



Presidency of Georgia
Council of Europe
November 2019 – May 2020
Présidence de la Géorgie
Conseil de l'Europe
Novembre 2019 – Mai 2020



Child-Friendly Justice in Europe - Participation and Restorative Justice: Online event – 12 May 2020

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Introductory address

Nowadays, every child is likely to come into contact with the justice system in one way or another. For many of them, it is not a pleasant experience, because justice systems are designed for adults and they are rarely adapted to the needs of children.

Therefore it is utterly important to put the spotlight on children and their experience with the justice system. Children are heavily reliant on justice systems to protect and promote their rights. They unfortunately continue to face a wider justice gap than adults, given that they also have less knowledge and confidence than adults to claim their rights and seek redress. Their vulnerability also entails that they are most likely to experience injustice and suffer the greatest impacts when it occurs, especially when the justice system does not meet their needs.

In the past decades, several instruments, declarations and guidelines that promote access to justice and child-friendly justice have been adopted by international and regional bodies. These frameworks cover children in all aspects of the justice systems, in criminal, civil and administrative proceedings and include children that come into conflict or in contact with the law. Their principles empower children to enforce their rights; they advocate for the development of policies that address children's precarious situation in justice systems and they encourage justice professionals to implement child-friendly principles.

At the Council of Europe level, important Conventions have been adopted which contain provisions that guarantee the respect of children's rights in judicial proceedings. To name just a few, for example, the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (known as the Lanzarote Convention) and the Convention on preventing and combating violence against women and domestic violence (known as the Istanbul Convention) set up concrete obligations and measures that need to be taken by states. But perhaps the most relevant instrument remains the Child-friendly justice Guidelines, the implementation of which has been actively promoted since their adoption in 2010. The Guidelines took into consideration the recommendations of over 3.800 children in 25 Council of Europe member States. This instrument is valuable not only because it is specific to child-friendly justice but also because of its wide scope. It encompasses a series of principles and safeguards that uphold the rights of children that come into conflict or into contact with law before, during and after judicial proceedings.

More recently, in November 2018, the Committee of Ministers adopted a Recommendation concerning restorative justice in criminal matters. The involvement of children in restorative justice should be enabled and administered in accordance with United Nations and Council of Europe standards. The Recommendation clearly explains that children must be afforded special rights, including the presence of their parents, legal guardians or another appropriate adult whose role is to ensure that their rights are upheld. Special domestic regulations and legal safeguards that apply to children in traditional criminal justice proceedings shall also apply to the process by which a case is referred to restorative justice, and to the restorative justice process itself.

These tools to uphold the rights of the child in the justice system are not the outcome of isolated initiatives. Rather, they are the result of coordinated action of the Council of Europe and they reflect the commitment of the Organisation in furthering the rights of the child that -in one way or another- are involved in the justice system.

This is witnessed also by the fact that Child-friendly justice is one of the five priority areas of the Strategy of the Council of Europe for the Rights of the Child (2016-2021). The Strategy makes it clear that the rights of children involved in the justice system -including their right to be heard in any judicial and administrative proceedings affecting them and to access competent, independent and impartial complaints mechanisms when their rights are breached- need to be ensured for all children, without discrimination on any ground. The former Ad hoc Committee for the Rights of the Child (CAHENF) which had been entrusted with the task of ensuring the implementation of the Strategy had been particularly active in, among others, developing standards and tools to protect the rights of migrant children during migration processes. The policy work of CAHENF in this field took into account the difficult experiences of unaccompanied and separated children and was driven by the need to put in place comprehensive and child-friendly measures for them in open accommodation facilities to ensure their protection and assistance of. It is in this spirit that the Committee of Ministers adopted in 2019 the first -at international level- instrument dedicated to ensuring an effective guardianship for unaccompanied and separated children in the context of migration. The fifth principle of this Recommendation addresses the rights of these children to information, access to justice and remedies, including child-friendly complaint mechanisms. The same need for

establishing child-friendly approaches in the context of migration is guiding the intergovernmental work on the age assessment procedures.

In addition, more and more family relationships break down or are put under strain and often they turn into legal disputes. Children are thus placed in very difficult situations. In family matters, particular attention should be paid to the assessment process of the best interests of the child, which should be the primary consideration. In this context, the recently established Steering Committee for the Rights of the Child (CDENF), which has succeeded the CAHENF, will seek, jointly with the European Committee for legal cooperation, to develop tools and standards in supporting the determination of best interest of the child in parental separation and child-care proceedings.

Moreover, child friendly justice and restorative justice principles will underpin the work of the CDENF in all areas including in actions addressing the difficult topic of violence, to guide states on systems for professionals to report violence against children, but also in the context of measures and interventions aimed at preventing peer violence and sexual abusive behaviour by children.

These are just a few examples of the important work undertaken by the Council of Europe, including the work of the former CAHENF and its successor, the CDENF, that are specifically aimed at improving the situation of hundreds of children in contact with the justice system or directly involved in judicial proceedings.

The question that inevitably arises is "Are we there yet?". No.

It is true that many challenges remain in our paths. The full realisation of a child friendly justice requires more efforts. Children do not have to "earn" or "deserve" their rights in the justice system. They are fully fledged right holders and should be treated as such. Child-friendly justice is more than a set of provisions. It is about fostering greater respect for their rights and treating them with dignity, respect, care and fairness. There may not always be one correct solution to a problem that children face in the legal system. Rather, the aim of child-friendly justice is to provide a range of strategies that can be used to adapt a legal proceeding to the particular circumstances of the child or children involved. The active role and behaviour of all professionals in contact with children involved in judicial proceedings are a key factor in ensuring that justice is "child-friendly", in addition to child-friendly hearing locations, age-appropriate information, effective support throughout proceedings, properly implemented procedural safeguards, and rehabilitation and support processes after proceedings.

This is why any initiative to discuss this topic is of great importance in order to follow up on commitments and to exchange on how to make progress to ensure that justice systems better support children. It is paramount to ensure that children, especially children who have already experienced or witnessed distressing situations, do not suffer from injustice. It is equally important that justice systems of all 47 member states do not fail children, as such injustice inevitably leads to worse outcomes for their recovery, development, and future engagement, as full members of the society.

At the intergovernmental level, rest assured, we will continue our efforts to work towards bridging this justice gap and promoting that member states' justice systems understand and respect their rights while taking fully into account their needs and vulnerability.

In conclusion, I would like to leave as food for thought a quote, attributed to Albert Camus which could reflect the meaning of a child-friendly justice system through the lens of a child¹:

Don't walk behind me, I may not lead.

Don't walk in front of me, I may not follow.

Just walk beside me and be my friend.

¹ See the Foreword of the Child-friendly Guidelines of the Council of Europe.