

Securing the best interests of the child in civil proceedings

The European context

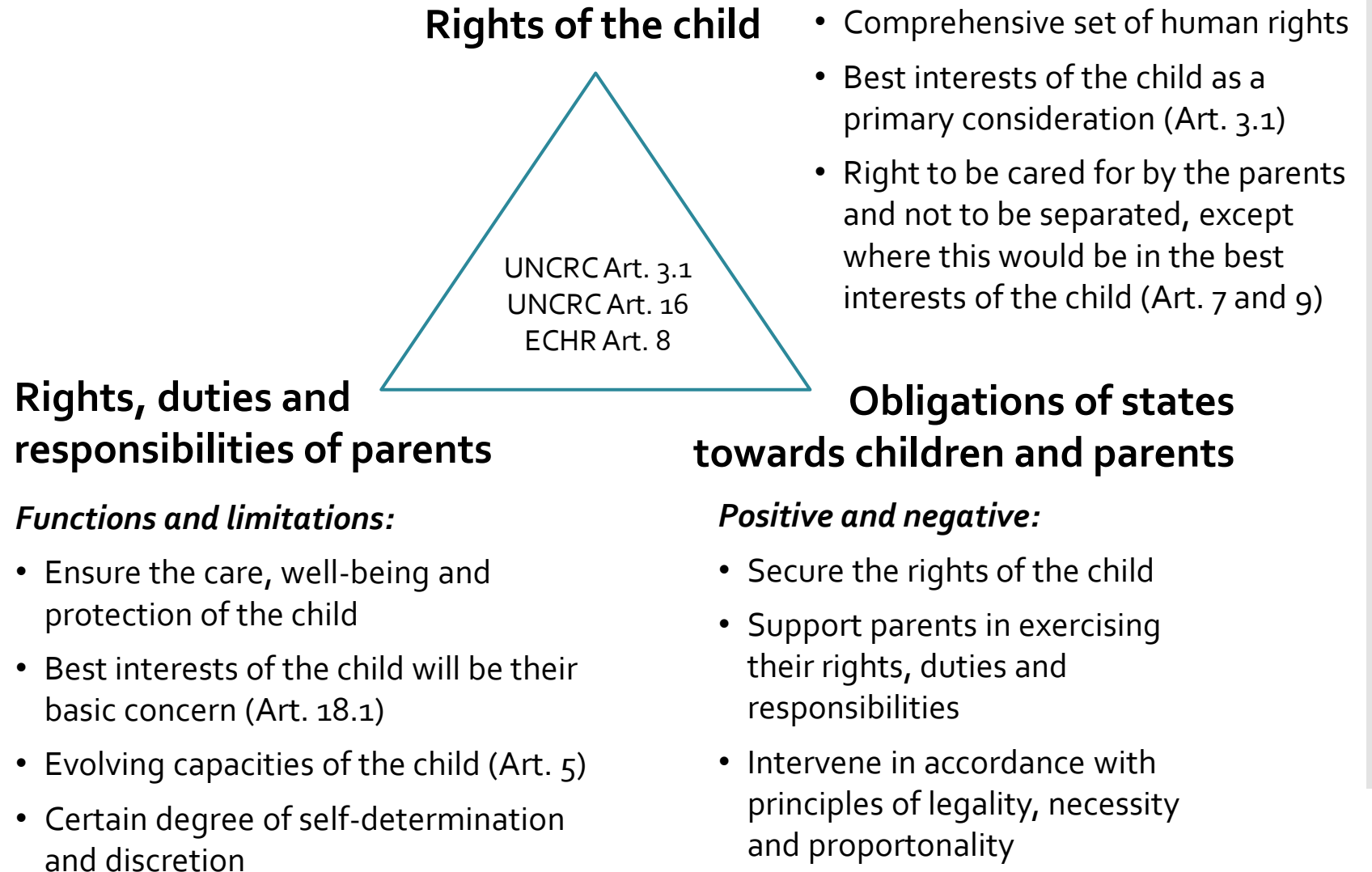
Joint EU-Council of Europe project
“Ensuring the best interests of the child in civil court proceedings in Slovenia”

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Rights of the Child – Implementation of International Standards

Best interests of the child: a core principle of the UNCRC

UN Convention on the Rights of the Child



Best interests determination:

steps of the procedure

- **Best interests assessment:**
 - comprehensive and guided by the rights and needs of the child
 - aims at ascertaining facts and gathering evidence
 - Multidisciplinary approach
 - **Decision-making process:**
 - transparent and documented
 - balancing process giving due consideration to the best interests of the child
 - **Periodic review and adaptation:**
 - ensure that decisions and measures continue securing the rights and meeting the needs of the child over time
 - repeated until a sustainable solution has been identified and implemented in accordance with the best interests of the child
- **Best interests determination through a formal / established procedure**
- **The procedure guides competent authorities in determining if and how an interference with the right to respect for private and family life of children and parents may be lawful and proportionate in the individual case**
- **Where a competent authority makes a decision on the best interests of the child, these three steps need to be observed**

Best interests determination:

steps of the procedure

Best interests assessment:

- Setting out in law the factors to be assessed helps to
 - ensure a comprehensive assessment guided by the rights and needs of the child,
 - limit the level of discretion of the competent authority,
 - prevent that other laws take precedence simply because they have a more specific wording.

