

Converging experience on restorative justice in Europe

Key findings from FRA research

CHILD FRIENDLY JUSTICE

Context

- Around 2.5 million children are estimated to be involved in judicial proceedings across the European Union (EU) every year. Such proceedings can be particularly stressful for children, who risk trauma if procedures are not adapted to their needs and made “child-friendly”. The effective participation of children is also vital for improving the operation of justice.
- The United Nations Convention on the Rights of the Child and other international and European human rights standards recognise the importance of children’s participation. They oblige EU Member States to ensure that children’s best interests are the primary consideration in any actions that affect them.

FRA research on child-friendly justice

- Nevertheless, in 2015 a research from the European Union Agency for Fundamental Rights has pointed to inconsistencies across Member States, and even within national jurisdictions, when it comes to areas like child-friendly justice. The way children are treated in justice systems needs to be improved across the EU.
- The aim of the Agency’s research was to identify practices and procedures of the actual treatment of children in criminal and civil justice proceedings in 10 European Member States and to assess how the Council of Europe Guidelines (CoE) on child-friendly justice are applied.
- In general, the main findings reveal that in many cases, children’s needs and rights are not adequately addressed. Many professionals said that they were not aware of the CoE guidelines and relied mainly on national regulations and their own understanding and judgement.
- FRA’s fieldwork findings, based on interviews with professionals and children, show that there is a long way to go to make justice more child-friendly across the European Union. Although all EU Member States have committed themselves to ensuring that children’s best interests are the primary consideration in any action that affects them, their rights to be heard, to be informed, to be protected and to non-discrimination are not always fulfilled in practice.
- FRA has done extensive research with legal professionals and children: this explores their experiences of civil and criminal proceedings as well as national minimum age requirements. FRA research has shown that the way children are recognised as rights holders differs. Age requirements can also be arbitrary and inconsistent, potentially limiting child rights.

Right to be heard

- The right to be heard and express one’s views is essential for effective participation in judicial proceedings, but simply capturing a child’s views is not enough.
- Age thresholds for the right of children to express their views and be heard during judicial proceedings differ remarkably among Member States, but also within Member States across different areas of regulation (e.g. in the context of family, criminal, and asylum and immigration law).

- Setting a minimum age requirement regarding the right to express views and be heard means that children over that age should be always given the opportunity to do so, if they so wish. However, this does not preclude courts from giving children below that age the same opportunity. Nonetheless, as FRA's findings from its studies on child friendly justice show, judicial practices in this respect vary between and within Member States – although the majority of children very much appreciated the opportunity to be heard.

Procedural safeguards

- Meaningful participation requires that the relevant authorities create a safe and friendly environment and use appropriate methods of questioning to determine and take into account a child's specific needs.
- To ensure child-friendly proceedings and in the best interests of the children as in line for example with the Council of Europe guidelines on child-friendly justice it is important that children are heard with the necessary procedural safeguards in place.
- Children need to feel safe and comfortable to be able to express their opinions freely. Children interviewed agree that safeguards reduce their stress when testifying and help them participate more freely; safeguards that are not implemented systematically can be a major source of fear and anxiety.
- Procedural safeguards for children come in many forms: interviews with child victims should be limited in number, should take place in specifically designed premises, and should be carried out by trained professionals – if possible, by the same person; visual contact between children and offenders should be avoided; children do not have to appear in court in person and are instead heard by testifying through communications technology or through the use of audio-visual records of interviews with them as evidence; hearings are closed to the public; and children are accompanied by a legal representative or adult of their choice.

Legal support

- Children involved in the trial have to be heard by the court under procedural safeguard measures, but FRA findings highlight that the provision of legal support is not institutionalised in most of the countries. Some children do not recognise lawyers or legal counsellors as sources of support because they believe that they fail to inform them about proceedings and their roles and responsibilities. Some children involved in custody cases report benefiting from their parents' legal representation, rather than having their own lawyer.
- In line with the Directive on procedural safeguards for children as suspects or accused persons, all EU Member States provide for free legal aid for child suspects/offenders without setting an explicit minimum age requirement. In the majority of Member States (17), though, the provision of legal aid depends on meeting income requirements. In three of these, those accused of serious crimes are exempted from income requirements. In 11 Member States, legal aid is provided at no cost to child suspects/offenders in all cases without any income requirements or other conditions.
- Only 6 % of children interviewed who were part of proceedings as witnesses or victims or in severe custody conflicts mentioned receiving legal support. Two thirds of them who received legal support assessed it positively; one third assessed it negatively.

Detention

- Child offenders can moreover be subject to custodial sanctions and measures (detention) in all EU Member States. As a general trend, the minimum age for being subject to such sanctions and measures is the same as the minimum age for criminal responsibility. Minimum ages range from 10 to 16 years. In 13 Member States, child offenders can be subject to custodial sanctions and measures (detention) from the age of 14 onwards. In 10 Member States, the threshold is set at a higher age. In four Member States, it is set at a lower age. In one Member State, no minimum age is set in the legislation. Only four Member States do not impose solitary confinement on children under 18 years of age.

Training of professionals

- The other key component is the professionals' behaviour to which degree they are able to accommodate for the children's needs. Professionals should choose a comfortable, friendly setting for interviewing children and remove gowns and wigs when hearing a child. Member States should for example consider establishing specialised courts for children or specialised divisions/panels within ordinary courts with expertise in children's rights and child friendly justice.
- The research shows that professionals across all areas of the child justice system lack adequate specialisation and training to work with children; legal professionals would benefit from training on how to interact with children, while social professionals should be trained on legislation related to children.

Right to information

- FRA research shows that most Member States lack clear requirements, rules and established practices, leaving up to the judgment of the individuals providing the information when, about what, and how to inform children. Information and explanation about the process, decisions, and further potential support are important: well-informed children are more likely to provide good evidence that may be taken into accounts by police and courts. Children interviewed said that when information is provided it is crucial to helping them understand proceedings; most of the children interviewed consider the information provided as insufficient.
- Children suggest that information should be provided early enough for them to prepare for hearings and then consistently throughout the proceedings at regular intervals. They would also like to receive information on possible waiting times before hearings, the length of proceedings, and the verdict and its consequences within a reasonable timeframe; they often complain that they do not receive updates and information about their cases' development during proceedings.
- Professionals who conduct the hearings should explain their professions and functions, introduce themselves and explain practical arrangements, behavioural guidelines.

FRA PRODUCTS

- [Child-friendly justice – Perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States](#) (2015) EN.
- [Child-friendly justice – perspectives and experiences of professionals - Summary](#) (2015) Available in all EU languages.
- [Child-friendly justice - Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EU Member States](#) (2017) EN
- [Child-friendly justice – perspectives and experiences of children and professionals - Summary](#) (2017) Available in all EU languages.

- [Child-friendly justice - Checklist for professionals](#) (2017) Available in all EU and some non-EU languages.
- [Children's rights and justice – Minimum age requirements in the EU](#) (2017) EN.
- [Child rights in the EU - Supporting you, Supporting them](#) (2019) EN.
- [Videos on rights of the child](#) (2015) Available in several EU and non-EU languages