



# *Can anyone hear me?*

.....  
***Participation of children in juvenile justice:***

*A manual on how to make European juvenile justice systems child-friendly*  
.....







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The International Juvenile Justice Observatory (IJJO) is an international organisation based in Brussels and recognised as a foundation of public interest. It works as an inter-disciplinary forum for sharing information, communication, debates, analysis and proposals focused on juvenile justice around the world.

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# Foreword

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The European Commission states that approximately 1 million children face criminal justice proceedings in the EU each year (around 12% of the total).<sup>1</sup> In the context of a study related to children involved in criminal, civil and administrative proceedings, the Commission has gathered data on child justice and its reports show wide variability in practice and procedure between States.<sup>2</sup>

While at the international level the United Nations Convention on the Rights of the Child<sup>3</sup> (1989) is the instrument of reference regarding the protection of children's rights, including those in conflict with the law, at the European level, the Council of Europe Guidelines on Child-Friendly Justice<sup>4</sup> play an important role despite their non-binding character. Several other instruments have been developed by the Council of Europe (e.g. *The European Rules for juvenile offenders subject to sanctions or measures*<sup>5</sup>) and the European Union, notably thanks to the EU Agenda on the Rights of the Child<sup>6</sup> adopted in 2011, in an attempt to regulate and harmonise children's rights and juvenile justice systems in Europe.

This recent increase in protection is an ongoing process and the rates of implementation vary between Member States. Support and assistance for all stakeholders and actors on the rights of the child is necessary for a full implementation of EU legislation and Council of Europe Guidelines. A concrete improvement of juvenile justice systems in Europe can only happen through the effective participation of children in the procedures concerning them, but this cannot be done without proper training and knowledge about children's rights, development and needs.

In December 2015, in the context of the EU Agenda on the Rights of the Child, the European Parliament agreed with the European Council on the text of a **Directive on procedural safeguards for children suspected or accused in criminal proceedings**.<sup>7</sup> The EU Directive introduces measures designed to safeguard a package of rights in a manner consistent with the reasoning of the European Court of Human Rights<sup>8</sup> and the *Guidelines on Child-friendly Justice*. The Directive's purpose is "to establish procedural safeguards to ensure that children who are suspected or accused in criminal proceedings are able to understand and follow those proceedings, to enable such children to exercise their right to a fair trial and to prevent re-offending by children and foster their social integration" (Recital 1).

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1 Commission Staff Working Document, 2013:  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0480:FIN:EN:PDF>

2 Summary of contextual overviews on children's involvement in criminal judicial proceedings in the 28 Member States of the European Union, European Commission, 2015, available at: <http://www.childreninjudicialproceedings.eu/docs/EU%20Summary.pdf>

3 UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p.3.

4 Council of Europe: Committee of Ministers, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*, 2011.

5 Council of Europe: Committee of Ministers, *Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures*, 5 November 2008, CM/Rec(2008)11.

6 European Commission (2011) Communication from the Commission to the European parliament, the Council, the Economic and Social Committee and the Committee of the Regions. *An EU Agenda for the Rights of the Child*.

7 *Directive of the European Parliament and the Council on procedural safeguards for children suspected or accused in criminal proceedings*, 16 December 2015, 2013/0408 (COD).

8 The ECtHR which has stated that the right to a fair trial under Article 6 requires that: "a child charged with an offence is dealt with in a manner which takes full account of his age/level of maturity and intellectual and emotional capacities and that steps are taken to promote his ability to understand and participate in the proceeding" (T v. UKT v. UK, No. 24724/94, 16 December 1999, at [84]).

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The Directive provides a package of rights that children are to enjoy at every stage of the criminal justice system, including most importantly: the mandatory right to be assisted by a lawyer and the right to free legal aid; the right to an individual assessment; the rules on questioning; the provision for the child to take part in the proceedings; the compulsory special training for judges, law enforcement authorities and prison staff, lawyers and others who come into contact with children in their work; and the provisions of detention, under which children should be held on remand only where there is no alternative. In such cases, it must be ensured that the children are held separately from adults, except where it is in their best interests not to do so.

Regarding the rights of the child to be heard and to participate effectively in judicial proceedings, the Directive rises up to the level of protection provided by Article 6 ECHR<sup>9</sup> (the right to a fair trial) and Articles 47 and 48 of the EU Charter of Fundamental Rights<sup>10</sup> (Right to an effective remedy and to a fair trial; Presumption of innocence and right of defence). Article 16 confirms a child's right to be present at, and participate effectively in, their own trial. This includes giving them the opportunity to be heard and to express their views. If a child is not present at their trial, the Directive provides the right to a new trial, or another legal remedy, in accordance with and under the conditions set out in the Directive on the presumption of innocence.<sup>11</sup> Moreover, the Directive introduces a requirement that appropriate measures should be taken to ensure that children are "always treated in a manner which protects their dignity and which is appropriate to their age, their special needs, their maturity and level of understanding, and bearing in mind any communication difficulties they may have" (Article 13 (2)). This Article ensures that child-friendly communication should become a requirement whenever a child is involved in a judicial procedure.

The Member States of the EU are bound by the legal obligations set forth in this Directive. Moreover, the Member States must comply with the Directive within 36 months of its entry into force.<sup>12</sup> The role of the IJJO in this context is to support Member States in this effort.

The International Juvenile Justice Observatory (IJJO) is an international organisation based in Brussels and recognised as a foundation of public interest. It works as an inter-disciplinary forum for sharing information, communication, debates, analysis and proposals focused on juvenile justice around the world. Through the European Council for Juvenile Justice (ECJJ), the IJJO formal network and think tank for the European region, the IJJO participates in the improvement of juvenile justice in Europe. The ECJJ, of which all partners of the Improving project are members, has authored several publications, including a European Research on Juvenile Restorative Justice, four Green Papers and a White Paper on *Improving Youth justice Systems during a time of Economic Crisis* (2013), on which the Improving project is based.

The main objective of the project "**Improving juvenile justice systems in Europe: Training for professionals**" is to improve juvenile justice systems in Europe and to understand where they can be made more efficient and child-friendly, focusing on a better implementation of the Guidelines of the Council of Europe on Child Friendly Justice and other international and European standards. Led by the IJJO, the project is based on the recommendations made in the ECJJ White Paper on "**Improving Youth justice Systems during a time of Economic Crisis**" (2013). The White Paper highlights the need for more action to be taken at a local and national level, in particular, the need for more training of professionals and to form organised groups of stakeholders at a national level. Moreover, it is recommended that juvenile justice professionals should acquire specific knowledge concerning children's rights, international and European standards and

9 C.f. footnote 8.

10 European Union, Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02

11 <http://data.consilium.europa.eu/doc/document/ST-13471-2015-INIT/en/pdf>

12 It is expected that the Directive will enter into force in the course of 2016.

communication with children in order to foster their re-integration.

Therefore, the project intends to put the voice of the child at the heart of juvenile justice systems by providing information, knowledge and training to juvenile justice national authorities and staff working with juvenile offenders at a European level. The project focuses on improving juvenile justice national systems and exchanging promising practices concerning juvenile offenders subject to sanctions or measures. This will promote a better implementation of international standards concerning children in conflict with the law. A training package composed of this Manual, a Toolkit for Professionals and a series of videos featuring young people in conflict with the law has been developed, and has been adapted into an online training course available on the International School of Juvenile Justice, the IJJO e-learning platform.

Through the two publications of this project, the Manual and the Toolkit, we expect to participate in the **improvement of know-how, knowledge and good practices** among juvenile justice stakeholders, with the underlying goal of effectively listening to the voice of children in conflict with the law.

The momentum created by the new Directive will certainly be an asset to the sustainability of the project's results. In this context, the IJJO will endeavour to help Member States with the implementation of the Directive through continuous dissemination of the project's training package, including the online training course, as well as tailor-made programmes of technical assistance.

The project also foresaw the creation of national coalitions in the partners' countries as an important means to provide support and assistance to Member States in the implementation of the Directive, particularly Art. 19.<sup>13</sup> These national coalitions involve important stakeholders on the rights of the child and juvenile justice systems, and constitute a pool of experts and advocacy actors at national level that can act together to disseminate knowledge and good practices and assist national authorities in the implementation of international norms.

Consequently, we expect these publications to be major assets in the implementation of the Directive, particularly the provisions regarding the right to be heard and to participate effectively in the proceedings. They will provide law enforcement authorities, staff of detention facilities, the judiciary, prosecutors and lawyers with useful knowledge, skills and tools to communicate with children in an appropriate manner, which will allow them to participate fully in the proceedings and to have their voices heard. These are necessary prerequisites for children to trust the justice process, develop appropriately and avoid recidivism.

**Dr. Francisco Legaz Cervantes,**  
Chairman of the International Juvenile Justice Observatory

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13 Article 19 of the Directive states that:

'Member States shall ensure that law enforcement authorities and staff of detention facilities who deal with cases involving children receive specific training to a level appropriate to their contact with children with regard to children's legal rights, appropriate interviewing techniques, child psychology, and communication in a language adapted to the child'.



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# About this Manual

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## INTRODUCTION

### INTERNATIONAL CHILDREN'S RIGHTS IN JUVENILE JUSTICE

In 2010 the *Guidelines of the Council of Europe on Child-friendly Justice* were published. These Guidelines aim to ensure that in all proceedings in which children are involved 'all rights of children, among which the right to information, to representation, to participation and to protection, are fully respected with due consideration to the child's level of maturity and understanding and to the circumstances of the case' (para. I.3). The Guidelines provide a comprehensive overview of child-friendly practices to be implemented in criminal, civil or administrative law.

The main objective of the project "**Improving juvenile justice systems in Europe: Training for professionals**" is to improve juvenile justice systems in Europe and to understand where they can be made more efficient and child-friendly, focusing on a better implementation of the *Guidelines of the Council of Europe on Child-friendly Justice* and other international and European standards. The project is based on the recommendations made in the IJJO's White Paper entitled "*Improving youth justice systems during a time of economic crisis*" (Moore, 2013). The White Paper highlights the need for more action to be taken at a local and national level, and in particular, the need for more training of professionals and to form organised groups of stakeholders at a national level. Moreover, it is recommended that juvenile justice professionals acquire specific knowledge concerning children's rights, international and European standards and communication with children in order to foster their re-integration. In this training, special attention will be paid to the right of children in conflict with the law to be heard and the improvement of communication with children by professionals in the juvenile justice process.

In 2015, the European Parliament agreed with the European Council to adopt the **Directive on procedural safeguards for children suspected or accused in criminal proceedings**.<sup>14</sup> The EU Directive introduces measures that are consistent with the reasoning of the European Court of Human Rights and the *Guidelines on Child-friendly Justice*. Article 19 of the Directive states that:

'Member States shall ensure that law enforcement authorities and staff of detention facilities who deal with cases involving children receive specific training to a level appropriate to their contact with children with regard to children's legal rights, appropriate interviewing techniques, child psychology, and communication in a language adapted to the child'.

The Member States of the EU are bound by the legal obligations set forth in this Directive. Moreover, the Member States must comply with the Directive within 36 months after its entry into force.

This Manual has the purpose of providing training to professionals working with children in conflict with the law and is specifically geared towards improving their communication with children. In this Manual, topics relating to children's legal rights, interviewing techniques, communication, child psychology and pedagogical skills will be touched upon in the various chapters. The Manual aims to provide information and to give further guidance on the implementation of the provisions of the new EU Directive. Information is provided with regard to the content of the Directive and how to implement the Directive in congruence

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<sup>14</sup> Directive of the European Parliament and the Council on procedural safeguards for children suspected or accused in criminal proceedings, 16 December 2015, 2013/0408 (COD). It is expected that the Directive will be adopted and enter into force in the course of 2016.

with other relevant international and European standards in juvenile justice. The manual can also be used for the training of professionals in the field of restorative justice and mediation, in or around the juvenile justice system.

## STRUCTURE OF THE MANUAL

The Manual focuses on promising practices and techniques related to child-friendly justice. The aim of the Manual is to disseminate knowledge on, and promote respect for, the rights of the child in conflict with the law. The Manual covers the following topics:

- International and European standards in juvenile justice and adolescent development.
- General requirements; specific proceedings for children in conflict with the law, the role of legal or other assistance and the role of parents in juvenile justice.
- Effective participation; the right to information and the right to be heard.
- Communication skills; how to communicate effectively with children in conflict with the law.
- Follow-up and support; incorporating the views of children in conflict with the law in decisions and clarifying decisions.

In every chapter **the implementation of the relevant international and European standards in practice** will be attended to. Basic requirements are given as to how to implement the standards in the different phases of the juvenile justice process. The phases that will be distinguished are: the phase of arrest and police interrogation; the phase of court proceedings and trial; the phase of disposition; and the phase of pre- and post-trial detention.

**Good practices** are presented in the Manual that relate to the topics discussed in that particular chapter. These practices serve as illustrations of how certain principles or legal provisions can be implemented in practice and were provided by the partner organisations. Therefore, these examples come from the countries of the partner organisations taking part in this project. These countries are: Austria, Cyprus, Czech Republic, Finland, France, Ireland, Italy, Latvia, Portugal and Spain. The partner organisations participating in this project are all members of the European Council for Juvenile Justice.<sup>15</sup>

## HOW TO USE THE MANUAL?

This Manual was developed as part of the training programme “*Improving juvenile justice systems in Europe: Training for professionals*”. The Manual acts as a practical guide for professionals working with children in conflict with the law. Throughout the Manual, the relevant sections of international and European standards are presented in boxes. Short summaries are also included in each chapter.

In addition to this Manual, the **training package** consists of a Toolkit for trainers and video material. The three components of the training package should be used together in a training or national discussion day. The Manual is the textbook for participants and the Toolkit is the guide for trainers. The videos were developed by the Northern Ireland based NGO Include Youth to illustrate several topics from the

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<sup>15</sup> The partner organisations in this project are: Providus (Latvia), University College Cork (Ireland), Fundación Diagrama (Spain), Ministry of Justice (Portugal), Hope for Children UNCRC (Cyprus), Finnish Forum for Mediation (Finland), Ludwig Boltzmann Institute of Human Rights (Austria), Ministry of Justice Transparency and Human Rights (Greece), Rubikon Centrum (Czech Republic), Istituto Don Calabria (Italy). Association Diagrama (France) and Include Youth (UK).

perspective of young people themselves. Several assignments in the Toolkit relate to the videos. The videos can be found here: <http://www.oijj.org/en/improvingjjs-video>

## **BACKGROUND VIDEO MATERIAL**

Include Youth is a non-governmental organisation in Northern Ireland that actively promotes the rights and best interests of disadvantaged and vulnerable young people. Include Youth specialises in two main areas, Youth Justice and Youth Employability. As part of this project, Include Youth was asked to bring together focus groups of young people with experience of the justice system and talk to them about their experiences of engaging with professionals, some of the challenges and frustrations that they faced, examples of positive engagement and tips for professionals.

Since July 2015, Include Youth has been running weekly focus groups in Woodlands Juvenile Justice Centre in Northern Ireland, with the aim of building relationships with the young people in custody and identifying young people who might be interested in talking on video about their experiences. Groups of young people on Include Youth programmes and young people engaging with Alternatives Northern Ireland were also talked to.

Three young people from Woodlands Juvenile Justice Centre were keen to be involved in the video and their names were changed and images anonymised as part of this agreement. During the sessions with these young people it was important to build rapport and talk to them at their level, showing respect and getting to know them. As the weeks' continued, they were much more vocal and relaxed and openly talked about their experiences.

As can be seen in the video, the juveniles talk about their experiences with the police, judges, staff in the Juvenile Justice Centre and youth workers. Some of this engagement has been negative and they talk about feeling disrespected and verbally abused. Ms. Danielle Boyd, a staff member at Woodlands Juvenile Justice Centre, agreed to be interviewed for the video and explained how the staff work with the young people in a participatory way and aim to build positive relationships.

Include Youth has close links and works in partnership with a number of community-based organisations, including Alternatives Northern Ireland. This organisation offers restorative justice programmes and works closely with the young people, the police and communities. Gareth Scullion, a 21-year-old young person, agreed to speak on video about his experiences of restorative justice in Northern Ireland, along with a member of staff, Ms. Kelly Gill, who is a 'school worker' for Alternatives. Gareth came into contact with the police a few years ago and he talks openly on the video about his past experiences of the justice system and how this has impacted on him.

Blair Anderson is 21 years old and is an ex-participant of Include Youth's Employability programme. She comes from a care background and openly talks about her experiences with the police and how this has impacted on her future. As part of the focus groups with young people, a day was organised in November 2015 to hear Blair talk about her experiences and from the police themselves. Approximately 50 young people participated in this session. Following the focus group in November 2015, Blair has been asked by the police to attend training sessions and workshops to speak alongside them about her experiences so that other members of the police and new recruits can learn from her.

Blair emphasises the importance of young people being listened to and being given a chance, especially those from a care background who are over-represented in the juvenile justice system in Northern Ireland.

## PURPOSE OF THE MANUAL

The Manual presents a compendium of techniques related to knowledge concerning children's rights in juvenile justice, child-friendly justice, adolescent development and skills related to working in groups, fostering child participation and communicating with children in conflict with the law.

## OBJECTIVES OF THE TRAINING

It is important that the Manual is accompanied by a face-to-face **training session or national discussion day**, during which knowledge is disseminated and skills can be practiced. The purpose of the training is threefold:

1. to familiarise the participants with the international and European children's rights framework relating to juvenile justice;
2. to make professionals aware of the importance of child participation in juvenile justice and;
3. to teach professionals skills to enhance child participation.

The manner in which the objectives of the training can be met differ, according to the local situation and the target group of the training. The first two objectives do not necessarily have to be addressed in a classical training session, but can also be part of a national discussion day. This general day of discussion could focus on a larger audience of stakeholders and professionals who work with children in conflict with the law. The third objective is preferably addressed in a more practical and small-scaled training session or workshop.

## KNOWLEDGE AND SKILLS

In order to contribute to juvenile justice systems in Europe that respect the rights of children and have a particular focus on child participation in juvenile justice proceedings, it is important that the professionals involved acquire certain knowledge and skills.

