

**“Hear Our Voices: The Rights and Determination of the Best interests of the Child in Parental Separation and in Care Proceedings”**

**Conference, Farmleigh House, Dublin**

*Monday, 3 October 09.00 am (Irish Time)*

**Opening Speech**

**Mr Christophe Poirel  
Director  
Human Rights Directorate**

Dear Minister,  
Ladies and Gentlemen,

I am delighted to address you today, jointly with Minister O’Gorman, at the opening of this Conference on the rights and the best interests of the child in parental separation and care proceedings. Thank you very much for hosting the conference and for being with us this morning.

The Council of Europe considers the best interests of the child to be a fundamental underlying principle in all actions concerning children.

In order to effectively safeguard the rights of children, we need to act in their best interests.

Although the European Convention on Human Rights does not expressly refer to the “best interests of the child”, or children for that matter, the European Court of Human Rights has developed a large body of case law dealing with children and their human rights and has on numerous occasions affirmed that the best interests of the child must be a primary consideration in all actions concerning children. This indicates that respecting children’s best interests is, in fact, a way to upholding their human rights.

It is no surprise, therefore, that the principle of the best interests of the child features prominently in many of Council of Europe legal instruments, primarily – but not exclusively - in the area of the rights of the child:

- The European Convention on the Exercise of Children’s rights;
- The Convention on Contact concerning Children;
- The Lanzarote Convention on Protection of children against sexual exploitation and sexual abuse;
- The Convention on preventing and combating violence against women and domestic violence – the so-called “Istanbul Convention”;

to name just a few of our binding legal instruments. It also appears in many recommendations, guidelines and other texts.

Ensuring child-friendly justice for all children, and the child's right to be heard are two strategic objectives of the current Council of Europe's Strategy for the Rights of the Child (2022-2027). They have constantly been at the heart of our work, and will continue to guide the activities of our organisation and our member States for the years ahead. The best interests of the child will be at the epicentre of this work.

Almost one in 11 people worldwide are involved in family disputes. Their legal problems relate very often to divorce and separation, child arrangements, or – more dramatically - domestic violence.

Children suffer disproportionately from decisions that are being taken in these circumstances. Their disempowerment can make it harder for them to recover from the effect of these decisions. It is our responsibility to ensure that children are also part of the solution, that they have access to justice and are part of the decision that an authority or a judge takes.

These situations are often the first encounter of a child with the justice system. And you know very well, first times and impressions always matter. Such experiences shape children's lives, their development, well-being and also their understanding of the justice system.

A justice system fails if a child feels that he or she is a victim of injustice or when his or her voice was not heard. It is our responsibility to ensure that justice is also done for children, with children.

Our justice systems have been designed mainly with an adult population in mind. And still, such systems are often difficult to access for adults, let alone for children. Child-friendly justice systems are designed to place the child in the centre, so to be able to assess their best interests when difficult decisions have to be taken. This is what guided the adoption of the Council of Europe Guidelines on Child-Friendly Justice, which address administrative, criminal and civil justice systems and look at the process before, during and after a decision is taken.

I would like to salute the efforts of our member states, as is the case of Ireland, to adapt – inspired by these Guidelines - their judicial systems to the needs of children and the valuable work done by practitioners and the civil society to support such efforts.

None of us is naïve to the practical difficulties of implementing children's participation rights in family law proceedings and of putting in place an effective child friendly justice system.

The reality in many countries is - and you certainly don't need me to tell you this - that there remain long standing practices and attitudes that need to be overcome, not to mention a wide range of legal, social or economic obstacles.

Family law systems in many countries operate within a context of limited resources and children's participation is affected by what is perceived as affordable and doable. As a result, children are often not asked to express their views; to exercise their right to participate in judicial decisions that affect them. They have to ask for it, and even then, sometimes their right is not properly respected. *Their voice is too often not heard.*

Furthermore, children's interests may conflict with those of others, in particular their parents. Many of the family law cases that are heard by the European Court of Human Rights are exactly about how to draw this fine balance between different interests.

For instance, when children are witnesses to domestic abuse, ensuring that family law responses to the aftermath of domestic violence do not perpetuate the violence itself (including, for instance, by exposing children to continued living as proxies of witnesses of continued pressure and violence perpetrated around visitation arrangements) is a crucial element in upholding the best interest of the child.

More generally, it appears clearly that family law and policy, processes and guidelines in member states should be further developed to come to the point where, in our justice systems, the child's right to be heard will fully be ensured and children's rights and best interests are upheld, in line with our common human rights standards. This may also possibly require further action and guidance at European level.

The Council of Europe, through an intergovernmental committee of experts on the rights and the best interests of the child in parental separation and in care proceedings, is currently preparing new legal instruments and implementation tools to guide practitioners on the rights and best interests of the child in the context of parental separation and in care proceedings.

Today's conference will be an occasion to share developments and good practices, in Ireland and in other member States, and to reflect on further action, but also to provide a valuable input to this work. Tomorrow, the findings of this conference will certainly be discussed at a hearing of stakeholders – umbrella organisations, professional associations and international networks – covering selected issues related to the best interests of the child and his/her rights in parental separation situations and care proceedings. The Conference and the hearing of stakeholders will provide a wealth of information and ideas for the work of the expert committee, which will meet immediately after, here in Dublin. And let me profit of this opportunity to thank again the Irish authorities and the Irish presidency of the Committee of Ministers for their hospitality and their commitment to the topic.

Dear Minister,  
Ladies, Gentlemen,

It is our view that shielding children from the family law system is not the best way to protect them. It rather silences them.

Children who understand that they have rights, what are those rights, and who also understand the processes in which they are involved, are empowered children. They are reassured by the fact that they can rely on adults and on the justice system to respect their rights.

They grow up knowing that our society and our justice system are treating them with respect and dignity. That we are not failing them, and that we considering them as full members of our society.

I wish you a very fruitful discussion and I trust you will find the best ways of protecting children's rights through participation, by providing them with the right path through the justice system, and by making sure that their rights are upheld. As all of you have a vital role to play in making that happen.

And it is very telling, in this respect, that the conference will start with a discussion with young people with experience of care and family law proceedings.

Let's hear their voice.

Thank you.