



Building a Europe
for and with children

Construire une Europe
pour et avec les enfants

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Speaking notes of Ms Regína Jensdóttir

Council of Europe Coordinator for the Rights of the Child

The Journey of Justice

(Check against delivery)

At the Final Event of the Child-Friendly Justice - In Action Project

on Promoting Child-Friendly Justice for Child Migrants in the EU

2 December 2020

“The moral arc of the universe is long, but it bends toward justice” – (Martin Luther King, Jr.)

This quotation of Martin Luther King makes me think of the journey that child migrants embark upon to flee injustice, crimes, poverty, discrimination. They leave the comfort of their environment, their countries, their families and friends, seeking a better life on our continent which we proudly boast as being built on human rights, the rule of law and democracy. Are they really to blame for taking risks to live a better life and is it not our responsibility to ensure that our part of the universe leads them to the path of justice? Our moral arc is also theirs and once they set foot on our grounds our justice becomes theirs. So why are we still having to discuss this, why are we still needing to develop guidance? Are we still stuck in that bend where justice is in the shadows?

We all know that justice systems in Europe are **not always adapted to the specific needs** of children of any background and in any situation. I therefore feel that our justice systems have been significantly challenged with the migration crisis.

To tackle this issue, and since the adoption of the Child-friendly Justice Guidelines 10 years ago, the Council of Europe has produced **numerous standards, reports and recommendations** to help member states implement the guidelines. We have truly not been alone on this journey and I am ever so grateful for the trust that key partners such as Defence for Children have placed in these guidelines which today are really a brand or a trademark on its own. A brand that we all understand, we all believe in, we all trust.

Adopted in 2010, the **Council of Europe Guidelines on Child-Friendly Justice** provide us, including our member States, with a compass for navigating through the comprehensive right based criminal, civil and administrative justice systems and processes, including migration proceedings. They apply **equally to all children** – whether they are victims of crime or alleged perpetrators, or if they are involved in migration processes or a family law or other legal dispute. These Guidelines were prepared in **consultation with approximately 4,000 children**; to ensure that they are a practical tool that responds to real-life problems. A decade after their adoption, they have been translated into more than 25 languages, and are used as a benchmark by governments and authorities far beyond our continent.

Across the Council of Europe, **child-friendly justice has been mainstreamed and integrated into our work**. The Parliamentary Assembly has adopted a Resolution on child-friendly justice. The European Court of Human Rights has had recourse to the Guidelines and their principles in numerous judgments. Achieving a child-friendly justice for all children is a major theme covered by the work of the Commissioner for Human Rights, as well as a key priority for the current Council of Europe Strategy for the Rights of the Child (2016-2021).

The Guidelines have also been embraced by **the European Union** in their activities and taken into account when drafting their own standards in the field: including Directive 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings.

At **international level**, the recent **General Comment on children’s rights in the child justice system** by the UN Committee on the Rights of the child complements and strengthens our Guidelines and work and is highly welcomed.

We must recognise that **our member states are already working towards the improvement of justice for children**. The Strategy mid-term evaluation process revealed progress in this area, as states have taken steps to decrease the number of children deprived of liberty and to make child-friendly information available for children, including for children in migration.

From the adoption of the Guidelines, we have been **stepping down and zooming in** on more focused operational areas where weak spots are found. One of these areas is, undoubtedly, access to justice for **children in migration**, including their deprivation of liberty which continues to be entirely in the shadows of our justice systems. The Steering Committee for the Rights of the Child (**CDENF**), our pan European platform for regular exchanges of knowledge, good practices and experiences supports the implementation of policy measures to protect unaccompanied and other children in the context of migration.

A range of standards and publications is already available on this area.

Last year, the Committee of Ministers adopted a **Recommendation on Effective guardianship for unaccompanied and separated children in the context of migration**. Its explanatory memorandum will be adopted by the CDENF in 2021.

Our team has also been looking at the issue of respecting children’s rights when undergoing **age assessment procedures**. As a result of this work, a guide for policy makers and a report on policies, procedures and practices were published on this specific issue. The CDENF is also currently in the process of **adopting standards on human rights compliant age assessment**

procedures, aimed at policy makers and professionals, which will be adopted in 2021. We also developed a handbook for front line professionals on how to communicate with children in migration. Finally, a few weeks ago, on the occasion of the world children's day, EASO and the Council of Europe launched a **joint video animation for children on their rights in age assessment procedures**, which is already available in 4 European languages (English, French, Portuguese and Spanish) and will be translated into Arabic, Pashto, Dari, Tigrinya, Somali and Punjabi before the end of the year.