### *The knowledge professionals need*

Knowledge about:

- core human rights, such as the right to a fair trial, the right to information and the right to be heard;
- key concepts such as procedural safeguards, child participation and adolescent development;
- the international and European children's rights instruments and their value;
- the design of specific proceedings for children in conflict with the law;
- the role of child participation in the different phases of the juvenile justice process.

## ***The skills professionals need***

Skills in:

- having an effective conversation with a child who is in conflict with the law, during which the child is able to give his or her views;
- listening to children in conflict with the law;
- conversation techniques to enhance the participation of children in conflict with the law;
- explaining procedures and decisions to children in conflict with the law;
- adapting the setting and atmosphere in which a conversation with a child in conflict with the law is to be held;
- involving parents in the juvenile justice process.

### **SUMMARY**

Main purpose of the training package:

To make juvenile justice systems in Europe more efficient and more child-friendly, by focussing on the right of juveniles children in conflict with the law to be heard and their effective participation in the juvenile justice system.

Objectives of the training package:

1. familiarising professionals with the international and European children's rights framework regarding relating to juvenile justice;
2. making professionals aware of the importance of child participation in juvenile justice and;
3. teaching professionals skills to enhance child participation.

DISCLAIMER: Any use of the pronoun “he” in this Manual refers to the child in conflict with the law, regardless of their gender.





## CHAPTER 1

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# International and European standards in juvenile justice

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# Chapter 1. International and European standards in juvenile justice

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This chapter provides an introduction to the core theme of this training manual: the **participation of children in conflict with the law in juvenile justice proceedings**. Section 1.1 sets out the importance of the right to be heard in juvenile justice and the development of child-friendly justice in Europe. Section 1.2 gives an overview of the relevant international standards in juvenile justice and Section 1.3 focuses on the relevant European standards. Section 1.4 touches upon some key issues concerning the development of adolescents, in relation to the juvenile justice system.

## 1.1 PARTICIPATION OF CHILDREN IN CONFLICT WITH THE LAW IN JUVENILE JUSTICE PROCEEDINGS

### THE IMPORTANCE OF THE RIGHT TO BE HEARD IN JUVENILE JUSTICE

According to Article 12 of the UN Convention on the Rights of the Child (CRC), children have the right to be heard in all matters affecting them. Naturally, this provision applies to children suspected or convicted of committing a criminal offence.

The right to be heard can be seen as an important participatory right emanating from the CRC. The UN Committee on the Rights of the Child (CRC Committee) has further defined the term participation.

#### GENERAL COMMENT NO. 12, PARA. 3

Since the adoption of the Convention in 1989, considerable progress has been achieved at the local, national, regional and global levels in the development of legislation, policies and methodologies to promote the implementation of article 12. A widespread practice has emerged in recent years, which has been broadly conceptualized as “participation”, although this term itself does not appear in the text of article 12. This term has evolved and is now widely used to describe ongoing processes, which include information-sharing and dialogue between children and adults based on mutual respect, and in which children can learn how their views and those of adults are taken into account and shape the outcome of such processes.

In the definition of the term participation, the CRC Committee places emphasis on the voices of children. Children do not only have the right to express their views, but they should also be provided with feedback about how their views have had an effect on the decision-making process. Moreover, the Committee states that: ‘Listening to children should not be seen as an end in itself, but rather as a means by which States make their interactions with children and their actions on behalf of children more sensitive to the implementation of children’s rights’ (General Comment No. 5, para. 12).

As well as stressing the importance of child participation from a children’s rights perspective, academic research has also shown the importance of participation for children themselves. Research by Kilkelly (2010), in preparation of the *Guidelines on Child-friendly Justice*, indicates that children who are involved

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in the justice system do not always feel respected and heard by adults. Moreover, they often have little faith or trust in the authorities because they feel as though they are not respected and their special needs are not taken into consideration. Furthermore, children have indicated that they value being heard directly, for example by a judge, because they can then be sure that their views are not misinterpreted. Children also feel that better decisions can be reached when judges (or other professionals) have a more complete understanding of what is happening in their life, and this can be accomplished by hearing the child directly (Cashmore & Parkinson, 2007; Kilkelly, 2010).

Besides the value that children attach to being heard in court, research also highlights the importance of hearing the views of children because it can have several other positive effects. Firstly, active participation in decision-making processes may help children understand and accept the final decision made. For example, the judges' decision is better accepted when the reasons for taking the decision are explained and consequently understood by the child (Cashmore & Parkinson, 2007; Saywitz et al., 2010). This is also the case for decisions that are taken in institutions where children are deprived of their liberty. Fair and consistent treatment increases feelings of safety and reduces feelings of stress among children in conflict with the law, which positively influences their motivation for treatment and reintegration programmes (Van der Laan & Eichelsheim, 2013). Secondly, participation can have a positive effect on children because it helps them grow up as responsible adults (Saywitz et al., 2010). When children learn to participate in decision-making, their reasoning skills and ability to express their views improve (Fitzgerald et al., 2009; Freeman, 1997).<sup>16</sup> Participation of children is also an essential element of restorative justice and mediation practices and mediation can also be regarded as a tool to enhance children's participation (see e.g. the example from Finland below).

#### SCHOOL MEDIATION IN FINLAND

The Finnish Basic Education Act and Core Curriculum (1998) are giving strong support for increasing participation of children in their schools. The aim is to teach children social skills by mediation. School mediation is seen as learning situation where children learn not only to manage conflicts but also to use their right of participation and being heard. Using mediation at schools ties the school community with the mediation practices used in the rest of the society, such as victim-offender mediation (VOM). The mediation method has been implemented to Finnish schools since 2000 by VERSO-programme under the Finnish Forum for Mediation (NGO).

### THE DEVELOPMENT OF CHILD-FRIENDLY JUSTICE IN EUROPE

In general, international juvenile justice standards recognize the child in conflict with the law as a human being with the right to a fair trial, but also with a special status requiring child specific treatment. This approach can be recognized in article 40 CRC, the core juvenile justice provision.

Also, at the European level, the case law of the European Court of Human Rights (ECtHR) contributes to the advancement of children's rights in juvenile justice systems. In particular, the use of articles 12 and 40 of the CRC has had a clear impact on the case law of the ECtHR. Likewise, the CRC Committee states in General Comment No. 10 on juvenile justice that there is great potential for them to take note of the case law of the ECtHR (see Kilkelly, 2015).

<sup>16</sup> A study conducted in Switzerland confirms that the participation of children and parents is one of the success factors of (pedagogic) measures. In this study 29 different empirical studies of various countries (Switzerland, Germany, Great Britain, the Netherlands and the USA) were compared. For more information see: [http://www.efk.admin.ch/images/stories/efk\\_dokumente/publikationen/evaluationen/Evaluationen%20\(37\)/10372BE\\_Rapport\\_final\\_publication.pdf](http://www.efk.admin.ch/images/stories/efk_dokumente/publikationen/evaluationen/Evaluationen%20(37)/10372BE_Rapport_final_publication.pdf)

Recently, in Europe, several developments have taken place to increase child-friendly justice practices. It is clear that the interplay between the CRC and the ECHR is very beneficial. Moreover, this was strengthened by the adoption of the 2010 *Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice*. The Guidelines give detailed recommendations with regard to adapting juvenile justice proceedings to the age and the developmental level of children in conflict with the law.

The 2011 EU Agenda for the Rights of the Child identified making the justice systems in Europe more child-friendly as a key priority of the European Commission.<sup>17</sup> Moreover, the European Commission states that the use of the Council of Europe *Guidelines on Child-friendly Justice* (2010) should be promoted.

## SUMMARY

The importance of participation in juvenile justice:

- It is a binding obligation of the Directive on procedural safeguards for children suspected or accused in criminal proceedings for every EU Member State.
- It has been recognized as part of children's right to a fair trial, among others by the European Court of Human Rights.
- Child participation is a means to implement the rights of children, as laid down, among others, in the UN Convention on the Rights of the Child.
- Participation is an ongoing process, which includes information-sharing and dialogue, which shapes the outcome of procedures.
- Children indicate that they value being heard by the decision-maker.
- Being able to participate has positive effects on the development of children and on the juvenile justice procedure and its outcomes.

## 1.2. INTRODUCTION TO INTERNATIONAL STANDARDS IN JUVENILE JUSTICE

### THE BEIJING RULES

Before the Convention on the Rights of the Child was adopted, the 1985 UN Standard Minimum Rules on the Administration of Juvenile Justice (the Beijing Rules) were adopted by the UN. The Beijing Rules contain detailed minimum rules regulating the administration of juvenile justice at the domestic level.

Although the Beijing Rules are not legally binding, the monitoring body of the CRC, the UN Committee on the Rights of the Child, has recommended applying the rules to all children in the justice system (General Comment No. 10, para. 4). Moreover, some of the rules have become binding because they are codified in article 40 CRC. These rules provide guidance with regard to the interpretation of this CRC provision.

With regard to the participation of children in juvenile justice procedures, Rule 14.2 is important.

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<sup>17</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *An EU Agenda for the Rights of the Child*, COM(2011) 60 final.

## **RULE 14.2 BEIJING RULES**

The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely.

This Rule introduces the concepts of understanding and participation. The right to participate in juvenile justice proceedings, as it has been laid down in Rule 14.2, can be seen as an example of article 12 CRC (the right to be heard) (Rap, 2013).

## **THE UN CONVENTION ON THE RIGHTS OF THE CHILD**

The UN Convention on the Rights of the Child (CRC) was adopted in 1989 and recognises children as autonomous human rights bearers. The CRC applies to every child, including those who are involved with the criminal or juvenile justice system. It can be seen as the single most important international human rights Convention for children. The Convention has been endorsed by all UN Member States (196 countries) but one: the United States of America. It is therefore the most ratified human rights instrument in the world.

### **Article 12 – *The right to be heard***

#### **ARTICLE 12 CRC**

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

The right to be heard applies to every child who is capable of forming their own views. This provision has significant practical value for the protection of the participatory rights of the child. Accordingly, States Parties have the duty to involve children in all matters that affect them, including judicial and administrative proceedings (art. 12 (2) CRC), such as juvenile justice proceedings. Moreover, states are encouraged to make the decision-making process with regard to matters affecting the child accessible to the child. This means that the decision-making process should be adapted to the age and level of maturity of the child. However, when hearing the views of the child, authorities must weigh these views by taking into account the age and level of maturity of the child, by determining what is in the best interest of the child and by balancing other interests that are at stake.

### **Article 40 – *Juvenile justice***

The core provision of international human rights law for children in conflict with the law is article 40 of the CRC. It can be argued that with the adoption of the CRC in 1989, juvenile justice became an internationally recognized human rights issue, meaning that both the child's right to be treated fairly, as well as his or her

right to be treated in accordance with his or her age, have been recognized.

In essence, the CRC approach towards children in conflict with the law is based on two assumptions. The first one is that every child is entitled to be treated fairly, with full respect for his human dignity and his right to a fair trial. The second assumption is that every child is entitled to be treated in a special and child-friendly way, which, among other things, means that every juvenile justice intervention should aim to reintegrate the child into society and allow him or her to play a constructive role. The pedagogical aspects are thus important: juveniles should be able to learn from their mistakes and should receive support to prevent reoffending, and this should all be done in a fair manner (Liefwaard, 2015).

#### ARTICLE 40 CRC

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 40(2) CRC encloses a list of minimum standards that aim to ensure that all children accused of committing a criminal offence receive fair treatment and trial. According to the UN Committee on the Rights of the Child, these standards include: the prohibition of retroactive juvenile justice, the presumption of innocence, the right to effective participation in the proceedings, the right to prompt and direct information of the charge(s), the right to legal or other appropriate assistance, the right to decisions without delay and with the involvement of parents, freedom from compulsory self-incrimination, equality of arms, the right to appeal, the right to free assistance of an interpreter and the right to full respect of privacy (General Comment No. 10, par. 41-67).

The right to effective participation in the proceedings is not explicitly mentioned in Article 40(2) CRC. Nevertheless, the UN Committee on the Rights of the Child emphasises that this is an essential requirement for a fair trial for children; a right that is directly linked to article 12 of the CRC which embodies the right of every child to be heard in judicial or administrative procedures, amongst others (General Comment No. 10, para. 44).

Article 40(3) CRC implies that States Parties shall design a separate juvenile justice system, but without really clarifying what this entails. In particular, it calls upon States Parties to draw up a minimum age of criminal responsibility and to provide for diversion where appropriate and desirable.

### **Article 37 – Deprivation of liberty**

Article 37 CRC is the core human rights provision for children deprived of their liberty and it recognizes the impact of deprivation of liberty on children's lives, as well as the need for a child specific approach. In this regard, it is crucial to provide a strong legal status for children who are (threatened to be) deprived of their liberty, which should be based on domestic (statutory) legislation.

#### **ARTICLE 37 CRC**

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

In this provision it is emphasised that no child shall be subjected to torture or other cruel, inhuman or degrading punishment. Neither the death penalty nor life imprisonment without parole shall be imposed for offences committed by people under the age of eighteen (art. 37(a) CRC).

Article 37(b) CRC has significant implications for the imposition of sentences in the context of juvenile justice as well, by stipulating that the deprivation of liberty of minors shall be used only as a measure of last resort and for the shortest appropriate period of time. It should be made clear here that article 37(b) CRC also applies to forms of deprivation of liberty outside the scope of the juvenile justice system. Deprivation of liberty is defined as: 'any form of placement in an institution by decision of a judicial or administrative authority, from which the juvenile is not permitted to leave at will' (Rule 21.5 European Rules for juvenile offenders subject to sanctions or measures). This means that children who are placed in (semi-) open institutions may also fall under the protection of article 37 CRC and related standards (Liefwaard, 2008).

According to the UN Committee on the Rights of the Child (General Comment No. 10, paras. 80-81), article 37(b) CRC entails that States Parties should provide for an effective package of alternatives for the pre-trial detention of children to safeguard the last resort-principle. They should also ensure that children can be released from pre-trial detention as soon as possible, and, if necessary, under certain conditions.

In this provision it is again highlighted that the needs of children in conflict with the law should be taken into account and these needs may differ according to the age of the child. Moreover, the importance of contact and correspondence with family is also clear as it is laid down in a legally binding human rights treaty (art. 37(c) CRC).

## **THE HAVANA RULES**

In 1990 the UN adopted the UN Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules). The Havana Rules contain guidelines for all minors deprived of their liberty. It is not only juvenile offenders that are subject to these rules, but also children who are deprived of their liberty on other grounds, including child protection, behaviour disorders or necessary psychiatric treatment. Again, this also concerns placements in open educational institutions and not only in closed detention centres (Rule 11(b)).

The Rules contain minimum standards for the deprivation of liberty of children. When deprived of their liberty, the particular needs of children with regard to age, personality, sex, type of offence, mental and physical health should be taken into account (Rule 28). Moreover, the design of detention facilities should be such that the need of the child for privacy, opportunities for association with peers and participation in sports and leisure-time activities can be fulfilled (Rules 32). The possession of personal belongings is a basic element of the right to privacy and should therefore be made possible for children (Rule 35). The Rules also state that children should have the right to wear their own clothing, at least when they leave the institution (Rule 36). Other basic rights that are stipulated are the right to education (Rule 38), the right to (open air) recreation (Rule 47) and the right to communicate with the outside world (Rules 59-62). In the Havana Rules it is specifically stated that personnel should do their job in a 'humane, committed, professional, fair and efficient manner' (Rule 83).

## **THE CRC COMMITTEE – GENERAL COMMENTS**

The UN Committee on the Rights of the Child is the monitoring body of the CRC. The Committee both monitors the implementation of the Convention on the Rights of the Child by its States Parties and issues General Comments in which its interpretation of the content of the human rights provisions is formulated. Although the General Comments do not have a legally binding nature, these documents are highly valued and relevant to the interpretation and implementation in practice of the children's rights set forth in the CRC.

## General Comment No. 10

In 2007, General Comment No. 10 on *Juvenile justice and children's rights* was published by the Committee. This document provides detailed recommendations on the implementation of article 40 CRC and other related children's rights provisions and standards.

### GENERAL COMMENT NO. 10, PARA. 46

A fair trial requires that the child alleged as or accused of having infringed the penal law be able to effectively participate in the trial, and therefore needs to comprehend the charges, and possible consequences and penalties, in order to direct the legal representative, to challenge witnesses, to provide an account of events, and to make appropriate decisions about evidence, testimony and the measure(s) to be imposed. Article 14 of the Beijing Rules provides that the proceedings should be conducted in an atmosphere of understanding to allow the child to participate and to express himself/herself freely. Taking into account the child's age and maturity may also require modified courtroom procedures and practices.

The CRC Committee makes a direct link between a fair trial and effective participation. It is explicitly stated that 'the right to be heard is fundamental for a fair trial' (para. 44). This starting point has implications for the treatment of children throughout the juvenile justice process. It implies that the child needs to be given 'the opportunity to be heard in any judicial or administrative proceeding' (para. 43) and during the entire process, from the pre-trial stage until the execution of a sanction or measure (para. 44). Moreover, when a child is considered to be criminally responsible for his acts he should not be treated as a passive object, because that will not contribute to an effective response to his behaviour. According to the Committee, research shows that the active engagement of the child in, for example, the implementation of measures, contributes to a positive result (para. 45).

## General Comment No. 12

In 2009, General Comment No. 12 on *The right of the child to be heard* was published by the Committee. This document gives further guidelines on how to implement article 12 CRC, with special provisions concerning the right to be heard in judicial proceedings.

A child cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for her or his age. Proceedings must be both accessible and child-appropriate. Particular attention needs to be paid to the provision and delivery of child-friendly information, adequate support for self-advocacy, appropriately trained staff, design of court rooms, clothing of judges and lawyers, sight screens, and separate waiting room

### GENERAL COMMENT NO. 12, PARA. 34

A child cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for her or his age. Proceedings must be both accessible and child-appropriate. Particular attention needs to be paid to the provision and delivery of child-friendly information, adequate support for self-advocacy, appropriately trained staff, design of court rooms, clothing of judges and lawyers, sight screens, and separate waiting rooms.

