



CONFERENCE OF INGOs  
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CONSEIL DE L'EUROPE

**Civil Society Committee  
on the Rights of the Child (CSC-RC)**

**Comité de la société civile  
sur les droits de l'enfant (CSC-DE)**

**2022 June 21<sup>st</sup> 9:30-12:30 Webinar**

**Evaluation and determination of the best interests of the child in parental separation and care proceedings**

Exchange of views and knowledge among specialists and professionals

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Tuesday June 21st (9:30-12:30 CET).

**General conclusion**

**by Michel Grangeat, Pr. Em. Univ. Grenoble Alpes – France-  
Chair of the CSC-RC of CINGO**

First of all, I would like to express my gratitude to the speakers whose so valuable inputs have shed lights on new issues and approaches regarding the evaluation and determination of the best interests of the child in parental separation and care proceedings. I am particularly grateful to Seamus Carroll, the chair of the Committee of experts on the rights and the best interests of the child in parental separation and in care proceedings (CJ/ENF-ISE), for his enthusiastic support and for the way in which he allowed the views of Civil Society to be included in the reflections and decisions of this intergovernmental expert group.

Then I would also like to congratulate the members of the Conference of INGOs and in particular Gerhard Ermisher, the president, the members of the CSC-RC and particularly the facilitators of the parallel workshops and panel discussions, and, finally, the staff of the NGO-unit, in particular Lusine Sahakyan and Maxime Mirot for their positive and efficient cooperation in designing and carrying out this webinar.

Many thanks to the participants, as well.

To conclude this webinar, I would like to highlight some important issues.

**Q1-** GC 14 and 20 remain relevant, and must be more disseminated even if they were discussed and published several years ago.

Young children and adolescents must be protected in their needs and rights and, at the same time, they must be supported as citizens of the future.

The maturity of adolescents must allow them to be better heard and to have their opinions better taken into account, in all areas concerning their lives.

Nevertheless, means must be developed to try to take into account the views of very young children.

**Q2-** The situation of very young children is often a concern, especially when parents separate. In our society, where the roles and functions of each parent tend to be more balanced than a few years ago, parental separation should preserve the relationship between the child and each parent.

In awarding custody and contact time, the court should give effect to the child's right and the principle that a child should have as much direct contact with each parent as is consistent with his or her best interests.

Sufficient time, and preferably an equivalent amount of time with each parent, should be allocated to enable the child to maintain and develop a meaningful relationship with each parent, in accordance with the best interests of the child.

**Q3-** The presentation and the intervention of the INGOs highlight the detrimental consequences for the child to be separated from their siblings and peers. They emphasise the distinction that has to be made between children suffering of the consequences of poverty on family life and those who are at physical or mental risks due to their parents disorders.

Child protection authorities should keep siblings together and seek to maintain the child's family and other ties to the greatest extent possible.

In case of separation, the State must guarantee that the situation of the child and his or her family has been assessed by a multidisciplinary team of specialised and well-trained professionals with appropriate judicial involvement and parental support, ensuring that no other option can fulfil the child's best interests.

Age appropriate care for children experiencing state care and parental separation should be maintained up to 18 and support should continue as needed into young adulthood. Increasing self-determination and choice for older children and adolescents should not mean ignoring their rights as children and as young people entering adulthood often with additional stresses and disadvantages.

**Q4-** The older a child is the more weight is to be given to child's own views when making both the best interests assessment and determination.

The fact that the child is very young or in a vulnerable situation (e.g. has a disability, belongs to a minority group, is a migrant, etc.) does not deprive him or her of the right to express his or her views, nor reduces the weight given to the child's views in determining his or her best interests. The adoption of specific measures to guarantee the exercise of equal rights for children in such situations must be subject to an individual assessment which assures a role to the children themselves in the decision-making process, and the provision of reasonable accommodation and support, where necessary, to ensure their full participation in the assessment of their best interests.

National law should provide for a range of child-friendly mechanisms or procedures by means of which the views of the child may be effectively expressed and heard. This should include State support to youth groups aiming to collective action and advocacy (ex. young people in care or care leavers groups).

In order to avoid undue stress and discomfort, the hearing of a child's views should take place in a child-friendly environment

The hearing of a child's views should be conducted by specifically trained and specialized professionals who are sensitive to children's behaviour and expression and work in a multi-disciplinary manner.