The Council of Europe has also been repeatedly calling to **end the practice of immigration detention of children** and has published a **guide for parliamentarians** for visiting places where children on the move are deprived of their liberty. We cannot forget to mention the practical guide developed with DCI on **monitoring places of detention**, which also applies to cases where children in migration are detained. In this context, under the auspices of the CDDH of the Council of Europe we have produced extensive guidance on both the legal and practical aspects of alternatives to immigration detention. We have not only produced comprehensive legal work in the field but also concrete practical guidance on how to successfully implement alternatives that actually work and protect children. This and other work is now accessible online in an interactive and engaging manner through both the HELP-course on *Refugee and Migrant Children* as well as the HELP-course on *Alternatives to Immigration Detention*.

The adoption of strong principles and frameworks for child-friendly justice systems is an important step forward. But the real test of our justice journey lies in their implementation which is where your "Child-friendly justice in action project", with the resulting Report and toolkit for professionals, comes in as a dynamic contribution to understand how we are shedding a light on good practices and setbacks in state justice systems for migrant children.

Let's be frank: despite all the progress achieved, the reality is, however, that children in Europe **continue to face difficulties** in accessing justice. European justice systems still present challenges in adapting to the needs of children and European countries have to expand their efforts to prioritise child-friendly justice in their agendas.

As your Report has found out, the child-friendly justice guidelines are only partially implemented as, in many respects, the child is seen and treated first and foremost as a migrant, which is a major obstacle to implement children's fundamental rights. The child-friendly justice standards are not yet sufficiently disseminated and known among professionals working with children in contact with the justice system.

Children **experience fear and shame** and they are among the least likely groups **to be heard or have their views taken into account** during judicial processes. Children are not well informed about their rights, the procedure and its possible outcomes.

When they come into conflict with the law, or arrive with migrant or refugee status, it is too often thought that they can be **"dealt with" by detention**. It is a reality that children in migration are still subjected to administrative detention, frequently in unsuitable conditions. These are children who have often suffered from the most terrible of situations. Our justice systems must help them to overcome such trauma, not compound it. We fully endorse your Report when affirming that no child, whether alone or accompanied, should ever be detained

for migration-related reasons. There is, quite simply, no excuse left: Instead of detention, alternative care models **can and must** be implemented for all children who come within our reach. In this we already have produced concrete guidance forward.

The **COVID-19 pandemic has added further challenges to this mix**, as it has led to the closure of courts across many member states, provoking delays in children's access to justice and hindering children's contact with their legal representatives. Confinement and other restrictive measures have sometimes led to a further isolation of children deprived of liberty, which include children in migration. Against the background of this new current reality, it remains right and possible to ensure that justice systems are child friendly. And, with this objective in mind, the Council of Europe has been and continues to be active in responding to and offering support to its member states during the pandemic.

All these major concerns that we have been dealing with during the past 10 years appear to have one thing in common: **the lack of awareness on the need – or the lack of knowledge on how – to put the child at the centre of justice procedures.**

Looking at the future, I can reassure you that the Council of Europe efforts will continue to face remaining obstacles on our long journey for children in migration, and the current Strategy for the Rights of the Child, due to conclude next year, will shed light on the best ways to meet this challenge.

In the years ahead, the Council of Europe stands ready to support all of its 47 member states through capacity-building and the development of tools and co-operation activities. We are currently in the process of preparation of a **new Strategy for the Rights of the Child**, for the period 2022-2027 and, in said Strategy, children's access to justice will remain a high priority. The next Strategy will be built on achieved and current work.

A **particular focus** will be placed on training for legal professionals, involving children, on capturing data on children's experience in the justice systems, on further promoting Barnahus model across Europe, and on supporting community-based legal and paralegal services for children, among others. In the area of migration, further work will be implemented by promoting the Guidelines on guardianship and of course our new recommendation on age assessment. In addition, legal and practical guidance on family based care for unaccompanied and separated children will be finalized, showcasing the way forward in implementing better models of care.

Children need justice systems that take account of their particular needs. Through the measures already implemented, and many more to come, our aim is to make accessible, empowering and child-friendly justice a reality across the board. Bringing the issues out into the open and discussing them in a clear, positive and sensitive manner paves the way to further progress.

This event is a valuable opportunity to do that. I cannot conclude but by congratulating you for the success of your project and wishing you a very fruitful discussion.