According to the CRC Committee, every judicial procedure concerning minors should be both ‘accessible and child-appropriate’ (para. 34). The views of child defendants should be heard in any proceeding – throughout the entire juvenile justice process (paras. 35, 58). Moreover, the Committee recommends that children should be directly and favourably heard (para. 35) and it should take place by means of a talk or dialogue, rather than an ‘one-sided examination’ (para. 43). The dialogue should take place in an environment in which the child feels safe and respected, and the States Parties are responsible for creating this child-appropriate court environment (paras. 23, 60).

## 1.3. INTRODUCTION TO EUROPEAN STANDARDS ON JUVENILE JUSTICE<sup>18</sup>

### THE EUROPEAN CONVENTION ON HUMAN RIGHTS

In article 6 of the European Convention on Human Rights (ECHR) the right to a fair trial is laid down. The provisions of the ECHR are applicable to everyone, including children. In article 6(1) juveniles are specifically mentioned. It is stated that, although everyone has the right to a public hearing, the press and public can be excluded from the court hearing when it is deemed to be in the interest of the juvenile.

#### ARTICLE 6 ECHR

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights: (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

The European Court of Human Rights in Strasbourg has developed case law relevant for juvenile justice. The Court acknowledges the right of the child under article 6(1) ECHR to participate effectively in juvenile justice proceedings explicitly in its case law.

In *T. and V. v. United Kingdom* (ECtHR 16 December 1999, Appl. No. 24724/94; Appl. no. 24888/94) the ECtHR considers that ‘it is essential that a child charged with an offence is dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his ability to understand and participate in the proceedings’ (para. 84). The Court maintained

18 For further reference see the *Handbook on European law relating to the rights of the child* (FRA, 2015).

the view that ‘the formality and ritual of the Crown Court must at times have seemed incomprehensible and intimidating for a child of eleven’ (para. 86) and the defendant(s) had been ‘unable to participate effectively in the criminal proceedings against him and was, in consequence, denied a fair hearing (...)’ (para. 89).

In *S.C. v. United Kingdom* (ECtHR 15 June 2004, Appl. No. 60958/00) the ECtHR touched upon the notion of the ‘effective participation’ of accused children in criminal justice proceedings in even more detail:

#### **S.C. V. THE UNITED KINGDOM, PARA. 29**

(...) “effective participation” in this context presupposes that the accused has a broad understanding of the nature of the trial process and of what is at stake for him or her, including the significance of any penalty which may be imposed. It means that he or she, if necessary with the assistance of, for example, an interpreter, lawyer, social worker or friend, should be able to understand the general thrust of what is said in court. The defendant should be able to follow what is said by the prosecution witnesses and, if represented, to explain to his own lawyers his version of events, point out any statements with which he disagrees and make them aware of any facts which should be put forward in his defence (...).

However, the Court explained that article 6 ECHR does not imply that a child defendant should understand every legal detail during the criminal trial: ‘Given the sophistication of modern legal systems, many adults of normal intelligence are unable to fully comprehend all the intricacies and all the exchanges which take place in the courtroom’ (para. 29). It becomes clear from this case that a child defendant should be able to form a general understanding of the nature of the process, the consequences of his appearance and attitude in court and the consequences of a possible sanction or measure. Moreover, in this specific case the Court decided that the defendant should have been tried in a specialised court, with adapted procedures, to have regard for the young age and low level of intellectual maturity of the defendant (para. 35).

### **THE EUROPEAN RULES FOR JUVENILE OFFENDERS SUBJECT TO SANCTIONS OR MEASURES**

In addition, the Council of Europe has developed a number of standards at the regional level. These include, among others, the 2008 *European Rules for juvenile offenders subject to sanctions or measures* (ERJO). The ERJO provide a number of basic principles and rules regarding sentencing and alternatives for deprivation of liberty in the context of juvenile justice.

As far as sentences for juvenile offenders are concerned, Rule 5 ERJO explicitly states that the imposition and implementation of sanctions or measures shall be based on the best interests of the juvenile offenders, limited by the gravity of the offences committed (principle of proportionality), and take into account their age, physical and mental well-being, development, capacities and personal circumstances (principle of individualisation) as ascertained when necessary by psychological, psychiatric or social inquiry reports. Furthermore, in accordance with the CRC and the Beijing Rules, Rule 10 ERJO stipulates that the deprivation of liberty of a juvenile shall be a measure of last resort and imposed and implemented for the shortest period possible.

Moreover, effective participation of juveniles with regard to the imposition as well as the implementation of sanctions and measures is advocated for in the ERJO:

## RULE 13 ERJO

Any justice system dealing with juveniles shall ensure their effective participation in the proceedings concerning the imposition as well as the implementation of sanctions or measures. Juveniles shall not have fewer legal rights and safeguards than those provided to adult offenders by the general rules of criminal procedure.

According to the drafters, the basic principles, as laid down in Rules 5 and 10 ERJO, call for a wide range of community sanctions and measures, adjusted to the different stages of development of juveniles (Rule 23.1 ERJO). Moreover, priority should be given to sanctions and measures that have an educational impact as well as constituting a restorative response to the offences committed by juveniles (Rule 23.2 ERJO). The ERJO provides a detailed set of standards regarding the legal framework and the conditions for the implementation of community sanctions in the juvenile justice context.

These conditions for the implementation of community sanctions are an addition to the basic principles regarding the execution of sentences in juvenile justice, by implementing, for example, the requirement of a speedy enforcement, the principle of minimum intervention (Rule 9) and the prohibition of implementation practices that aggravate the afflictive character of the imposed sentence (Rule 8).

## THE GUIDELINES ON CHILD-FRIENDLY JUSTICE

The Council of Europe has elaborated on the right to effective participation in judicial proceedings in its *Guidelines on Child-friendly Justice* and has defined ‘child-friendly justice’ as follows (Definitions, under c):

### GUIDELINES ON CHILD-FRIENDLY JUSTICE

‘Child-friendly justice’ refers to justice systems which guarantee the respect and the effective implementation of all children’s rights at the highest attainable level, bearing in mind the principles listed below and giving due consideration to the child’s level of maturity and understanding and the circumstances of the case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity.

The Guidelines contain general elements of child-friendly justice. One of these elements is for children to be informed and given advice from their first involvement with the juvenile justice system and throughout the justice process. Children should, for example, be informed of their rights, the juvenile justice system, its procedures and different procedural steps that have to be taken, the charges and the court dates. Parents should be informed when charges are brought before the court as well, but giving information to parents should not be an alternative to providing the child with information (para. IV, art. 3). Other general elements of child-friendly justice are that children should be heard in closed court sessions and that professionals working with children should be trained in communicating with children from different age groups. These professionals should also receive education on children’s rights and needs and regarding proceedings that are adapted to children (para. IV, art. 9, 14, 15).

With regards to the organisation of the proceedings, it is recommended that children should be dealt with ‘in non-intimidating and child-sensitive settings’ (para. IV, art. 54).

It is stated that '(...) specialist courts (or court chambers), procedures and institutions should be established for children in conflict with the law' (para. IV, art. 63). The *Guidelines on Child-friendly Justice* can best be put in practice in specialised youth courts and by specialist professionals working in these courts.

## THE DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON PROCEDURAL SAFEGUARDS FOR CHILDREN SUSPECTED OR ACCUSED IN CRIMINAL PROCEEDINGS

In December 2015, the European Parliament agreed with the Council of Europe to adopt the *Directive on procedural safeguards for children suspected or accused in criminal proceedings*.<sup>19</sup> The EU Directive introduces measures that are consistent with the reasoning of the ECtHR in *T. and V. v. the United Kingdom* and the *Guidelines on Child-friendly Justice*.

### ARTICLE 16 – RIGHT OF CHILDREN TO APPEAR IN PERSON AT, AND PARTICIPATE IN, THEIR TRIAL

Member States shall ensure that children have the right to be present at their trial and shall take all necessary measures to enable them to participate effectively in the trial, including by giving them the opportunity to be heard and to express their views.

Member States shall ensure that children, who were not present at their trial, have the right to a new trial, or another legal remedy, in accordance with and under the conditions set out in Directive 2016/XX/EU of the European Parliament and of the Council\*.

\*Directive 2016/XX/EU of the European Parliament and of the Council on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings (OJ L ...).

In this Directive several child-specific provisions are laid down. The Commission states that in Article 6 of the ECHR it is implied that an accused person has the right to appear in person at the trial (recital 30). Therefore, Member States should take appropriate measures to promote that children are present at their trial and should put in place practical arrangements in this regard. Moreover, it is acknowledged that children should be 'treated in a manner appropriate to their age, their special needs, their maturity and level of understanding, and bearing in mind any communication difficulties they may have' (recital 27a). Trials against children should be organised away from the glare of public attention (art. 14) and children have the right to be accompanied by an adult (art. 15). The right to legal assistance is laid down in article 6 of the Directive. In the preamble it is stated that children should be assisted by a lawyer because they "are vulnerable and are not always able to fully understand and follow criminal proceedings" (recital 16). Member States should arrange for a lawyer to assist the child and they should provide legal aid where this is necessary to ensure that the child is effectively assisted by a lawyer (recital 16).

19 Directive of the European Parliament and the Council on procedural safeguards for children suspected or accused in criminal proceedings, 16 December 2015, 2013/0408 (COD). It is expected that the Directive will be adopted and enter into force in the course of 2016.

## SUMMARY

According to article 12 CRC children have the right to be heard in all matters affecting them, also in juvenile justice proceedings. Children do not only have the right to give their views, but they should also be able to learn from how their views have had an effect on the decision-making in juvenile justice proceedings.

At the European level, the right to a fair trial, which is focused upon in article 6 of the European Convention in Human Rights (ECHR), is of great importance, because effective participation is considered to be part of a fair trial by the European Court of Human Rights.

Moreover, the Council of Europe has developed a number of regional standards and guidelines. These include, among others, the Guidelines on Child-friendly Justice, which give detailed recommendations with regard to adapting the juvenile justice proceedings to the age and the developmental level of juveniles.

## 1.4. JUVENILE JUSTICE AND ADOLESCENT DEVELOPMENT<sup>20</sup>

### AGE LIMITS IN JUVENILE JUSTICE

The applicability of the juvenile justice system is determined by two age limits. The first age limit concerns the age at which a child is considered to be criminally responsible for his or her behaviour. This age limit is known as the minimum age of criminal responsibility (MACR). The second age limit concerns the age limit which draws a distinction between juvenile criminal justice and adult criminal justice. In many jurisdictions this 'upper age limit' corresponds to the age of majority, although exceptions may apply.

According to article 40 (3), CRC States Parties 'shall seek to promote (...) [t]he establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law'. The CRC does not provide a specific minimum age. According to Rule 4.1 of the Beijing Rules, the MACR shall not be fixed at too low an age level, and emotional, mental and intellectual maturity shall be borne in mind. In the commentary accompanying this rule it is stated that one must consider the 'individual discernment and understanding' of the child, in order to assess whether the child can be held responsible for delinquent behaviour. The CRC Committee recommends that States employ a minimum age of at least 12 years for criminal responsibility (General Comment No. 10, para. 32). The Committee refers to Beijing Rule 4.1 in stating that 12 years is not considered to be too low and according to the Committee, it can be seen as an internationally acceptable minimum age. Moreover, States Parties to the CRC are 'encouraged to increase their lower MACR to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level' and 'not to lower their MACR to the age of 12' when the current MACR is set at a higher age (paras. 32, 33). In Europe, most of the MACR's are higher than 13. In Table 1 below the MACR's of the countries involved in the current project are listed.

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20 Parts of this section are derived from Rap, S. (2013). *The participation of juvenile defendants in the youth court: A comparative study of juvenile justice procedures in Europe*. Amsterdam: Pallas Publications (dissertation).

Table 1: Minimum age of criminal responsibility

10	12	13	14	15	16	17
Northern Ireland	Ireland	France	Austria	Czech Republic	Portugal	Poland
			Cyprus	Finland		
			Italy	Greece		
			Latvia			
			Spain			

Source: Pruin, 2010.

In Table 1 the minimum age of *criminal* responsibility is displayed. However, in several countries (e.g. Czech Republic, France, Portugal, Poland) the possibility exists of imposing educational or therapeutic measures below this age when a child has come into conflict with the law (see Pruin, 2010). This is done on the basis of protection grounds and not on mere criminal grounds.

#### THE MINIMUM AGE OF CRIMINAL RESPONSIBILITY IN CZECH REPUBLIC

In Czech Republic minors are criminally liable from the age of 15 and the Youth Justice Act (1 January 2004) applies until the age of 18. Children under 15 are not criminally liable, but they may be subject to measures specified under this law (such as probation supervision). Measures (educational, protective and penal measures) were introduced instead of punishments in the Youth Justice Act. One of the protective measures is the placement in a juvenile institution. This may be imposed upon a juvenile, as well as a child under 15, committing an act otherwise considered criminal.

In principle, under the CRC, all persons under the age of 18 are regarded as children and are entitled to be treated in accordance with article 40 CRC and other relevant CRC provisions. As pointed out above, European jurisdictions tend to draw the line between juvenile justice and criminal justice at 18. However, there are exceptions at both sides of the dividing line.

When the age of a child is uncertain, the child is entitled to reliable medical or social investigation that may establish his age (General Comment No. 10, para. 39). When the age of the child cannot be established, in case of conflict or inconclusive evidence, the child should not be held criminally responsible (paras. 35 and 39).

## AGE-CRIME CURVE

Delinquent behaviour in adolescence can be regarded as normal and transitory behaviour, rather than abnormal and stable behaviour (Moffitt, 1993). This can be shown by the age-crime curve, which displays the statistical relationship between age and the occurrence of crime. The majority of offenders are teenagers or young adolescents (see Figure 1). On the basis of the age-crime curve, Moffitt (1993) makes the distinction between **adolescent-limited** and **life-course persistent delinquency**. The first refers to

delinquency that is highly prevalent during adolescence and that takes place as a social phenomenon amongst groups of peers. The second refers to delinquency as a form of psychopathology that is not limited to adolescence, but occurs across one's lifespan. The majority of adolescent delinquents fall within Moffitt's (1993) adolescent-limited delinquency category, whereas only a small minority of adolescents display persistent antisocial and delinquent behaviour throughout their lifespan.

Adolescents are still in the midst of their **identity development** and they therefore have more conflicts with respect to issues of authority (Steinberg & Cauffman, 1996; Steinberg & Schwartz, 2000). This may have to do with the fact that identity development involves exploratory and experimental behaviour. Experimentation, as part of the normal identity development, often involves risk-taking, such as delinquent behaviour (Steinberg & Scott, 2003). This period of experimentation comes to an end when the individuals' identity becomes more settled, so in the case of most adolescents delinquency is of a passing nature (Scott & Steinberg, 2008; Steinberg & Scott, 2003). For most young people who are in conflict with the law, delinquent behaviour is a one-off incident and not a persistent way of life. They will age out of delinquent behaviour and do not display severe personality disorders (Moffitt, 1993; see also Steinberg & Scott, 2003).

Figure 1: Age-crime curve

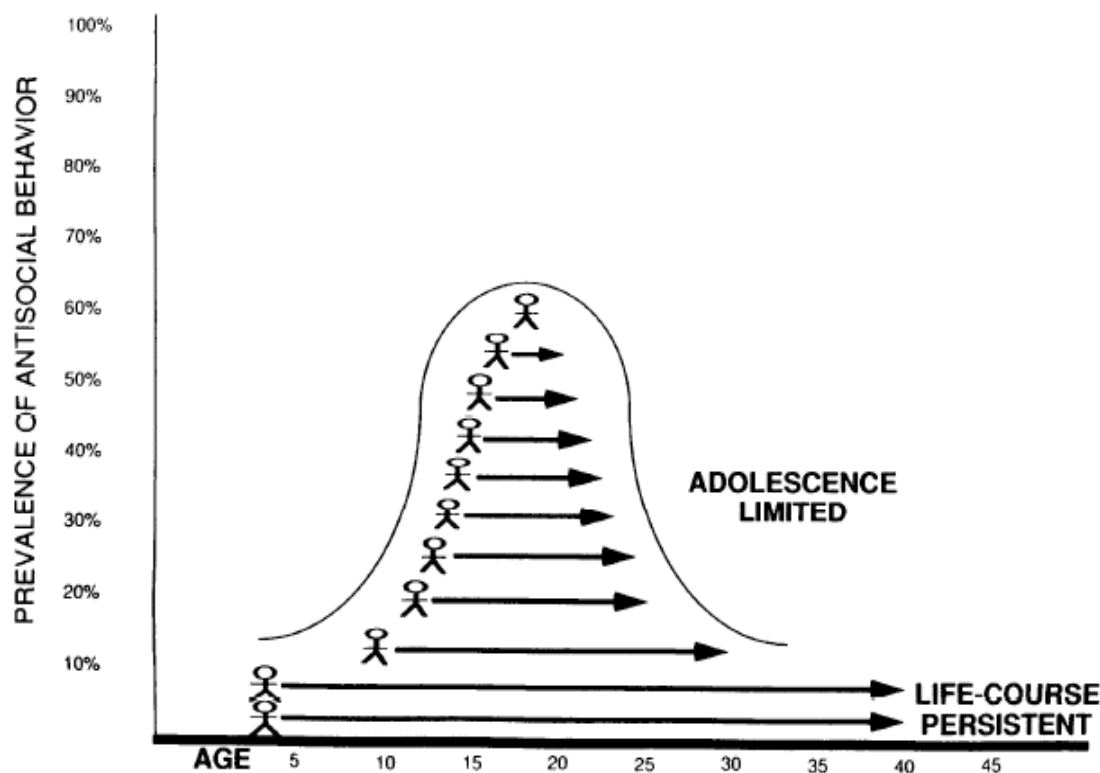


Figure 3. Hypothetical illustration of the changing prevalence of participation in antisocial behavior across the life course. (The solid line represents the known curve of crime over age. The arrows represent the duration of participation in antisocial behavior by individuals.)

Moffitt, 1993

## ADOLESCENT COGNITIVE DEVELOPMENT

During adolescence the **intellectual abilities** of young people develop markedly. Adolescents are able to think in more advanced, abstract, efficient and effective ways. Logical reasoning skills gradually increase between the ages of 11 and 16. The formal intellectual abilities (i.e. IQ) of a person do not notably increase after his 16<sup>th</sup> to 18<sup>th</sup> birthday. Before the age of 16 the intellectual abilities of an adolescent are similar to those of a child and do not yet resemble the abilities of adults. Although IQ does not notably change after the age of 18, the **reasoning skills** of adolescents do not yet function at the same level as those of adults. Adolescents have less life experience and therefore have less knowledge to draw on when taking decisions. Besides, adolescents differ in their ability to make judgments, as a consequence of less matured emotional and social skills (Loeber et al., 2015; Scott & Steinberg, 2008; Steinberg & Schwartz, 2000).

