proceedings.

The third point concerns the question of **child representation** before the Strasbourg Court itself; at present, the Rules Committee of the Court is working on establishing specific rules in relation to family break-up cases and they should be elaborated shortly, to bring more clarity

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<sup>2</sup> See, for example, ECtHR, *A.B and Others v. France*, No. 11593/12, 12 July 2016.

<sup>3</sup> See activities relating to the End Immigration Detention of Children Campaign, available at: <https://pace.coe.int/en/pages/campaign-detention-children>.

<sup>4</sup> *T. v. the United Kingdom* [GC], no. 24724/94, 16 December 1999.

<sup>5</sup> see *Adamkiewicz v. Poland*, no. 54729/00, § 70, 2 March 2010; *Panovits v. Cyprus*, no. 4268/04, § 67, 11 December 2008; *V. v. the United Kingdom* [GC], no. 24888/94, § 86, ECHR 1999-IX; and *T. v. the United Kingdom* [GC], no. 24724/94, § 84, 16 December 1999

<sup>6</sup> see *Martin v. Estonia*, no. 35985/09, § 92, 30 May 2013.

<sup>7</sup> By way of examples, see *S.N. v. Sweden*, no. 34209/96, ECHR 2002-V, *Bocos-Cuesta v. the Netherlands*, no. 54789/00, 10 November 2005, *Kovač v. Croatia*, no. 503/05, 12 July 2007, *Vronchenko v. Estonia*, no. 59632/09, 18 July 2013 and *Rosin v. Estonia*, no. 26540/08, 19 December 2013.

to these difficult situations. As judge Sicilianos underlined, the best interests of the child should be at the centre of the decision-making<sup>8</sup> in proceedings, be they criminal or civil.

Today, our justice systems face different challenges of an **unprecedented public health crisis**. Crimes like domestic violence and cyber criminality, including sexual abuse online, are on the rise across the world, as it is bracing for an unprecedented social and economic crisis, as 500 million people could be pushed into poverty by the Coronavirus.<sup>9</sup> With many people out of jobs and others struggling with in-work poverty, crime rates may grow: that is why **the issue of restorative justice is more pertinent than before**, for adults and children alike.

Whilst appearing tough and decisive may help some politicians to get more votes, applying punitive approaches, without addressing the root causes of juvenile crime, will not resolve the problems. Re-thinking of our societies, including of our criminal justice systems, in the aftermath of this public health crisis will need to include the revision of our approaches to juvenile justice. As the Secretary General of the Council of Europe Ms Marija Pejčinović Burić indicated in her statement on the eve of the Europe Day, “answers to problems caused by the COVID-19 pandemic must be grounded on our fundamental values, human rights, democracy and the rule of law”.

## WAY FORWARD - main conclusions:

- The contributions received underscored **the variety of responses** the Council of Europe member States and the organisation have developed to support the empowerment and uphold the rights of children in justice systems. However, many challenges remain.
- Member states are encouraged to make full use and implement [Recommendation \(2018\)8](#) of the Committee of Ministers to member States concerning restorative justice in criminal matters which includes detailed recommendations concerning criminal proceedings. The Council of Europe **could offer co-operation programmes** to its member States, including training to the professionals implementing restorative justice.
- It is important to recall that children do not have to “earn” or “deserve” their rights, as they are **fully fledged right holders** and should be treated as such. Child-friendly justice is more about fostering greater respect for their rights and treating them with dignity, respect, care and fairness, by providing a range of strategies to adapt a legal proceeding to the particular circumstances of the child involved. Standards of the European Court of Human Rights and the principles laid out in the [Child-friendly justice guidelines](#) remain of paramount importance.

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<sup>8</sup> As set out extensively in *A and B. v Croatia*, §§ 77- 83.

<sup>9</sup> Oxfam (2020), “Dignity Not Destitution” Report, available at: <https://www.oxfam.org/en/press-releases/half-billion-people-could-be-pushed-poverty-coronavirus-warns-oxfam>

- Although progress has been achieved, too many children are still deprived of their liberty in numerous contexts, and in ways which are contrary their rights under international law. Member States should implement the recommendations of the Global Study, inter alia to **reduce the number** of children detained and apply non-custodial measures, to address **root causes** and invest resources to reduce inequalities and **support families**, to **apply the requirement of detention as a measure of last resort** and only for **shortest appropriate period** of time, and to **educate and train relevant professionals**. All forms of **immigration detention of children** should be replaced by appropriate non-custodial solutions.
- Full support should be given to the continuation of the work of the Council of Europe at the **intergovernmental level**: particular attention should be paid to future work of the Committee of experts on the Rights and the best interests of the child in parental separation and in care proceedings (CJ/ENF-ISE) in the development of tools and standards in supporting the determination of best interests of the child in this context. The same goes for inter-governmental work regarding the establishment of the child-friendly approaches on the age assessment in migration procedures, alternatives to detention, the development of non-binding instruments on systems for professionals to report violence against children and on measures and interventions aimed at preventing peer violence and sexual abusive behaviour by children.
- The contributions shed light to the valuable **work of other international organisations**, of the United Nations and the European Union in the first place. Such co-operation should continue as it helps the cross-fertilisation of ideas and initiatives.
- Member States are further encouraged to evaluate their practices against the international children's rights standards, taking account of children's views and lived experiences, and undertake to extend, expand and strengthen those practices that are child-friendly and compliant with children's rights. Particular attention should be paid to the afore-mentioned in the light of the **ongoing pandemic and its future, likely effects**.

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