References and examples of practice:

- CRC Committee General Comment No. 14 (2013)
- National laws of Austria, Bulgaria, Finland, Romania, Slovak Republic, Spain, ...
- Committee of Experts CJ/ENF-ISE drafting Council of Europe policy instruments on the rights and best interests of the child in parental separation and care proceedings

Best interests determination:

steps of the procedure

Decision-making:

- Balancing the rights and needs of the child with the rights, duties and responsibility of the parents
- Taking account of the obligations of the state towards children and parents (positive and negative)
- Giving due consideration to the best interests of the child

Examples of legal wording on due consideration :

- The best interests of the child ...
 - shall be a primary consideration (UNCRC Art. 3.1)
 - must be a primary consideration (EU Charter Art 24.2)
 - shall be the paramount consideration (UNCRC Art. 21 (adoption), Irish Constitution, Art. 42A.4)

Best interests determination:

steps of the procedure

Review and adaptation:

- Intervention plan of social services
- Individual care plan in care proceedings
- Individual educational plan
- Life project planning

Guidance and orientation on the best interests determination

Procedural safeguards in best interests determination procedures

- Child-friendly information in all stages of proceedings
 - Germany: "[Zank](#)" information website for children involved in parental separation proceedings
 - Ireland: Tusla website "[changingfutures](#)" for children in contact with child protection services and involved in care proceedings
- Hearing and giving due weight to the child's views
 - Swedish legislation has no age limits for the child to be heard in civil proceedings
 - Estonia: where the decision differs from the child's views, the competent authority shall explain why
 - Hearing children in Barnahus and other child-friendly justice services
- Guardianship and support by a person of trust
 - Ireland: Child advocacy: person of trust supports children in civil proceedings
- Legal assistance and representation
- Administrative or judicial oversight and review

Relevance and importance of the best interests determination procedure

- **Cross-cutting:**
 - Relevant to the implementation of UNCRC, Council of Europe Conventions, recommendations and guidelines concerning the rights of the child (in civil proceedings), EU and national law
- **Sensitivity:**
 - Primary consideration of the rights of the child in light of rights, duties and responsibilities of parents and obligations of states – different (legitimate) interests and power dynamics involved
- **Significance:**
 - Safeguard the rights and interests of the child in view of his or her individual situation, context, background and perspectives for the future: ensure implementation processes are meaningful to the individuals concerned
- **Re-focus:**
 - Enables the transition from an approach guided by the logic of institutional mandates and categorisation of children towards a multidisciplinary and interagency approach that is child-sensitive and child-centred
- **Political:**
 - Maintain a child rights focus where different interpretation in light of culture, tradition, different political approaches and priorities may be in conflict
- **Recognised need:**
 - Weak procedures risk creating harm for children and families, and demand on national and international judiciary

Examples of practice from Europe

- **Sweden: Children's Needs in Focus (BBIC)**
 - comprehensive programme for social service case assessment and management in accordance with the best interests of the child
- **Austria: Online guidance and resource centre**
 - Access to guidelines, a resource centre, working methods and tools
- **Framework assessment of children in need (UK, Sweden, Estonia)**
 - Evaluated tool for the best interests assessment
- **Multi-agency risk assessment of children**
 - LASTA model used in Barnahus in Finland
- **Multidisciplinary and interagency case conferences**
 - Case conferences in UK, Barnahus in Nordic tradition

Family mediation and ADR in the best interests of the child

Mediation and other ADR processes in the best interests of the child

- Mediation tends to be
 - faster than court proceedings
 - more cost-effective
 - able to resolve family conflicts in a sustainable way, including its history
 - helps parents to improve or re-establish communication and to focus on the needs and best interests of the child
- Mediation may be appropriate and in the best interests of the child in cases of (domestic) violence, as long as safeguards are in place
 - suitability assessment,
 - risk assessment,
 - physical safeguards,
 - safeguards for children,
 - specially trained and skilled mediators

Family mediation and ADR in the best interests of the child

Examples of practice

- **Mediation in Court Model**
 - Facilitate information and access to mediation in proceedings concerning international child abduction (Netherlands, Germany)
- **Strengthening the hearing of the child in mediation**
 - ReUnite, UK, focus on international child abduction, the principles and procedures can be applied in parental separation cases, national / cross-border
- **Mediation in situations of high conflict or violence**
 - Family group conferences
 - Parental coordination programme

Proposals for consideration

- Best interests of the child as a substantive right
- Best interests determination as a formal / established procedure
- Multidisciplinary and interagency approach
- Compendium of methods and tools – systemic methods
- A unified set of guidance applicable across sectors and groups of children
- Competence and resource centre on the best interests of the child
- Training on the best interests of the child, incl. in academic and vocational training, joint and multidisciplinary training and training on methods
- Innovate the state administration to operate in accordance with the best interests of the child

References

Best interests assessment and determination

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Thank you!

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