Young people in early adolescence start to think in more **abstract** ways about problems. From approximately their 12<sup>th</sup> birthday young people acquire the ability to reflect on more abstract cases. Matters such as poverty, justice, fairness and love attract much attention from young adolescents. Step by step, they start to reflect on relationships and on themselves as people with a past, present and future. Abstract thinking develops gradually over the course of adolescence until around the age of 17 or 18 when this ability no longer notably improves (Delfos, 2005; Steinberg, 1999; Steinberg & Cauffman, 1996).

The higher executive functions of the brain, such as planning, verbal memory and impulse control, develop even further and are only fully developed around the age of 25 (Loeber et al., 2015). Therefore, the manner in which adolescents reach decisions differs from adult decision-making. This is also due to the **psychosocial immaturity** of adolescents, which influences the manner in which decisions are taken. This contributes to the not fully mature decision-making of adolescents (i.e. the maturity of judgment), although formally their cognitive capacities are mature (Scott & Steinberg, 2008; Steinberg & Scott, 2003).

### **Risky behaviour**

A characteristic of adolescence is that young people engage much more than adults in risky behaviour. Adolescents are more prone to **risk-taking behaviour**, such as drug use, violence, risky sexual behaviour and risk-taking while engaging in road traffic (Steinberg, 1999). Young adolescents tend to underestimate risks and do things they generally know are wrong, especially when the young person finds himself in an exciting situation and experiences peer pressure, as his ability to assess the situation diminishes (Steinberg & Cauffman, 1996).

Research suggests that adolescents do not take more risks because they do not perceive the risks, but that they invariably **underestimate the risks** attached to certain behaviour, particularly the long-term risks. Older adolescents are better able to assess risks and to look ahead to see the likely consequences of different behavioural choices (Greene et al., 2000; Schmidt et al., 2003; Steinberg & Cauffman, 1996; Steinberg & Scott, 2003). The capacity to oversee the short and **long-term consequences** of behaviour increases gradually between childhood and young adulthood (Steinberg & Cauffman, 1996).

Another explanation for engaging in risky behaviour is the **lack of impulse control** that adolescents display (Steinberg & Cauffman, 1996). Up until the age of 30, impulsivity gradually declines. Sensation seeking increases between the ages of 10 and 15 (Steinberg, 2011). Hormonal and physiological changes taking place in the second half of adolescence partly explain the inadequate impulse control and the lack of systemic behaviour among adolescents and young adults (Steinberg & Cauffman, 1996; Steinberg & Scott, 2003).

## **Peer pressure**

A second characteristic of adolescent development is susceptibility to peer pressure. In adolescence, people show an increased interest in socialising with their peers (Steinberg, 2011). Moreover, compared to young children and adults, adolescents are more vulnerable to the pressure exerted by the peer group (Steinberg & Scott, 2003). **Acceptance from peers** is of great importance for adolescents (Crone & Dahl, 2012). From around the age of 8, children aim to associate with peers instead of making contact with adults (Delfos, 2004). Susceptibility to peer pressure peaks around the age of 14 and declines thereafter. This implies that sometime between the ages of 12 and 16 peer pressure is highest and it gradually declines as from then (Scott & Steinberg, 2008; Steinberg & Cauffman, 1996).

Peer pressure can also be related to risk-taking behaviour. When in the presence of peers, adolescents are more likely to take risks and to make risky decisions than children and adults (Steinberg, 2011). The tendency to take risks is not only a consequence of spending more time with friends, but is also a consequence of the inability to resist peer pressure and the sensitivity to rewards such as peer approval (Gardner & Steinberg, 2005; Steinberg, 2011). Research shows that conformity to peers is especially high with regard to antisocial behaviour and among boys (Steinberg, 1999).

## **Understanding of juvenile justice proceedings**

Developmental psychological research shows that children around 12 or 13 years of age do not perceive themselves as citizens who can be called to account for their behaviour by the state (Grisso, 2000). This mainly has to do with the fact that they are barely able to think in abstract terms and still see themselves as children who are accountable to their immediate environment only: their parents, grandparents, teachers and sometimes neighbours. Children are unable to see the legitimacy of laws and legal procedures, which are in place to control the social order, and they do not see themselves as being part of that social system (Buss, 2000).

Studies on adolescents' understanding of the nature of criminal proceedings show that children below the age of 14 are less likely to be familiar with trial-related information than older adolescents (Grisso, 2000). The capabilities of 16 and 17 year olds are more similar to those of young adults (18 to 24 year olds) (Grisso et al., 2003). To summarise, it can be concluded that adolescents are only capable of understanding what it means to appear before a judge when they are around 14 years of age.

It should be acknowledged, however, that large differences between the developmental maturity of individual children can be observed. Some children are behind or ahead in their development, physically, cognitively, emotionally or morally. The pace at which young people between the ages of 14 and 18 tend to develop differs substantially between individuals and therefore age is a poor indicator of the capacities that young people possess to effectively participate in a trial. Trial-related knowledge of individual children increases with age, but intelligence also has a strong effect on understanding (Grisso, 2000; Grisso et al., 2003, see also below).

## **ADOLESCENT EMOTIONAL DEVELOPMENT**

With regard to the emotional development of children, an important developmental task is establishing a sense of **autonomy** or independence (Steinberg & Schwartz, 2000). During childhood the attachment to parents and the approval of parents mainly guide the behaviour of children. Up to the age of 10 or 11 children would like to please parents and other adults with their behaviour. In early adolescence individuals start to oppose their parents actively and start to seek separation from parents. They start to

individuate from their parents. The emerging sense of autonomy is expressed by opposing the wishes and advice of parents and other adults, as a way of proving their independence. The decisions of adolescents are not always taken reasonably, but are the opposite consequence of their parents' wishes. They may even value the opinion of parents, but the tendency to show and prove their new status can be stronger than the tendency to obey to the wishes of their parents. This may involve engaging in risky behaviour and a stronger orientation towards peers.

Emotional autonomy increases all throughout adolescence. Adolescents are directed at their peers and distance themselves from their parents. By late adolescence the process of individuation is largely accomplished and adolescents are more autonomous from their parents and peers (Scott & Steinberg, 2008; Steinberg & Cauffman, 1996; Steinberg & Schwartz, 2000). During adolescence individuals also develop a greater self-awareness and they are increasingly able to have more reciprocal interpersonal relationships with others. Egocentrism gradually decreases and as a result adolescents are better able to see the (long-term) consequences of their behaviour on themselves and on others (Steinberg & Cauffman, 1996).

**Identity development** takes place later in adolescence, during the late teens and early twenties. A coherent self-image and identity do not arise until the end of adolescence. Adolescents who have reached a sense of identity show a better ability to reason morally, show more reflectiveness and are better able to make deliberate choices concerning their educational or occupational career. Adolescents who are still in the process of developing their identity have more conflicts with respect to issues of authority and show higher levels of anxiety (Steinberg & Cauffman, 1996; Steinberg & Schwartz, 2000).

Skills associated with a developed sense of identity are the ability to form interpersonal relationships, to reflect on one's own behaviour and to be able to morally reason on a higher level. These skills are also associated with the ability to take perspective, which increases gradually until the age of 16. Perspective taking enables the young person to understand how decisions or actions are viewed by other persons, even if that is not the persons' own view (Steinberg & Cauffman, 1996).

Young people who persistently commit crimes – mainly crimes that cause personal injury and harm – appear to have less well-developed empathic abilities (Jolliffe & Farrington, 2004). **Empathy** prevents people from committing crimes, because it is against the nature of the empathic/sympathetic person to cause harm or to hurt other people. Empathy decreases the probability of certain types of criminal behaviour, while a lack of empathy is assumed to have a facilitating influence on offending (Jolliffe & Farrington, 2004).

## DISABILITIES

Although most children display risky or even delinquent behaviour as part of normal adolescent behaviour, children in conflict with the law have a higher risk of experiencing a range of problems (Weijers & Grisso, 2009). On the individual level developmental delays, intellectual deficits, learning disabilities and emotional disorders are prevalent, but problems on the wider environmental level, such as street violence, victimisation, domestic problems and out of home placements, truancy and substance abuse are also prevalent (Ten Brummelaar & Kalverboer, 2011; Van Domburgh et al., 2009; Grisso, 2000). Two factors will be highlighted here: mental health problems and low IQ.

## **Mental health problems**

Mental health problems are more prevalent among children in conflict with the law, especially those who are detained, compared to children who do not come in contact with the juvenile justice system (Loeber et al., 2015).

Several mental disorders involve cognitive disabilities, including cognitive impulsivity.

Cognitive impulsivity means that a person makes very quick decisions and acts accordingly. Children who display this behaviour are more often arrested by the police (Loeber et al., 2015). For example, **Attention Deficit Hyperactivity Disorder** (ADHD) can cause impulsivity, which is related to delinquency. ADHD and **conduct disorder** often go together. Symptoms of a conduct disorder are aggression towards people and animals, destruction of property, deceitfulness, theft and serious violations of rules. A conduct disorder can develop into an **antisocial personality disorder**. Symptoms of an antisocial personality disorder are failure to conform to social norms, deceitfulness, impulsivity, irritability and aggressiveness and lack of remorse and empathy. Lack of empathy is also associated with **autism**. Children who are diagnosed with autism can show a lack of cognitive empathy; they are not able to put themselves in the position of others. Young people who persistently commit crimes – mainly crimes that cause personal injury and harm – appear to have less well-developed empathic abilities. Empathy prevents people from committing crimes, because it is against the nature of the empathic/sympathetic person to cause harm or to violate other persons. Empathy decreases the probability of certain types of offences, while a lack of empathy is assumed to have a facilitating influence on offending (Jolliffe & Farrington, 2004). Furthermore, children in conflict with the law show higher levels of drug and alcohol use. Research shows that frequent use of drugs or alcohol causes developmental delays and delays in psychosocial maturity (Loeber et al., 2015).

## **Low IQ<sup>21</sup>**

Research shows that children with a low IQ (less than 85) are overrepresented in the juvenile justice system. Moreover, they have more convictions and have a longer criminal career compared to children with an average or high IQ (Loeber et al., 2015; Kaal, 2015).

To identify low IQ in people is difficult, because, on first sight, people with a low IQ do not distinguish themselves from others by clear physical, behavioural or personality characteristics. People with a low IQ, however, are in daily life often overestimated (Kaal, 2015).

21 For different considerations on existing types of intelligence, see: [http://ei.yale.edu/wp-content/uploads/2013/09/pub323\\_RP2012-MayerCarusoPanterSalovey.pdf](http://ei.yale.edu/wp-content/uploads/2013/09/pub323_RP2012-MayerCarusoPanterSalovey.pdf)

## DIFFICULTIES PEOPLE WITH A LOW IQ MAY EXPERIENCE

1. Deficits in thinking; this makes it more difficult to process thinking and to gather new information.
2. Language delays; these are not always adequately detected by professionals and people with a low IQ can have difficulties with expressing emotions verbally.
3. Difficulties with understanding symbols such as time, money and numbers.
4. A limited working memory; information is less well saved, more time is needed to process information and to respond adequately and people have more difficulties with completing complex tasks.
5. Difficulties with generalising and abstract thinking; newly acquired skills are less well transferred from one situation to another.
6. Difficulties with differentiating between primary and secondary issues and between cause and effect.
7. Difficulties with social information processing; this causes difficulties in choosing appropriate ways of acting, besides an aggressive or passive way.
8. Difficulties with social relations; this occurs together with difficulties in perspective taking.
9. Susceptibility to others' opinions and the urge for others' approval and to belong with others; this may go hand in hand with naivety or with distrust and wariness.
10. Limited development of conscience.
11. Limited impulse control.
12. An unrealistic self-image; this can take the shape of feelings of inferiority or overestimation of oneself.

Source: Kaal, 2015

A low IQ often coincides with other problems. Often, people with a low IQ experience **psychiatric disorders and behavioural problems**. Furthermore, children with a low IQ often have family-related problems or problems in their social environment. They come from socially disadvantaged families, where parents have a low IQ as well, who live in poverty, have housing problems, previous contacts with social services and a poor social network (Kaal, 2015).

Children with a low IQ need extra attention. They can come in to contact with the juvenile justice system and they have more difficulty understanding the juvenile justice process. Moreover, professionals do not always adequately assess the cognitive and social abilities of children with a low IQ.

## SUMMARY

In adolescence, the cognitive and emotional skills of juveniles develop rapidly. Although the intellectual abilities might be developed, the manner in which juveniles take decisions differs from adult decision-making. This has to do with the tendency to take risks, the inability to oversee the long-term consequences of behaviour and the susceptibility to peer pressure.

Juveniles are only capable of understanding what it means to appear before a judge when they are around 14 years of age.

For the majority of juveniles delinquency is part of their normal development into adulthood. However, delinquent juveniles have a higher risk of experiencing a range of problems, such as mental health problems and a low IQ.



## CHAPTER 2

# General requirements



# Chapter 2. General requirements

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This chapter focuses on the general requirements of the juvenile justice process. Practical guidance will be given on how to adapt the juvenile justice process by presenting several requirements relating to specific proceedings for juveniles and to legal and non-legal assistance. In Section 2.1 the entitlement to specific proceedings will be set out. In Section 2.2 legal safeguards will be discussed, in particular the right to legal and other appropriate assistance. Section 2.3 will focus on the role of parents in juvenile justice proceedings.

## 2.1 ENTITLEMENT TO SPECIFIC PROCEEDINGS

In order to be able to implement child-friendly procedures and practices in the juvenile justice system, it is important that procedures are adapted to the age, needs and level of maturity of juveniles.

### RELEVANT INTERNATIONAL AND EUROPEAN STANDARDS

Article 40 (3) of the CRC encourages the creation of a **specific juvenile justice system** (Liefwaard, 2015). It states that States Parties should 'seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law' (art. 40 (3) CRC). States are encouraged to provide juveniles with specific treatment in a separate youth court, as part of special juvenile criminal proceedings.

The CRC Committee has given further recommendations in this regard:

#### GENERAL COMMENT NO. 10

92. A comprehensive juvenile justice system further requires the establishment of specialized units within the police, the judiciary, the court system, the prosecutor's office, as well as specialized defenders or other representatives who provide legal or other appropriate assistance to the child.

93. The Committee recommends that the States parties establish juvenile courts either as separate units or as part of existing regional/district courts. Where that is not immediately feasible for practical reasons, the States parties should ensure the appointment of specialized judges or magistrates for dealing with cases of juvenile justice.

94. In addition, specialized services such as probation, counselling or supervision should be established together with specialized facilities including for example day treatment centres and, where necessary, facilities for residential care and treatment of child offenders. In this juvenile justice system, an effective coordination of the activities of all these specialized units, services and facilities should be promoted in an ongoing manner.

It is important to highlight that specialised services are requested at every stage of the juvenile justice process, starting with the police and ending with the implementation of sanctions and measures.

The European Court of Human Rights has also acknowledged the importance of specialised courts for minors in *S.C. v. United Kingdom*, in order to be able to take into account the age and the intellectual abilities of minors (ECTHR 15 June 2004, Appl. no. 60958/00, para. 35).

To develop special procedures for juveniles, the CRC Committee has developed guidance on where to start and what these procedures should look like:

#### GENERAL COMMENT NO. 12

34. A child cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for her or his age. Proceedings must be both accessible and child-appropriate. Particular attention needs to be paid to the provision and delivery of child-friendly information, adequate support for self-advocacy, appropriately trained staff, design of court rooms, clothing of judges and lawyers, sight screens, and separate waiting rooms.

In the *Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings* it is stated that in order to guarantee the right of a child to be present at the trial, practical arrangements should be made regarding the presence of the child at his or her trial (recital 30).

Moreover, the Council of Europe's *Guidelines on Child-friendly Justice* provide several more detailed recommendations with regard to the design and implementation of specialised juvenile justice procedures.

#### GUIDELINES ON CHILD-FRIENDLY JUSTICE – ORGANISATION OF THE PROCEEDINGS, CHILD-FRIENDLY ENVIRONMENT AND CHILD-FRIENDLY LANGUAGE

54. In all proceedings, children should be treated with respect for their age, their special needs, their maturity and level of understanding, and bearing in mind any communication difficulties they may have. Cases involving children should be dealt with in non-intimidating and child-sensitive settings.

55. Before proceedings begin, children should be familiarised with the layout of the court or other facilities and the roles and identities of the officials involved.

56. Language appropriate to children's age and level of understanding should be used.

57. When children are heard or interviewed in judicial and non-judicial proceedings and during other interventions, judges and other professionals should interact with them with respect and sensitivity.

58. Children should be allowed to be accompanied by their parents or, where appropriate, an adult of their choice, unless a reasoned decision has been made to the contrary in respect of that person.

59. Interview methods, such as video or audio-recording or pre-trial hearings in camera, should be used and considered as admissible evidence.

60. Children should be protected, as far as possible, against images or information that could be harmful to their welfare. In deciding on disclosure of possibly harmful images or information to the child, the judge should seek advice from other professionals, such as psychologists and social workers.

61. Court sessions involving children should be adapted to the child's pace and attention span: regular breaks should be planned and hearings should not last too long. To facilitate the participation of children to their full cognitive capacity and to support their emotional stability, disruption and distractions during court sessions should be kept to a minimum.

62. As far as appropriate and possible, interviewing and waiting rooms should be arranged for children in a child-friendly environment.

63. As far as possible, specialist courts (or court chambers), procedures and institutions should be established for children in conflict with the law. This could include the establishment of specialised units within the police, the judiciary, the court system and the prosecutor's office.

## Protection of privacy

The right to protection of privacy is a key element specific to children involved in the juvenile justice system and it is highly relevant for the effective participation of juveniles in justice proceedings. In article 40 (2)(b) (vii) it is stated that the privacy of children involved in the justice system should be fully respected ‘at all stages of the proceedings’. The right to privacy is also substantiated in the Beijing Rules (Rule 8.2), which state explicitly that no information that can lead to the identification of the juvenile (such as his name) should be published.