Safeguards should be in place to ensure that any expressed views are those of the child and are not the result of undue influence or duress.

**Q5-** Children are rights holders and their rights must be upheld so that they can achieve their potential as well-adjusted adults. Parental separation is a fact of life for many people and states must increase the funding allocated to family and child justice systems, also as a means to ensure confidence in civil and judicial authorities.

Children must be protected and empowered to claim their rights, and the capacity of duty-bearers to fulfil their role must be enhanced. Children's right to be heard must be better respected in all situations of parental separation and care.

Child-friendly information should be provided to children in order to enable them to decide whether to exercise the right to be heard. Adaptation should be made according to the child's development (e.g. young adolescent or adolescent close to adulthood).

States should ensure that the child has access to independent support and advice and, where appropriate, to legal representation separate from the other parties throughout the proceedings.

The decision should contain a clear and transparent reasoning, explaining how the relevant factors have been assessed, verified and assigned weight; it should also explain how the views of the child have been heard and taken into consideration, wherever possible in a child-friendly language.

**Q6-** Positive change in family relationships can happen through a (new) experience that can happen in a trusting relationship. Professionalisation of social workers is a key factor in the process given that the latter are authorized to refer children and families to various services, to monitor the process and thus, to set the stage for a meaningful collaboration between parents and professionals.

States should ensure that a range of services are in place to strengthen and stabilise families and ensure the welfare of children. Where necessary, the scope of pre-existing services should be strengthened to address a range of families with broader characteristics.

In parenting support programmes or services, where it is in accordance with the BIC, due consideration should be given to the willingness and capacity of each parent:

- to care for and meet the needs of the child;
- to encourage and allow the child to enjoy meaningful and continuing contact with the other parent, and, where appropriate, siblings and extended family;
- to join parents peer support and advocacy groups offering safe spaces to improve parental skills and contribute to the assessment of BIC

Before concluding this webinar, I would like to stress the importance of time and in particular timeliness in the assessment and determination of the best interests of the child in separation and parenting proceedings.

Time and timeliness represent overarching issues that could form the basis for improving the practices and approaches of adults who are in charge of the assessment and determination of the BIC.

Some recommendations need to be emphasise:

**Judicial decision making:** In proceedings affecting a child the judicial authority shall act speedily to avoid any unnecessary delay and procedures shall be available to ensure that its decisions are rapidly enforced.

**Judicial decision reviewing:** The decisions taken should be reviewed at reasonable intervals as the child develops and his or her capacity to express his or her views evolves. The BIC determination should indicate a mechanism for periodic review of the measures in the light of the child's evolving capacities and development..

**Impact on the child's present and future situation:** The best interests determination, which should be based on the best interests assessment, should include an assessment of the likely impact on the child's present and future situation, giving due consideration to the rights and needs of the child, to the child's transition to adolescence, and to adulthood and independent life.

**Mediation and preventive actions:** Mechanisms for reaching agreement should be available in advance of the court decision, including the expression of the child's views. Child participation is essential, both in cases of parental separation or placement, involving the child and family members.

**Another crucial point is the financial issue.** The Committee on the Rights of the Child has just published the Outcome Report of the 2021 Day of General Discussion on Children's Rights and Alternative Care. Amongst many crucial recommendations, it declares that 'States should substantially increase investment to ensure the availability of a trained, qualified, accredited, mandated and supported social service workforce to work directly with children and families.'

For us, this financial support for the quality of the social service workforce is fundamental.

Member States should ensure that sufficient human and material resources are allocated to the family justice system and social service institutions. Specific attention should be paid to preventive actions and early interventions. Even in difficult economic situations, these allocations should be maintained or increased if necessary. These resources should be channelled and monitored to better support the day-to-day interventions with children and families and to support multidisciplinary professional perspectives and methods.

I cannot finish without a thinking to the Ukrainian children and Ukrainian people who are suffering from the war in their villages and cities, and their whole country. As the Conference of INGOs we are in solidarity with them, as well as the people in Russia and Belarus who protest against an unjust war, risking their freedom, health and lives in defending our common values.

And finally, on behalf of CSC-RC members, I would like to invite you to join the committee and promote the rights of children, from infants to adolescents, and especially those who are separated

from parents. If your organisation is already part of CINGO, you just need to contact us. In other cases, do not hesitate to join one of the many INGOs that represent civil society at the Council of Europe.

Thanks for attending.