In the *Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings* it is also laid down that the privacy of children should be protected during criminal proceedings (art. 14(1)). This means, *inter alia*, that court hearings involving children should be held in the absence of the public (art. 14(2)) and that records with personal information should be kept confidential (art. 14(3)).

The right to have one’s privacy protected relates to the notion that juveniles should be able to **express their views freely**. The CRC Committee states that “‘freely’ means that the child can express his or her views without pressure and can choose whether or not he or she wants to exercise his or her right to be heard. ‘Freely’ also means that the child must not be manipulated or subjected to undue influence or pressure’ (para. 22). The fact that the identity of a child that is in conflict with the law is protected contributes to the fact that the child can give his or her views freely.

The protection of privacy of juveniles who are involved in the juvenile justice system is also of importance because it **prevents stigmatisation**, which in turn can hamper the reintegration of juveniles into society (see art. 40 (1) CRC). The CRC Committee states that ‘reintegration requires that no action may be taken that can hamper the child’s full participation in his/her community, such as stigmatization, social isolation, or negative publicity of the child’ (General Comment No. 10, para. 29).

One way to protect the privacy of juveniles is to conduct closed court hearings. In article 6 (1) of the ECHR the right to a public hearing is laid down, as part of a fair trial, but it is stated that the press and public may be excluded when a juvenile is involved in the proceedings. The CRC Committee has taken the position that a **trial in camera** (i.e. behind closed doors) should be considered as a significant prerequisite for effective participation. *In camera* hearings should be the rule and exceptions should be very limited and justified in writing by the court, taking into account the best interests of the juvenile (General Comment No. 12, para. 61; see also General Comment No. 10, para. 65).

The Committee makes a clear connection between expressing views freely and conducting the hearing behind closed doors. This adds an important dimension to a trial behind closed doors, as it is an important feature of the juvenile justice system (see also General Comment No. 10, paras. 65-66). The issue should not be regarded as a privacy issue only (i.e. the right to have one’s privacy protected justifying an exception – as a rule – to a fair hearing in public; cf. art. 6 (1) ECHR), but also as an issue concerning the juvenile’s right to effective participation.

In the *Guidelines on Child-friendly Justice* the protection of privacy is also elaborated upon. It is recommended that when children are heard or give evidence, this should take place behind closed doors. Only those directly involved should be present (para. IV, art. 9). Moreover, it is stated that “no information or personal data may be made available or published, particularly in the media, which could reveal or indirectly enable the disclosure of the child’s identity, including image, detailed descriptions of the child or the child’s family, names or addresses, audio and video records, etc.” (para. IV, art. 6).

In chapter 4 the issues of confidentiality and the protection of privacy will be further discussed in light of communicating effectively with juveniles.

## RELEVANT STANDARDS IN PRACTICE: BASIC REQUIREMENTS<sup>22</sup>

In the following sections of this chapter the implementation of the relevant international and European standards in practice with regard to specialised proceedings will be attended to. Basic requirements are formulated as to how to implement the standards in the different phases of the juvenile justice process.

### *Setting and atmosphere*

To create a non-intimidating and **child-sensitive setting** in which juveniles are able to effectively participate, some aspects of the setting and its atmosphere should be adapted.

An important requirement for communicating with young people (and parents) is that everyone is **seated within hearing distance** of each other and that everyone is able to see each other (see also ECtHR, 23 February 1994, Appl. no. 16757/90 (*Stanford v. the United Kingdom*), para. 26). This may sound obvious, but in large courtrooms this is not always the case (Rap, 2013). When the different parties can hear and see each other, without the use of microphones, chances of having a personal conversation are higher. Moreover, smaller distances make it possible to have eye contact. This encourages the young person to be at ease and to feel free to express his or her opinion (Saywitz et al., 2010).

A second requirement is that **juveniles are addressed in a positive manner**. Research shows that court hearings held in a disorganised way<sup>23</sup> and court professionals acting in a negative manner (both verbally and non-verbally)<sup>24</sup> contribute to a negative atmosphere in court. This negative atmosphere in turn relates to juvenile defendants having a less positive perception of the juvenile justice system in general (Greene et al., 2010) and this influences their willingness and possibilities to participate.

A negative atmosphere can also make the young person feel intimidated by the circumstances. Feeling intimidated impedes children from giving their own views (Archard & Skivenes, 2009). **Social support** during the conversation can help juveniles overcome resistance to participate. Social support from a professional can consist of making eye contact, smiling, using warm intonation patterns, having a relaxed body posture, building an initial rapport and complimenting children on the efforts they make during the conversation (Saywitz et al., 2010). Addressing juveniles in an angry and disapproving manner, instead of in a more neutral and understanding manner, hinders their participation and their perceived fairness of the trial.

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22 Parts of this section are derived from Rap, S. (2013). *The participation of juvenile defendants in the youth court: A comparative study of juvenile justice procedures in Europe*. Amsterdam: Pallas Publications (dissertation).

23 Disorganisation in court is defined in Greene and colleagues' study as: delays in the start of hearings, delays caused by the absence of court staff, missing or misplaced files and paperwork and confusion in the calling of cases (Greene et al., 2010).

24 Unprofessional conduct by court personnel is defined in Greene and colleagues' study as: humiliating comments made about the attire worn by the juvenile defendant, eye rolling and sighing when the defendant tries to explain something, snapping at the defendant and his parents when asking for more information, and prosecutors who criticise and embarrass less experienced lawyers about the manner in which things should be done in court (Greene et al., 2010).

## Duration of proceedings

The *Guidelines on Child-friendly Justice* recommend that court sessions involving children should be **adapted to the child's pace and attention span**. This means that regular breaks should be scheduled and hearings should not last too long; people have a limited attention span. This is even more so the case for adolescents, because their impulse control is not fully developed yet (see para. 1.4). When they have difficulties focusing (e.g. ADHD), long sessions are especially not recommended. Moreover, distractions and disruptions during the session should be avoided, because they take the attention away from the actual matter at hand and make it more difficult for the young person to stay focused. Therefore, in order for the young person to participate effectively, interviews and hearings should be strictly closed, so no other people can walk in and out of the room and cause disruptions.

### SUMMARY

- In order to be able to implement child-friendly procedures and practices in the juvenile justice system it is important that procedures are adapted to the age, needs and level of maturity of juveniles.
- The right to protection of privacy is a key element of specific proceedings for children involved in the juvenile justice system and it is highly relevant for the effective participation of juveniles in justice proceedings.
- With regard to the juvenile justice proceedings, it is important that a non-intimidating and child-sensitive setting is created, which implies that everyone is seated within hearing distance from each other, that juveniles are addressed in a positive manner and that the duration of the proceedings is adapted to the limited pace and attention span of the child.

## 2.2 RIGHT TO LEGAL OR OTHER ASSISTANCE

In order to facilitate effective participation, specialized legal or other assistance is needed and considered to be a **prerequisite of child-friendly justice** in all parts of the proceedings. The primary aim of legal or other assistance is to safeguard the rights and interests of the juveniles that are subjected to criminal justice procedures and to assist them in a child specific manner. All human rights instruments have recognized this important procedural safeguard. In this section the right to legal or other assistance will be further explained.

### RELEVANT INTERNATIONAL AND EUROPEAN STANDARDS

The 'right to legal or other appropriate assistance' can be considered to be a fundamental human right for both adults and juveniles and is part of the right to a fair trial.

On the international level the right to legal or other assistance for minors appears in article 40 (2)(b)(ii-iii) CRC. Article 40 states that a juvenile has a right to legal or other appropriate assistance in the preparation and the presentation of his or her defence, unless it is considered not to be in the best interests of the child. This exception has been used to take into account the more informal approaches to juvenile justice, which some States have adopted (Van Bueren, 2006). The Beijing Rules state in particular, that 'throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid' (Rule 15.1, see also Rule 7.1).

In the *Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings* it is stated that children have the right of access to a lawyer (art. 6(1)). This right applies from the moment that children are made aware that they are suspected or accused of having committed a criminal offence. Assistance by a lawyer means that the child is represented by a lawyer during criminal proceedings, especially during questioning. However, this provision does not mean that a lawyer has to be present during each investigative or evidence-gathering act (recital 16a). Member States are allowed to deviate from this provision when they believe that assistance by a lawyer is not “proportionate in the light of the circumstances of the case, taking into account the seriousness of the offence, the complexity of the case and the measures that could be taken in respect of the alleged offence, it being understood that the best interests of the child shall always be a primary consideration” (art. 6(5)). However, children should always be assisted by a lawyer when a court decides to use the measure of **detention** or when the child is already detained (art. 6(5)).

During placement in a closed institution, the Beijing Rules emphasise the child’s need for individual assistance: while in custody, juveniles shall receive care, protection and all necessary individual assistance - social, educational, vocational, psychological, medical and physical - that they may require in view of their age, sex and personality (Rule 13.5). It might well be the case that ‘other’ assistance becomes more relevant while being in custody. Moreover, it is acknowledged that the child may require assistance in other forms, such as psychological, medical or educational assistance.

In General Comment No. 12, para. 38 it is explained that ‘the opportunity for representation must be “in a manner consistent with the procedural rules of national law”’. This clause should not be interpreted as permitting the use of procedural legislation which restricts or prevents enjoyment of this fundamental right. On the contrary, States Parties are encouraged to comply with the basic rules of fair proceedings, such as the right to a defence lawyer.

In General Comment No. 10, para. 49 the Committee states about legal or other appropriate assistance:

#### GENERAL COMMENT NO. 10

49. The child must be guaranteed legal or other appropriate assistance in the preparation and presentation of his/her defence. CRC does require that the child be provided with assistance, which is not necessarily under all circumstances legal but it must be appropriate. It is left to the discretion of States parties to determine how this assistance is provided but it should be free of charge. The Committee recommends the State parties provide as much as possible for adequate trained legal assistance, such as expert lawyers or paralegal professionals. Other appropriate assistance is possible (e.g. social worker), but that person must have sufficient knowledge and understanding of the various legal aspects of the process of juvenile justice and must be trained to work with children in conflict with the law.

50. As required by article 14 (3) (b) of ICCPR, the child and his/her assistant must have adequate time and facilities for the preparation of his/her defence. Communications between the child and his/her assistance, either in writing or orally, should take place under such conditions that the confidentiality of such communications is fully respected in accordance with the guarantee provided for in article 40 (2) (b) (vii) of CRC, and the right of the child to be protected against interference with his/her privacy and correspondence (art. 16 of CRC). A number of States parties have made reservations regarding this guarantee (art. 40 (2) (b) (ii) of CRC), apparently assuming that it requires exclusively the provision of legal assistance and therefore by a lawyer. That is not the case and such reservations can and should be withdrawn.

According to the CRC Committee the right to legal or other appropriate assistance is vital to the right of the young person to participate in the juvenile justice process, so this assistance is not necessarily under all circumstances legal but it must be appropriate.

At the European level, the right to legal representation is considered part of a fair trial. It follows from Article 6(1) ECHR that ‘in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing’. Article 6(3)(b) ECHR stipulates that everyone charged with a criminal offence has the right ‘to have adequate time and facilities for the preparation of his defence’ while Article 6(3)(c) enshrines the right ‘to defend [one]self in person or through legal assistance of [one’s] own choosing’.

However, as the Council of Europe, observed there are other forms of assistance, such as ‘private or subsidised services (...) available for children and young people through which they can get information on children’s rights in general or basic information on the legal issues of their own case or situation’. The *Guidelines on Child-friendly Justice* of the Council of Europe (2010), require that children should be guaranteed equivalent levels of safeguards in both **judicial and out-of-court proceedings**. Children should be given the opportunity to obtain legal advice and other assistance in determining the appropriateness and desirability of the proposed alternatives (para. IV.B.25-26).

Thus, the right to legal or other appropriate assistance can be regarded a fundamental human right for both adults and juveniles. However, whereas most of the international standards provide the right to legal or other appropriate assistance, article 37(d) CRC provides for legal **and** other appropriate assistance for every child deprived of his or her liberty. This implies that if a child is deprived of his liberty he must be entitled to a higher degree of assistance than if he needs to prepare and present his defence (Liefwaard, 2008). So, it is important to note that the child is entitled to **legal and other forms of assistance** concerning his particular dependent status if he is deprived of his liberty. The most classical form of legal assistance is the assistance provided by a lawyer.

## RELEVANT STANDARDS IN PRACTICE: BASIC REQUIREMENTS

Legal and other appropriate assistance should apply to all other stages of the proceedings, beginning with the interviewing (interrogation) of the child by the police, (General Comment No. 10, para. 52). In this regard, it is useful to explore the significance of the implementation of the legal or other assistance in different stages of the criminal justice procedure, in particular during the phase of arrest and police interrogations, in the phase of court proceedings and trial and the phase of disposition. As the most classical form of legal assistance is the assistance provided by a lawyer, the specific role of the lawyer will be highlighted.

### *Role of the lawyer in the phase of arrest and police interrogation*

As soon as a child is arrested and placed in police custody, access to assistance must be granted. Under the EU Access to a Lawyer Directive 2013/48/EU, to be implemented by 27 November 2016, Member States are obliged to regulate the right to legal counsel at the stage of police interrogation in statutory legislation in accordance with the minimum standards, as provided in the Directive.<sup>25</sup> Article 3(3) states that access to a

25 Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, OJ 2013 L 294/1.

lawyer includes the right of suspects to **meet and communicate with the lawyer** in private, including before the first interrogation; the presence and effective participation of the lawyer during questioning; and the lawyer's presence during the investigation and evidence gathering. Although the Directive does not provide much more guidance regarding children who are in the stage of arrest and police interrogations, it includes direct references to children in recitals 52 and 55 of its preamble, where it states that the Directive 'promotes the rights of children and takes into account the Guidelines of the Council of Europe on child friendly justice' and 'ensures that suspects and accused persons, **including children**, are provided with adequate information to understand the consequences of waiving a right and that any such waiver is made voluntarily and unequivocally'.

International children's rights standards are not entirely clear about whether or not children have the **right to waive their right to legal assistance**. However, according to the *Directive on procedural safeguards for children suspected or accused in criminal proceedings*, children should not be able to waive their right of access to a lawyer in case of deprivation of liberty (art. 6(5)); See also Liefwaard & Van den Brink, 2014).

The ECtHR considers access to a lawyer to be one of the fundamental elements of the right to a fair trial (see ECtHR 27 November 2008, no. 36391/02, para. 51; ECtHR 11 December 2008, no. 4268/04). Individuals charged with a criminal offence have the right to access a lawyer from the **early stages of a police investigation**. That right may be limited in exceptional circumstances, provided that the limitation does not unduly prejudice the rights of the accused. The ECtHR has found that this could occur when statements given without having had access to a lawyer are used for conviction (ECtHR 27 November 2008, no. 36391/02, para. 62).

In the case of *Salduz v. Turkey*, the European Court considered that Article 6(1) ECHR had been violated, since a 17-year-old suspect did not have access to a lawyer at any point during his five day stay in police custody (ECtHR 27 November 2008, Appl. No. 36391/02). The Court found that: "in order for the right to a fair trial under Article 6(1), to remain sufficiently 'practical and effective', access to a lawyer should be provided, as a rule, from the first interrogation of a suspect by the police [...]". The Court also noted that one of the specific elements of this case was the applicant's age. Having regard to a significant number of relevant international legal instruments concerning legal assistance to minors in police custody, the Court stressed the fundamental importance of providing access to a lawyer where the person in police custody is a minor (para. 63).

In the case of *Panovits v. Cyprus*, the Salduz judgment was confirmed (ECtHR 11 December 2008, Appl. No. 4268/04). The Court held that effective exercise of the rights of the defence imports a positive obligation upon the prosecuting authorities to furnish a suspect with the necessary information to enable them to access legal representation and to actively ensure that a suspect understands he can access a lawyer, free of charge if necessary (para. 72).

The quality of the lawyer is of special importance to children (Van Bueren, 2006). The European Court acknowledges the notion of children's evolving capacities, which means that not every legal detail has to be understood, but in order to receive a fair trial one must understand the general nature of what is happening (ECtHR 20 January 2009, Appl. No. 70337/01). In this context the lawyer has some crucial tasks. The lawyer has to explain to the minor the essential elements of the charge. Moreover, the child must be confident that he is represented by a well-informed and trained professional, who can advise him properly (see Beijing Rule 22.1; General Comment No. 10, para. 49).

In the case of *Güveç v. Turkey* the European Court held that in case of a manifest failure by a counsel appointed under the legal aid scheme to provide effective representation, Article 6(3)(c) of the Convention requires the national authorities to intervene. In this specific case, the manifest failure of the lawyer to represent the minor properly and his many absences from the hearings, should have led the trial court to consider that the applicant urgently required adequate legal representation (ECtHR 20 January 2009, no. 70337/01, para. 31). The European Court considers that the shortcomings, including in particular the lack of legal assistance for most of the proceedings, worsened the consequences of the applicant's inability to participate effectively in his trial and infringed his right to due process (ECtHR 20 January 2009, no. 70337/01, para. 32).

Using these examples, one can conclude that defendants should always be provided with legal assistance before the first police interrogation.

### ***Role of the lawyer in the phase of court proceedings and trial***

With regard to the phase of court proceedings and trial, a minor can hardly participate adequately in the youth court without being prepared with legal assistance, generally by the lawyer. As already mentioned, the **minor must have a broad understanding** of the nature of the trial process and of what is at stake for him or her. This includes that the lawyer needs to inform the minor about what the allegations are, what his rights are, what will be expected of him, the procedures, who will be present and what their role will be, where he is supposed to sit in the courtroom, that he should pay careful attention to and that he is not obliged to answer immediately because he has the right to remain silent (Melton, 1989).

During the hearing the lawyer should explain **judicial terminology, important statements, and questions** posed by the judge or prosecutor that the young person might not understand. This implies that the lawyer should be aware of what juveniles usually know and do not know (Melton, 1989). The defendant should be able to follow what is said by the prosecution witnesses and, if represented, to explain to the defence counsel his or her version of events, point out any statements with which he disagrees and make the trial court aware of any facts which should be put forward for the defence (ECtHR 20 January 2009, Appl. No. 70337/01, para. 24). The lawyer can also facilitate the involvement of the minor during the proceedings.

After the hearing has taken place, the lawyer should **explain the judgment and sentence** to the minor and his parents. It is also important to note that the lawyer can explain beforehand which sanctions could potentially be imposed so that the minor and his or her parents are informed and aware of potential consequences (Ten Brummelaar & Kalverboer, 2011).

### ***Role of the lawyer in the phase of disposition***

In the phase of disposition, legal or other appropriate assistance is of vital importance, especially when a child is deprived of his or her liberty. Whereas most of the international standards provide the right to legal **or** other appropriate assistance, Article 37(d) CRC provides for legal **and** other appropriate assistance for every child deprived of his or her liberty.

The Beijing Rules emphasise the child's need for all necessary individual assistance during his or her placement in a closed institution: while in custody, juveniles shall receive care, protection and all necessary individual assistance – social, educational, vocational, psychological, medical and physical – that they may require in view of their age, sex and personality (Rule 13.5). It might well be the case that 'other' assistance becomes more relevant while being in custody.

The Committee on the Rights of the Child pays attention to the **aftercare** needs of children in the post-disposition phase. In General Comment No. 10 it is stated that 'many children in conflict with the law are also victims of discrimination, e.g. when they try to get access to education or to the labour market. It is necessary that measures are taken to prevent such discrimination, inter alia, as by providing former child offenders with appropriate support and assistance in their efforts to reintegrate in society' (para. 7). Consequently, it is assumed that assistance could aid the reintegration of these juveniles.

## Role of the lawyer during pre- and post-trial detention

In the Havana Rules it is stated that when juveniles are held in **pre-trial detention** they 'should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers' (Rule 18(a)).

The ECtHR requires that State authorities ensure that children have the right to **challenge the lawfulness of the detention** at reasonable intervals, and that they have access to a lawyer during the proceedings determining the lawfulness of their detention (art. 5(4) ECHR). For example, the case of *Bouamar v. Belgium* concerns the placement of a juvenile in a remand prison on nine occasions for periods of around 15 days. The young person was considered to have a disturbed personality and violent behaviour. The Court found a violation of Article 5(4) because the hearings for the determination of the juvenile's detention took place in the absence of his lawyers, they were not decided speedily and there was no actual decision on the 'lawfulness of the detention', since the domestic courts dismissed the juvenile's appeals as devoid of purpose (ECtHR 29 February 1988, Appl. No. 9106/80).

## 2.3 THE ROLE OF PARENTS<sup>26</sup>

As the previous paragraph focused on the right to legal or other forms of appropriate assistance, this section focuses on the parental assistance that can be seen as a form of '**other appropriate assistance**'. This is because parents can play an important role in assisting the child in understanding the procedures and participating in the process. However, parental assistance should not be seen as the only way of providing 'other appropriate assistance', it could be argued that parental assistance should be an additional form of assistance to address the particularly vulnerable position of juveniles.

## RELEVANT INTERNATIONAL AND EUROPEAN STANDARDS

On the international level the right to parental assistance within the juvenile justice system is recognized by article 40 CRC. Article 40 (2)(b)(iii) CRC states that the child is entitled to the presence of 'other appropriate assistance', in particular, taking into account his or her parents or legal guardians', unless it is considered not to be in the best interests of the child. According to Article 40 (2)(b)(ii) CRC the parents can also play a role in informing the child about the charges against him or her.

In General Comment No. 10, para. 53 the Committee makes a statement about parents or legal guardians:

### GENERAL COMMENT NO. 10

53. Parents or legal guardians should also be present at the proceedings because they can provide general psychological and emotional assistance to the child. The presence of parents does not mean that parents can act in defence of the child or be involved in the decision-making process. However, the judge or competent authority may decide, at the request of the child or of his/her legal or other appropriate assistance or because it is not in the best interests of the child (art. 3 of CRC), to limit, restrict or exclude the presence of the parents from the proceedings.

26 Parts of this section are derived from Rap, S. (2013). *The participation of juvenile defendants in the youth court: A comparative study of juvenile justice procedures in Europe*. Amsterdam: Pallas Publications (dissertation).

The CRC Committee has further established the role of parents and legal guardians and recommends that parents or legal guardians should also be present at the proceedings because they can provide **general psychological and emotional assistance** to the child. Thus, by noting the special benefits of the parents' assistance (psychological and emotional), the CRC Committee makes a clear distinction between the role of the legal representative and the role of the parents of the juvenile defendant. Moreover, the Committee also recommends that States Parties explicitly provide by law the maximum possible involvement of parents or legal guardians in the proceedings against the child (General Comment No. 10, para. 54). The Committee regrets that in some countries there is a trend whereby parents are held responsible for the acts committed by their children, because that does not contribute to the reintegration of the child (General Comment No. 10, para. 55).

The role of parents and guardians has also been explained in the Commentary on Rule 15.2 of the Beijing Rules, which stipulates that 'the parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile.'

However, parental involvement can also have a negative effect, because of feelings of shame and fear. Therefore, the best interests of the child may require that juveniles are not be awarded their right to assistance. Consequently, it can be argued that the child should always have the possibility to **waive their right to have one of their parents present**, for example, during police interrogation,<sup>27</sup> or, as Rule 15.2 Beijing Rules put it: 'They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile'.

When children are deprived of their liberty, the right to parental assistance supplements the right of each child deprived of liberty to maintain contact with his family, through correspondence and visits, provided that this contact is not against the best interests of the child (art. 37(c) CRC).

This is also stressed on the European level. *The Guidelines on Child-friendly Justice* of the Council of Europe (2010), require that if a child is arrested and taken into custody, the child and his or her parents should be promptly and adequately informed of the reason for this (para. IV, A.1).

The *Directive on procedural safeguards for children suspected or accused in criminal proceedings*, provides that children should benefit from the assistance of parents, unless this would be contrary to the **child's best interests** (art. 15(2a)). The holder of parental responsibility should be provided with the same information the child receives, as soon as possible (art. 5(1)). Moreover, the child has the right to be accompanied by a holder of parental responsibility or by another appropriate adult during court hearings in which they are involved (art. 15(1-2)).

Thus, parental assistance can be seen as a form of 'other appropriate assistance' and it can be regarded as a fundamental right of juveniles who are in conflict with the law. Contrary to lawyers, parents are in the position to provide **emotional support** to the child. To enhance the participation of juvenile defendants in court, it is important to hear the parents as well. On the one hand, hearing parents can contribute to the awareness of the young person of the impact his behaviour has had on others. On the other hand, it can contribute to the acceptance of the sentence and the appropriate execution of that sentence by the young person. The participation of parents can enhance the perception of parents and children that both the procedures in court and the decision-making are fair (Rap, 2013).

27 See for the role of parents during interrogations: Liefwaard & Van den Brink (2014).

## RELEVANT STANDARDS IN PRACTICE: BASIC REQUIREMENTS

As the assistance of parents is crucial in all parts of the proceedings, it is useful to explore the significance of the implementation of the role of parents in different stages of the criminal justice procedure, in particular during the phase of arrest and police interrogations, in the phase of court proceedings and trial and the phase of disposition.

### *Role of parents in the phase of arrest and police interrogation*

In the *Access to a Lawyer Directive 2013/48/EU* it is laid down that when a child is deprived of liberty, the holder of parental responsibility shall be notified and be given reasons thereof, unless this would be contrary to the child's best interests. In the latter case, another appropriate adult shall be informed (recital 55 and article 5 (2)).

The *Guidelines on Child-friendly Justice* also state that, from the first moment a child is apprehended by the police, he or she should be given the opportunity to contact his parents or a person whom he trusts (para. IV, A.28). It is also of great importance that, in case of arrest and police custody, children and their parents are promptly and adequately informed of **the reason for which the child has been taken into custody** (para. IV, A.1). As a rule, both the child and parents should directly receive the information. Provision of the information to the parents should not be an alternative to communicating the information to the child (para. IV, A.3). Information on any charges against the child must be given promptly and directly after the charges are brought. This information should be given to both the child and the parents in such a way that they understand the exact charge as well as the possible consequences (para. IV, A.5).

Moreover, a child who has been taken into custody should not be questioned with regards to criminal behaviour, or asked to make or sign a statement concerning their involvement, except in the presence of a lawyer or of one of the child's parents or, if no parent is available, of another person whom the child trusts. The parent or another trusted person may be excluded if suspected of involvement in the criminal behaviour or if engaging in conduct which amounts to an obstruction of justice (para. IV, A.30).

### *Role of parents in the phase of court proceedings and trial*

During court proceedings and trial, children should be allowed to be accompanied by their parents, unless a reasoned decision has been otherwise made in respect of that person (*Guidelines on Child-friendly Justice*, 2010, para. IV, A.58). Parents in particular can play an important role regarding the information that is given and providing the child with support.

Regarding the information process, **parents should be informed** when charges are brought before the court. However, giving information to parents should not be an alternative to providing the child with information (*Guidelines on Child-friendly Justice*, 2010, para. IV, A.3; see also General Comment No. 10, para. 48). It is important for parents and their child that they feel they are seen from the start of the hearing and that the judge is able to address them directly. Research shows that parents feel more satisfied when they feel that the judge has listened to their views and has taken their contribution seriously during a court hearing (Schuytlot, 1999). It is therefore recommendable that judges ask parents to give their views on the case at a certain moment during the hearing. For example, the judge can ask parents questions about how they reacted when they first heard about the offence or the arrest of their child; how they discussed the events with their child at home; whether they are worried about specific matters in the life of their child; whether they recognise the issues that are raised in court (Rap, 2013). In addition, research indicates that children who are involved in the justice system state they value receiving information and explanations from their parents over receiving it from other adults such as lawyers or court officials (Kilkelly, 2010).

When a child has to appear before a juvenile criminal court, parents are still to be the primary people to support the child in his or her development and upbringing (Weijers, Hepping & Kampijon, 2010). As mentioned before, parents can provide the child with psychological and emotional support, but it does not necessarily imply that parents should defend their child or take part in the decision-making in court (General Comment No. 10, para. 53). Parents who provide support to their child can help the child participate during the court hearing. Furthermore, they can help the child **accept the sentence**, when parents acknowledge and accept the authority of the court and its decision. However, parents can only give this support properly when they are well informed and understand the procedure and what is expected of them and their child during the hearing (Rap, 2013).

Thus, parents can play an important role during court proceedings and trial in giving information to the court and providing the child with support.

### THE ROLE OF PARENTS IN ITALY

Only minors aged 14 years and over may be tried in juvenile courts; younger children who commit criminal acts are referred to social services for family and community-based services. The Italian juvenile code requires that an 'appropriate adult' be present to support the child in all stages of a juvenile case. If parents are unable or unwilling to perform this role, another appropriate adult whom the child trusts is appointed (art. 12 D.P.R. 448/1988).

### *Role of parents in the phase of disposition*

After the conviction, in the phase of disposition, the role of parents is of vital importance. European recommendations draw the attention to the role of parents in the phase of disposition as well. Parents should be required, where appropriate, to attend counselling or parent training courses, to ensure their child attends school and to assist social agencies in carrying out community sanctions and measures.<sup>28</sup>

### *The role of parents during pre- and post-trial detention*

Within the family, the parents have, not only the right, but also the responsibility to care for and supervise their children. The separation of children from their parents is a measure of last resort (Rule 18.2, Beijing Rules,). Therefore, especially when children are deprived of their liberty, the right to parental assistance gives rise to the right of each child deprived of liberty to **maintain contact with his family** through correspondence and visits, provided that this contact is not against the best interest of the child (art. 37(c) CRC). Moreover, when a child is detained the information on admission, place, transfer and release should be provided without delay to the parents and guardians or closest relative of the juvenile concerned (Rule 22, Havana Rules). In addition, parents or family members have the right to assist the child in order to make a complaint during detention (Rule 78, Havana Rules).

In the *Guidelines on Child-friendly Justice* it is stated that maintaining family ties is important because of the vulnerability of children who are deprived of their liberty and to promote the reintegration of the child into society. It is therefore recommended that, in case of detention, **children maintain regular and meaningful contact with parents**, family and friends through visits and correspondence. Moreover, restrictions on this right should never be used as a punishment (para. 21(a)).

28 See Council of Europe, recommendation rec (2003)20 of the Committee of Ministers to Member States concerning new ways of dealing with juvenile delinquency and the role of juvenile justice (24 September 2003).

## SUMMARY

- Specialized legal or other assistance is needed and regarded as a prerequisite of child-friendly justice in all parts of the proceedings and relevant for the effective participation of juveniles.
- Lawyers have an important task in assisting the juvenile in understanding the various steps in the juvenile justice process and can help him choose the right course of action and attitude during the process.
- Parental assistance can be seen as a form of 'other appropriate assistance'. Parents can play an important role in assisting the child in understanding the procedures, participating in the process and providing the child with emotional support.



## CHAPTER 3

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# Effective participation

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# Chapter 3. Effective participation

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The core focus of this chapter is the right to effective participation. In order for juveniles to effectively participate in juvenile justice proceedings, two other rights are important: the right to information and the right to be heard. Section 3.1 will focus on the right to information and how to implement it in practice in the different stages of the juvenile justice process. The right to be heard is the core focus of section 3.2.

## 3.1 RIGHT TO INFORMATION<sup>29</sup>

The CRC Committee has stated that ‘the child’s right to information (...) is, to a large degree, a prerequisite for the effective realization of the right to express views’ (General Comment No. 12, para. 82). Moreover, ‘children should be provided with full, accessible, diversity-sensitive and age-appropriate information about their right to express their views freely’ (para. 134(a)). This is in essence the topic of this section.

In juvenile justice proceedings, it is important that the young person can participate effectively, that he is informed about the procedures in which he is involved and that he understands what will be expected from him during the proceedings. In this section the right to be informed will be further elaborated upon.

### RELEVANT INTERNATIONAL AND EUROPEAN STANDARDS

Article 40 (2)(b)(ii) CRC provides that children who are suspected of having committed an offence have the right “to be informed promptly and directly of the charges against him”. The charges have to be communicated directly to the child or, when appropriate, through his parents or legal guardians. This is one of the legal safeguards for a fair trial, as listed in article 40 (2)(b) CRC.

The UN Committee on the Rights of the Child has indicated that in order for a juvenile to participate effectively in proceedings he must not only be informed of the **charges**, but also of the **juvenile justice process as a whole** and of the **possible measures** that can be taken (General Comment No. 10, para. 44). The Committee has given further guidance on how to interpret the right to be informed about the charges in General Comment No. 10.

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<sup>29</sup> Parts of this section are derived from Rap, S. (2013). *The participation of juvenile defendants in the youth court: A comparative study of juvenile justice procedures in Europe*. Amsterdam: Pallas Publications (dissertation).

## GENERAL COMMENT NO. 10

47. Every child alleged as or accused of having infringed the penal law has the right to be informed promptly and directly of the charges brought against him/her. Prompt and direct means as soon as possible, and that is when the prosecutor or the judge initially takes procedural steps against the child. But also when the authorities decide to deal with the case without resorting to judicial proceedings, the child must be informed of the charge(s) that may justify this approach. This is part of the requirement of article 40 (3) (b) of CRC that legal safeguards should be fully respected. The child should be informed in a language he/she understands. This may require a presentation of the information in a foreign language but also a “translation” of the formal legal jargon often used in criminal/juvenile charges into a language that the child can understand.

48. Providing the child with an official document is not enough and an oral explanation may often be necessary. The authorities should not leave this to the parents or legal guardians or the child's legal or other assistance. It is the responsibility of the authorities (e.g. police, prosecutor, judge) to make sure that the child understands each charge brought against him/her. The Committee is of the opinion that the provision of this information to the parents or legal guardians should not be an alternative to communicating this information to the child. It is most appropriate if both the child and the parents or legal guardians receive the information in such a way that they can understand the charge(s) and the possible consequences.

Two points from General Comment No. 10 should be highlighted. First, the Committee states that a child should be informed about the charges in a **language he understands**. This may mean that information should be translated in a foreign language, but it is also of vital importance that the information is presented in a way that it is adapted to the age and level of understanding of a child and that legal jargon is translated into common language (see also chapter 4, section 4.3).

Second, the Committee states that an **oral explanation of the information** is often necessary. Moreover, it is the responsibility of the authorities to make sure that the child understands each charge brought against him and it should not be the responsibility of the parents or the legal (or other) representative. This means that the information and explanations should be communicated to the child directly and not via the parents or the lawyer. Furthermore, both the child and his parents should be able to understand the charges and the possible consequences of these charges.

In General Comment No. 12 the Committee states that the ‘right to information is essential, because it is the precondition of the child's clarified decisions’. This implies that children should be informed about ‘the matters, options and possible decisions to be taken and their consequences by those who are responsible for hearing the child’ before the hearing starts. Moreover, the child should be informed about the conditions under which he will be asked to give his views (para. 25). Concerning the juvenile justice process, this implies that the child should be informed about this **process and the possible measures** that can be taken by the court, for example (para. 61).

The CRC Committee stresses the importance of juveniles being **informed in advance**. The Committee states that ‘the decision maker must adequately prepare the child before the hearing, providing explanations as to how, when and where the hearing will take place and who the participants will be (...)’ (General Comment No. 12, para. 41). It is important to note that this task is assigned to the decision maker in the case, such as the judge, prosecutor or police officer. The child should also receive information about the option of giving his views directly or through a representative and the consequences that might have. Moreover, the impact that the views of the child can have on the outcome of the hearing should also be made clear to him (para. 41). This latter point is in accordance with the Committee's beliefs that participation should be voluntary, that children should never be forced to express their views and that they should be informed that they can cease involvement at any stage of the proceedings (para. 134 (b)).

In addition, in the *Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings* it is provided that children should be informed about their rights promptly (art. 4(1)). Specifically, children should be informed of the following rights:

- (a) the right to have the holder of parental responsibility informed;
- (b) the right to be assisted by a lawyer;
- (c) the right to protection of privacy;
- (d) the right to be accompanied by the holder of parental responsibility during certain stage(s) of the proceedings other than court hearings;
- (e) the right to legal aid;
- (f) the right to an individual assessment;
- (g) the right to a medical examination, including the right to medical assistance;
- (h) the right to limitation of deprivation of liberty and the use of alternative measures, including the right to periodic review of detention;
- (i) the right to be accompanied by the holder of parental responsibility during court hearings;
- (j) the right to appear in person at trial;
- (k) the right to effective remedies;
- (l) the right to specific treatment during deprivation of liberty.

The Council of Europe's *Guidelines on Child-friendly Justice* consider 'information and advice' as general elements of child-friendly justice. The Guidelines give a detailed account on what kind of information should be provided to children (see below).

#### GUIDELINES ON CHILD-FRIENDLY JUSTICE, IV, A, PARA. 1, A-L

Information should be provided on:

- specific rights children have with regard to judicial or non-judicial proceedings;
- instruments available to remedy possible violations of their rights;
- information on the likely duration of proceedings;
- possible access to appeals and independent complaints mechanisms;
- the system and procedures involved;
- the existing support mechanisms for the child;
- the appropriateness and possible consequences of given in-court or out-of-court proceedings;
- the charges or the follow-up given to their complaint;
- the time and place of court proceedings;
- the general progress and outcome of the proceedings or intervention;
- the availability of protective measures;
- the existing mechanisms for review of decisions affecting the child;
- the existing opportunities to obtain reparation from the offender or from the state through the justice process, through alternative civil proceedings or through other processes;
- the availability of services (health, psychological, social, interpretation and translation, and other) or organisations which can provide support as well as the means of accessing such services;
- any special arrangements available in order to protect their best interests as far as possible if they are resident in another state.;

Moreover, it is stressed in the Guidelines that both **the child and his parents** or legal representative should receive the information directly and in a manner that they understand the exact charges and the consequences (IV, A, paras. 2-5).

In the Guidelines it is also provided that children should be given ‘all necessary information on how to effectively use the right to be heard’. It should, however, be explained to them that their right to be heard and the fact that they can give their views may not necessarily determine the final decision (IV, D, 3, para. 48). This point will be further elaborated upon in chapter 5.

## RELEVANT STANDARDS IN PRACTICE: BASIC REQUIREMENTS

In the following sections of this chapter the implementation of the relevant international and European standards in practice with regard to the right to information will be attended to. Basic requirements are formulated as to how to implement the standards in the different phases of the juvenile justice process; from the arrest of the juvenile until post-trial detention.

### *The phase of arrest and police interrogation*

When a juvenile is arrested by the police this involves his **first contact with the juvenile justice system**. After being arrested the young person can be taken to the police station for interrogation and he can be held in police custody. These first encounters with the police can be stressful for the juvenile, because of lack of knowledge and understanding of what will happen. It is therefore important to provide him with clear information.

The police have the duty to inform the juvenile suspect of the **charges** in a language and manner that he understands (art. 40(2)(b)(ii) CRC; *Guidelines on Child-friendly Justice*, IV, C, para. 28). At this stage the juvenile should also receive information on the opportunities of **diversion** that might exist. The possible consequences of diversion should also be explained and the juvenile should be given the opportunity to obtain legal advice, before making a decision in this regard (*Guidelines on Child-friendly Justice*, IV, C, para. 25).

A lawyer can further assist the young person during this stage of the proceedings. However, it is the duty of the police to provide the juvenile with information from the moment he is arrested. This is of even more importance when taking into account the fact that a lawyer is usually not present at the police station from the moment the young person is brought in. From the *Salduz v. Turkey* case follows that suspects should be assisted by a lawyer from the first interrogation by the police (ECtHR, 27 November 2008, Appl. no. 36391/02). However, before the lawyer arrives the juvenile has to wait in a police cell and this can be a very stressful event for him (Berger & Van der Kroon, 2011). Adequate information on the proceedings that will follow, what he can expect and how much time these will take can, to a certain extent, ease the stress.

## THE ROLE OF THE POLICE IN ITALY

After the arrest of a minor, the police must inform him of the following rights:

### - The right to have a lawyer appointed of his choice

In case the minor cannot afford a lawyer the investigative police will ask the local bar association for a state appointed lawyer to be appointed. In Italy, a lawyer is appointed to everyone who faces criminal charges.

### - The right to have family informed

Public officials and judicial police responsible for the arrest or custody of the minor must give immediate notice to the holder of parental authority (or the foster family).

### - The right to be informed of the allegations/charges

When a minor is arrested in the act of committing a crime, or immediately after a crime he does not have the right to be informed of the allegations until an interrogation by the prosecutor or until the first hearing before a judge, which must be held within 96 hours of the arrest. In other circumstances (i.e. when the juvenile is not caught in the act of committing an offence), the police will need a warrant for his arrest. The police will show the warrant to the juvenile, which contains information about the allegations against him, the evidence held against him, the reason that led to the arrest, etc.

## *The phase of court proceedings and trial*

Court proceedings can be hard for young people to fully understand. As was explained in chapter 1, young people lack the ability and knowledge to fully understand legal procedures. As they mature with age and gain more experience with the justice system, it is expected that they will better understand trial-related information and knowledge.

The European Court of Human Rights ruled in the case of *S.C. v. the United Kingdom* that a fair trial – as laid down in art. 6 ECHR – does not necessarily imply that a defendant understands every legal detail of the criminal proceedings (ECtHR, 15 June 2004, appl. no. 60958/00, para. 29). The Court holds the opinion that the **legal representative** has an important role in informing and guiding the defendant through the proceedings. The Court further specifies that the defendant should have ‘a broad understanding of the nature of the trial process and of what is at stake for him or her, including the significance of any penalty which may be imposed. It means that he or she, if necessary with the assistance of, for example, an interpreter, lawyer, social worker or friend, should be able to understand the general thrust of what is said in court’.

From this case follows that effective participation – as part of a fair trial – does not require that a juvenile understands every detail that is discussed during a court hearing. This means, however, that terms such as ‘a broad understanding’ and ‘general thrust’ should be further defined. From the international and European standards discussed above it can be derived that, as a minimum, **three issues should be explained** to the juvenile:

1. the **charges** that are brought against the juvenile;
2. the **procedures** and the order that is followed during the juvenile justice process;
3. the **possible measures and sanctions** that can be taken by the court.

The authority that will take the final decision on the case should explain these issues. This might be a judge, prosecutor, police officer or other competent administrative authority. Being informed about these issues at a court hearing or trial, although they might have been explained to the juvenile during previous proceedings, is important because it will enable the young person to form his informed views. Sometimes, a long period of time can go by before a court hearing is held and juveniles might have had multiple encounters with the police, therefore it is important to not assume that the juvenile has remembered all the information or has an adequate recollection of these issues. Moreover, explaining the process and the order of the process will help the young person understand what is expected of him during the proceedings and when he will be able to give his views to the authority.

Furthermore, it is important that the juvenile receives information on the possibilities of **appeal** against the decision that is taken. Article 40(2)(b)(v) provides that the child has the right to have the decision and any measures imposed reviewed by a higher competent, independent and impartial body (see also General Comment No. 10, paras. 60-61). In the *Guidelines on Child-friendly Justice* it is stated that the child's lawyer, guardian ad litem or legal representative should give the necessary information concerning appeal, after the decision or judgment is given to the child (para. 75).

#### PROBATION SERVICE FOR JUVENILES IN GREECE

In Greece, the probation officer for minors is the professional responsible for preparing the minor and his family for the court procedures and for informing them about the rights of the minor (the right to be heard, right to a lawyer, right to an interpreter if necessary, right to be accompanied in court by his parents/guardians). These officials are specially appointed professionals (social workers, sociologists, psychologists, social anthropologists and legal professionals) working for the public Probation Service. They work with the minor and his parents, and may use a special manual developed for parents/guardians of children in conflict with the law.

The probation service for juvenile offenders is an integral partner in the juvenile court procedure, mediating between the court and the juvenile, writing social enquiry reports and proposing the appropriate individualised treatment of the juvenile offender. The probation officers for minors are also responsible for implementing educative measures ordered by the court.

#### *The phase of disposition*

Disposition can take place at various phases of the juvenile justice process. In this section two topics will be highlighted: diversion and the imposition of community sanctions and measures.

With regard to **diversion**, it has been stated above that the juvenile suspect should receive information concerning diversionary measures after his arrest. When applicable, the police or the prosecutor can divert the young person away from the formal juvenile justice system. However, the juvenile should receive information on the possible consequences of diversion – what it will entail, whether a confession is required and whether it will have consequences on the criminal record. Moreover, a juvenile should be able to consult a lawyer before deciding whether he would like to consent to the proposed diversionary measure (*Guidelines on Child-friendly Justice*, IV, C, para. 25). The UN Committee on the Rights of the Child stresses that juveniles must have the opportunity to give their free and voluntary consent to diversion after having obtained legal advice (General Comment No. 12, para. 59).

The European Rules for juvenile offenders subject to sanctions or measures (ERJO) gives further guidance on implementation of **community sanctions and measures**. Rule 33.1 states that 'juvenile offenders

must be informed about the modalities of the implementation of the community sanction or measure imposed on them'. Moreover, the juvenile and his parents or legal guardians should be informed about the consequences of non-compliance with the conditions and obligations of community sanctions and measures (Rule 46). This Rule continues as follows:

"It must be recognised that no matter how much information has been given to juvenile offenders at the imposition stage, the beginning of the actual implementation is a favourable moment to reinforce it. Juveniles can be expected to be highly receptive to information about the significance and consequences of the community sanction or measure at this stage, provided that the information given is clear, comprehensive and explicit. The information should normally be given orally so as to permit a dialogue to take place between the practitioner and the juvenile. It is desirable also to give a written statement to the juveniles and their parents or legal guardians recalling the conditions and obligations that the juveniles are required to respect and to provide other generally useful information about the implementation of the community sanction or measure" (Rule 46 ERJO).

It is important to stress that information that might have been provided to the juvenile in an earlier stage of the proceedings should be repeated at the start of a community sanction or measure, especially information concerning breach and its consequences. These are of particular importance during this phase, because juveniles should be aware that with their behaviour they can either elicit or prevent breach.

### ***Pre- and post-trial detention***

The UN has drawn up Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules, 1990). Juveniles who are deprived of their liberty can be detained as part of pre-trial detention or as part of post-trial incarceration. Two sets of principles, as set out in the Havana Rules, are related to the right to information for juveniles who are deprived of their liberty. First, information should be provided on the rules governing the detention facility. In principle, these rules should be provided in writing. However, juveniles should be helped to understand the rules, so they know what their rights and obligations are in the institution.

#### **HAVANA RULES**

24. On admission, all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand, together with the address of the authorities competent to receive complaints, as well as the address of public or private agencies and organizations which provide legal assistance. For those juveniles who are illiterate or who cannot understand the language in the written form, the information should be conveyed in a manner enabling full comprehension.

25. All juveniles should be helped to understand the regulations governing the internal organization of the facility, the goals and methodology of the care provided, the disciplinary requirements and procedures, other authorized methods of seeking information and of making complaints and all such other matters as are necessary to enable them to understand fully their rights and obligations during detention.

The second set of principles relates to making complaints while staying in a detention facility. In Rule 25 it is stated that juveniles have the right to make complaints and that they should be helped to understand this right. In Rules 75-78 the right to complain is further elaborated upon. For example, the juvenile should be able to make requests or complaints to the director of the detention facility (Rule 75) and to a higher authority (Rule 76), an independent office or ombudsman should be established to investigate complaints (Rule 77), and juveniles have the right to request assistance in order to make a complaint (Rule 78).

## HAVANA RULES

75. Every juvenile should have the opportunity of making requests or complaints to the director of the detention facility and to his or her authorized representative.

76. Every juvenile should have the right to make a request or complaint, without censorship as to substance, to the central administration, the judicial authority or other proper authorities through approved channels, and to be informed of the response without delay.

77. Efforts should be made to establish an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements.

78. Every juvenile should have the right to request assistance from family members, legal counselors, humanitarian groups or others where possible, in order to make a complaint. Illiterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organizations which provide legal counsel or which are competent to receive complaints.

## INFORMATION PROVIDED TO MINORS AT THE JUVENILE DETENTION CENTRE OF FUNDACIÓN DIAGRAMA, SPAIN.

When a minor arrives to the juvenile detention centre, he will be welcomed by the management staff and the social-educational team (usually the psychologist and the mentor in education). The minor is taken to a neutral space with the purpose of reducing his stress and/or anxiety levels. The type of measure that has been imposed on the minor is explained to him in a way that he understands, as well as what it means to be in a juvenile detention centre and the duration of the placement.

The professionals make sure that the minor understands the information provided. Moreover, the rules of the centre are explained, as well as the juvenile's rights and obligations, the schedules and the habeas corpus procedure (all this information is also provided in writing and in his own language). The minor will then be invited to read it and he will have a chance to discuss any questions or doubts he may have. When the minor does not speak Spanish, and nobody in the centre speaks his language, a translator will be present.

The minor will also receive general information about his future life in the centre and, at the same time, he has to inform the staff about his interests, expectations and needs. This way, the juvenile will sense that he is being listened to and that he is an active participant in the intervention process.

## SUMMARY

The right to information is one of the essential parts of effective participation for juveniles. This right entails that:

- juveniles are informed about the charges that are brought against them, the juvenile justice process as a whole and of the possible measures that can be taken;
- the juvenile receives the information in a language he understands, preferably orally, and it should be directed towards him personally, and not through his parents.

### 3.2. RIGHT TO BE HEARD<sup>30</sup>

Next to the right to be informed juveniles have the right to be heard. Both rights are an important part of protecting their right to effective participation in juvenile justice proceedings.

#### RELEVANT INTERNATIONAL AND EUROPEAN STANDARDS

As has been explained in Chapter 1, the right of children to be heard has been laid down in article 12 CRC. In this provision it is stated that children have the right to be heard in every matter that affects them. Specifically, the right to be heard in judicial and administrative proceedings is mentioned. In General Comments No. 10 and 12 the right to be heard in juvenile justice is further developed by the CRC Committee.

The CRC Committee has stated in General Comment No. 10 that ‘the right to be heard is fundamental for a fair trial’ (para. 44). The child should have the right to be heard directly and not only through a representative. Moreover, the right to be heard must be observed at all stages of the juvenile justice process. It is important that the Committee acknowledges that in the pre-trial stages the juvenile has the right to remain silent, as well as the right to be heard (para. 44).

In General Comment No. 12 it is stated that, in line with article 12 (2) CRC, children in conflict with the law should be provided with the opportunity to be heard (para. 32). As has been explained above, the participation of juveniles should be voluntary: they should never be forced to express their views and they should be informed that they can cease involvement at any stage of the proceedings (para. 134 (b)). This is in accordance with the procedural right to remain silent and not to be compelled to give testimony or to confess guilt (see art. 40 (2)(b)(iv) CRC).

The *Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings* states that children have the right to appear in person at, and participate in, their trial (art. 16(1)). This right is part of the right to a fair trial provided for in article 6 ECHR. In the preamble it is stated that ‘Member States should take appropriate measures to incentivise children to attend their trial, including by summoning them in person and by sending a copy of the summons to the holder of parental responsibility (...)’ (recital 30). Moreover, the child has the right to be accompanied by a parent or other appropriate adult during court hearings (art. 15(1-2)).

In the *Guidelines on Child-friendly Justice* the right to participation plays an important role in a child-friendly justice system. The guidelines provide a detailed account on what child-friendly justice should look like and it is defined by the Council of Europe as:

“(...) It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity” (Definitions, under c).

In the sections below, more detailed guidelines will be provided on how to implement the right to be heard in different stages of the juvenile justice process.

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30 Parts of this section are derived from Rap, S. (2013). *The participation of juvenile defendants in the youth court: A comparative study of juvenile justice procedures in Europe*. Amsterdam: Pallas Publications (dissertation).

## RELEVANT STANDARDS IN PRACTICE: BASIC REQUIREMENTS

In the following sections the implementation of the relevant international and European standards in practice with regard to the right to be heard will be attended to. Basic requirements are formulated as to how to implement the standards in the different phases of the juvenile justice process.

### *The phase of arrest and police interrogation*

In the phase of arrest and police interrogation the right to be heard must be balanced with the right to remain silent. On the one hand, juveniles have the right to express their views on the case and give their opinion on the decisions that are taken in this phase. On the other hand, juveniles have the right to remain silent, with regard to the facts of the case, so they cannot be forced to confess guilt (art. 40 (2)(b)(iv) CRC).

A first requirement for an interrogation of a young person is that it takes place in a quiet room, where the interview is not disturbed, for example, by people who can walk in and out of the room (see also chapter 2).

Second, two other aspects of human behaviour should be taken into account during police interrogation: compliance and suggestibility. **Compliance** means that someone falsely confesses just to speed up the interview. The suspect knows that he is not guilty, but he would like to go home and therefore confesses. Compliance takes place under pressure, the pressure that someone will be interrogated or detained for a longer period of time (Gudjonsson, 2003).

**Suggestibility** refers to the level of individual influenceability. The suspect starts to believe the information that is wrongly presented to him. Highly suggestible people develop pseudo-memories of the incident that is suggested to them. The suspect is not aware of this process. Research shows that suggestibility is higher for women compared to men, children under the age of 12, people with a lower IQ, people who are anxious or tired or when the suspect thinks that he has to provide an answer to every question (Gudjonsson, 2003). This last aspect is common amongst children, because they expect that they will have to give an answer to every question that is posed to them (Saywitz et al., 2010). In chapter 4 more detailed information on this topic will be provided. To avoid compliance and suggestibility it is important to provide the young suspect with clear instructions before the interrogation starts. It is important that the right to remain silent is not only presented to him as a fact, but that its implications are also explained. In chapter 4 more details will be presented on how this can be done.

Moreover, as has been explained in chapter 2 the presence of a lawyer from the first interrogation by the police is of great importance. The lawyer is in the position to provide the juvenile suspect with additional information on his right to remain silent. Furthermore, the lawyer has an important task in detecting pressure that is exerted on the juvenile by the police and to intervene in the interrogation when he suspects that the juvenile will confess under pressure. As has been addressed in Chapter 2 as well, it is therefore inadvisable to give juveniles the opportunity to waive their right to access and representation of a lawyer (see also Liefwaard & Van den Brink, 2014).

In relation to this, it is provided in the *Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings* that when a juvenile is questioned by the police or other law enforcement authorities the interrogation can be audio-visually recorded, where it is deemed rational, taking into account whether a lawyer is present and whether the juvenile is deprived of his liberty (art. 9(1)).

## THE 'SOCIAL-NETWORK CONFERENCE' IN AUSTRIA

In the Juvenile Court Act of Austria it is laid down that pre-trial detention should be avoided. In order to further eliminate the use of pre-trial detention in 2015, Austria has started to organise a social-network conference for juveniles who can be taken in pre-trial detention. This conference is held with the juvenile, his family, a juvenile court social worker and a probation officer. The young person is given strict conditions, such as the attendance of school or work and to start certain therapies, such as an anti-aggression training. The conditions are laid down in an agreement which must be accepted by the juvenile. This practice has led to a decreasing number of juveniles in pre-trial detention.

### *The phase of court proceedings and trial*

Several studies have indicated that children and young people value being heard directly by the authority that takes a decision concerning them (Kilkelly, 2010; Ten Brummelaar & Kalverboer, 2011; Cashmore & Parkinson, 2007). Moreover, the CRC Committee has stated that children should have the opportunity to be heard directly in any proceedings (General Comment No. 12, para. 35).

In the *Guidelines on Child-friendly Justice* two other important points are highlighted. First, children should be heard when they are deemed to have sufficient understanding of the case (para. 44). This also means that the manner in which the child is heard should be adapted to his level of understanding. Second, children should not be precluded from being heard solely on the basis of age (para. 47).

## GUIDELINES ON CHILD-FRIENDLY JUSTICE

44. Judges should respect the right of children to be heard in all matters that affect them or at least to be heard when they are deemed to have a sufficient understanding of the matters in question. Means used for this purpose should be adapted to the child's level of understanding and ability to communicate and take into account the circumstances of the case. Children should be consulted on the manner in which they wish to be heard.

47. A child should not be precluded from being heard solely on the basis of age. Whenever a child takes the initiative to be heard in a case that affects him or her, the judge should not, unless it is in the child's best interests, refuse to hear the child and should listen to his or her views and opinion on matters concerning him or her in the case.

The latter point means that, in principle, **no age limit** should be attached to hearing the child's views. Article 12 (1) CRC can be considered to be of a dynamic nature, because of the implications that the age and maturity of the child have on his (level of) participation (Beijer & Liefwaard, 2011). Moreover, individual assessments of the level of maturity have to be made in every case involving a child, because the weight given to the views of the child depends on his level of maturity. Individually different developmental trajectories and, as a consequence, individual differences in the capacity to express views should be taken into account when assessing the extent to which the child's views should be taken into consideration by the decision maker (Lansdown, 2005; Saywitz et al., 2010; Stalford, 2012). The right to be heard has been made contingent on the level of maturity of the child and this implies that adults can still make decisions on the child's behalf when he or she is deemed to be immature and not able to express his or her views (Beijer & Liefwaard, 2011).

The right to participate is not only an important children's right, but it is also important from a theoretical perspective. Enabling a young person to tell his own side of the story is considered to be an important factor in the potentially positive effect of coming to court and being confronted with his own behaviour by

the decision maker (Fagan & Tyler, 2005). Theory and research concerning **procedural justice** has indicated that when people are able to participate in a decision-making procedure they are more satisfied with the procedure and its outcome (Tyler, 2003). Procedural justice refers to the perceived fairness of the procedures and the perceived fairness of the treatment one receives (Tyler, 2006). Moreover, researchers found that people are more willing to cooperate with authorities and more willing to comply with the decisions made by those authorities, when they are treated with trust, fairness, respect and neutrality (Tyler, 2006). It is assumed that when a juvenile is able to give his own views on the case and when he is able to participate, this will help him accept the final decision of the case and comply with this decision (see for more on this topic chapter 5).

Another important element of effective participation is **showing genuine interest** in the contributions the juvenile makes. The CRC Committee indicates that ‘simply listening to the child is insufficient; the views of the child have to be seriously considered when the child is capable of forming her or his own views’ (General Comment No. 12, para. 28). Showing a genuine interest in the views of the juvenile implies that he is encouraged to give his views and that the judge, or other authority, continues to ask questions during the conversation with the juvenile. By asking more questions, the judge can show that he finds the contribution of the young person to the hearing to be of importance (Delfos, 2005). Social support, consisting of eye contact, smiling, warm intonation patterns, relaxed body posture and complimentary remarks, gives young people the confidence that their story is being heard and taken seriously (Saywitz et al., 2010; see also chapter 4). Showing an interest in the story and the views of the young person, by not merely taking note of it, but by asking one or more questions and going into detail, is at least as important for his participation as enabling the juvenile to tell his side of the story. In this way the decision-maker shows respect for the young person’s story and can show that he is a benevolent listener (Tyler, 2003; 2006).

To conclude, juveniles prefer to be addressed at their own **level of understanding and maturity**. Professionals have to check whether the young person understands what is being discussed during the hearing, but they also have to check whether they understand the young person correctly in order for the young person to feel that he is being taken seriously and is understood by the decision-maker. It is also important that the decision-maker devotes some attention to the juvenile’s personal situation, as well as discussing the facts of the case. This shows genuine interest and respect for the background of the juvenile, which in turn will enhance the perceived fairness of the procedure.

### ***The phase of disposition***

It is acknowledged by the CRC Committee that the right to be heard should be observed during every stage of the judicial process. This also includes the **actual implementation** of the imposed sanctions or measures (General Comment No. 12, para. 58). The European Rules for juvenile offenders subject to sanctions or measures (ERJO) also state that the principle of participation refers to the stage of imposition and execution of sanctions and measures as well (Rule 13).

In General Comment No. 10 the Committee has also made some important remarks in this regard:

#### **GENERAL COMMENT NO. 10**

45. The child should be given the opportunity to express his/her views concerning the (alternative) measures that may be imposed, and the specific wishes or preferences he/she may have in this regard should be given due weight. Alleging that the child is criminally responsible implies that he/she should be competent and able to effectively participate in the decisions regarding the most appropriate response to allegations of his/her infringement of the penal law (see paragraph 46 below). It goes without saying that the judges involved are responsible for taking the decisions. But to treat the child as a passive object does not recognize his/her rights nor does it contribute to an effective response to his/her behaviour. This also applies to the implementation of the measure(s) imposed. Research shows that an active engagement of the child in this implementation will, in most cases, contribute to a positive result.

Important remarks of the Committee include the idea that the juvenile should not be treated as a passive object, because that does not contribute to an effective response to his offending behaviour. Active involvement of the juvenile in the implementation of the sanction or measure is expected to contribute to a **positive completion** of the sanction or measure (General Comment No. 10, para. 45).

### **Pre- and post-trial detention**

The European Rules for juvenile offenders subject to sanctions or measures (ERJO) give more details with regard to the participation of juveniles who are deprived of their liberty. First, Rule 50 is of importance for the participation of juveniles.

#### **EUROPEAN RULES FOR JUVENILE OFFENDERS SUBJECT TO SANCTIONS OR MEASURES**

50.1. Juveniles deprived of their liberty shall be guaranteed a variety of meaningful activities and interventions according to an individual overall plan that aims at progression through less restrictive regimes and preparation for release and reintegration into society. These activities and interventions shall foster their physical and mental health, self-respect and sense of responsibility and develop attitudes and skills that will prevent them from re-offending.

50.2. Juveniles shall be encouraged to take part in such activities and interventions.

50.3. Juveniles deprived of their liberty shall be encouraged to discuss matters relating to general conditions and regime activities in institutions and to communicate individually or, where applicable, collectively with authorities about these matters.

In the Commentary to the Rules it is explained that **active participation of juveniles in activities**, as described in Rule 50.1, is a necessary condition for the success of their activities. Of even more importance is the fact that in the Commentary it is stated that 'Rule 50.3 strengthens the idea of active participation by encouraging juveniles to raise and discuss matters relating to general conditions of life and regime activities in the institution (...) This participatory approach is of major importance as juveniles feel in this way involved and attached to decisions which concern them and their present and future development' (Commentary, Rule 50).

Research by Van der Laan and Eichelsheim (2013) shows that a juvenile's poor adaptation to imprisonment, such as having feelings of stress, losing autonomy or experiencing an unsafe environment does not contribute to learning from the prison experience. These juveniles are not motivated to participate in training programmes during imprisonment. From this study it can be concluded that the poor psychological adaptation of juveniles can be influenced by factors such as justice in rule enforcement (such as fair treatment and having the right to be heard) and being able to participate in daily activities. Moreover, this could create a safer environment in the institution, give juveniles a sense of freedom and choice and reduce stress levels among juveniles, which in turn can increase the juveniles' motivation to participate in training programmes aimed at reducing reoffending. This is of particular importance in institutions where juveniles are deprived of their liberty, because the general aim of these institutions is to prepare them for reintegration into society and to prevent future offending (Rule 50.1). In the Commentary of the ERJO it is further acknowledged that a participatory approach is part of a preventive strategy (Commentary, Rule 52).

The Havana Rules require that every juvenile is interviewed as soon as possible after their arrival at an institution or detention facility. A **psychological and social report** should be drafted on the basis of this interview in which the specific type and level of care and programme are determined (Rule 27).

In Rule 62.6 (c) ERJO it is also stated that (except in case of a very short period of deprivation of liberty) ‘an overall plan of educational and training programmes in accordance with the individual characteristics of the juvenile shall be developed (...)’. Most importantly, ‘the views of the juvenile shall be taken into account when developing such programmes’ (Rule 62.6 (d)). In the Commentary it is stated that taking into account the views of the juvenile in drafting the overall plan is of importance, because it is only when juveniles agree to participate in the proposed programmes that these are likely to be successful (Commentary, Rule 62).

### JUVENILES IN DETENTION

In Italy, the surveillance judge of the juvenile court is a specialized judge whose functions are: to monitor the execution of the criminal measures in order to guarantee the legality of the execution of any form of custody; to supervise the organisation of the juvenile detention centre with regard to custody and treatment programs; and to issue provisions addressed at eliminating possible violations of children’s rights in detention. According to D.P.R. 448/1988 the surveillance judge should maintain frequent contact with the concerned children and exchanges with the team in charge of him, as well as to ensure his presence in the centres on a regular basis (Braun & Rosset, 2015).

In France, the sentence enforcement judge checks the conditions in which convicted juveniles serve their sentence. If needed, he addresses his observations to the competent authorities. The juvenile judge also acts as a sentence enforcement judge as well as an investigating judge over children in his jurisdiction. In this framework, he has the power to meet with accused minors as well as to check the conditions of detention of minors. After the visit, he gives his observations to the competent authorities if it appears necessary. Juveniles may request an appointment with a judge entitled with visiting powers, at which staff members of the institution are not present (Braun & Rosset, 2015).

### SUMMARY

The right to be heard forms an important underpinning of effective participation. This right entails that:

- juveniles should have the opportunity to give their views in every phase of the juvenile justice process;
- their views should be weighed taking into account their age and maturity.

Participation can be seen as a prerequisite for a fair trial and it can help the young person accept the final decision rendered in a case.



## CHAPTER 4

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# Communication skills

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# Chapter 4. Communication skills<sup>31</sup>

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In the *Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings* it is explicitly laid down that professionals working with children in conflict with the law should be trained and taught appropriate interviewing techniques, child psychology, and communication in a language adapted to the child (art. 19). In the *Guidelines on Child-friendly Justice* it is also emphasised that professionals, such as police officers, lawyers, judges, mediators and social workers, should be trained in communication skills, in using child-friendly language and in child psychology (para. 67; see also General Comment No. 12).

In this chapter a first introduction is given with regard to communicating effectively with children and adolescents. In every section examples are given to illustrate the notions and the techniques that are explained. First, in section 4.1 the importance of the setting in which one talks with a young person is discussed. In section 4.2 several conversation techniques are explained that will benefit the contribution of the juvenile during a conversation. In section 4.3 the importance of giving explanations and clarifications will be elaborated upon.

## 4.1. SETTING

In Chapter 2 the setting and atmosphere in which to speak with juveniles has been elaborated upon. It was explained that in order to facilitate the participation of juveniles in judicial proceedings it is important that all the participants are seated within hearing distance of each other and that everyone is able to see each other. A second requirement is that juveniles are addressed in a positive manner throughout the proceedings. And a third requirement is that court sessions should be adapted to the child's pace and (relatively short) attention span. In this chapter two other related points will be highlighted: building trust and confidentiality.

### BUILDING TRUST

To effectively communicate with juveniles, a brief **emotional bond** should be formed between the professional and the young person. This takes effort on the part of the professional, because juveniles will not easily "open up" to adults. Generally, building trust takes time and, especially in juvenile justice proceedings, time is scarce. It is recommended that adults listen nonjudgmentally to juveniles to establish trust. This means that the adult listens more than he speaks, so the juvenile is able to share his thoughts and feelings (American Psychological Association, 2002). A non-judgmental attitude requires critical examination of one's own beliefs and acknowledging that those beliefs might not be universally shared (Grant et al., 2008). Listening nonjudgmentally enables the juvenile to realise that his opinion is valued, which in turn increases his trust in the adult (American Psychological Association, 2002).

It is advisable to start a conversation as you would like it to proceed. Create the expectation that the juvenile will be doing most of the talking; the professional will do the listening. Children should be given at least 10–20 seconds to answer a question. Professionals should not rush in with more questions; children

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31 Parts of this chapter are derived from Rap, S. (2013). *The participation of juvenile defendants in the youth court: A comparative study of juvenile justice procedures in Europe*. Amsterdam: Pallas Publications (dissertation).

need time to process the meaning of the question and to formulate answers. Research shows that children who are reluctant to answer a question should not be pressured. When a child stays silent, it is advised to not insist on that point, but instead try to understand the reasons behind the child's reluctance to give an answer to the question (Saywitz et al., 2010).

## CONFIDENTIALITY

A very important requirement for communicating with juveniles, especially about sensitive topics, is assuring confidentiality. In chapter 2 the international standards concerning the protection of privacy have been outlined. Confidentiality is of importance because **juveniles will feel safer** and, as a consequence, will be able to speak with the professional. Research in health care shows that juveniles are more willing to disclose sensitive information when a health visit is started with a brief discussion about confidentiality (Grant et al., 2008). It is, therefore, important to inform juveniles before a conversation with a professional starts about the protection of privacy and what this entails in practice. When the young person is informed about this, he will feel safer to speak with the professional.

Studies show that the responses children give are influenced by the presence of others. They can be reluctant to accuse adults or peers in the presence of others or they can look for cues from adults when providing answers. Parents can provide support to the juvenile, but this does not necessarily have to be the case. This depends on the nature of the relationship with the parent and the kind of support the parent provides (Saywitz et al., 2010).

In general it is advisable that **sensitive issues** are discussed with the juvenile alone, in the absence of his parents. When parents are present a situation can develop in which the juvenile will spare his parents from hearing information that might be painful or that will alter the parent's perception of their child. During an interview or hearing the professional can ask parents to leave the room for a short while, in order to address these sensitive issues with the juvenile alone. It is important to discuss with the young person which information will be given to parents when they come back, how the conversation can be summarised and which information should be kept confidential (Grant et al., 2008).

## SETTING CONVERSATIONAL RULES

Before starting a conversation with a young person, it is important to give an introductory talk in which the purpose of the meeting is clarified. This way, the young person knows what he can expect and what will be expected from him during the conversation. Especially when the meeting involves questioning a young person it is important to explain certain conversational ground rules in advance. Research has shown that these rules will increase the reliability of the responses of children, given that the interview techniques used are not highly leading (Saywitz et al., 2010).

## CONVERSATIONAL GROUND RULES

1. Promoting accuracy, completeness, honesty: "Tell me everything you remember, from beginning to end, even the little things you think are not very important. Do not make anything up." "Do you promise that you will tell me the truth? Are you going to tell me any lies?"
2. Instructing children to say, "I don't know": "If you don't know an answer, tell me you don't know. Don't guess. Don't make up anything that's not true. But if you know the answer, tell the answer."
3. Instructing children to say "I don't understand": "I am going to ask you some questions. Some of the questions will be easy to understand and some questions might be hard to understand. If you hear a question you do not understand, tell me that you do not understand the question. Say 'I don't understand,' 'I don't know what you mean,' or 'I don't get it.' I will ask you the question again in other words."
4. Warning children about misleading questions: "Sometimes I may put my guess into a question or I may make a mistake. Tell me if I am wrong. I am not in your family. I could not know what happened. I want to know what you think. It is important for you to tell me if I make a mistake or say something wrong. I want to understand correctly."
5. Telling children that the interviewer cannot help answer questions: "I don't know what's happened to you or what happened in your family. I won't be able to help you answer the questions."

Source: Saywitz et al., 2010

## 4.2. CONVERSATION TECHNIQUES

In health care, **motivational interviewing** is a well-known and evidence-based approach that helps patients adhere to treatment, which was developed by Miller and Rollnick (2002). This approach uses a directive, client-centred style of interaction to promote behavioural change (Levensky et al., 2007).

When people talk about their own behaviour this can make them more aware of their behaviour in the future and better direct it. By asking questions the professional can help the juvenile reflect on his behaviour (Delfos, 2005).

With motivational interviewing it is aimed to achieve **intrinsic motivation** in people to change. Motivational interviewing requires that professionals follow four principles: genuine expression of empathy, development of discrepancy between the person's current behaviour and his treatment goal, rolling with the person's resistance and support of the person's self-efficacy (see table below).

FOUR PRINCIPLES OF MOTIVATIONAL INTERVIEWING	
Express empathy	The professional communicates that he understands and accepts the person's experience, including his ambivalence about change. The professional attempts to see the world through the person's eyes.
Develop a discrepancy	The professional uses certain techniques to help the person identify discrepancies between his behaviour and his personal goals and values in order to motivate the person to change.
Roll with resistance	The person is the primary source of answers and solutions and the professional must invite, not impose, new perspectives. The professional does not directly oppose any resistance displayed by the person.
Support self-efficacy	The professional emphasises the person's ability to choose and carry out a plan to change his behaviour.

Source: Miller & Rollnick, 2002

For the effective communication with juveniles the techniques that are described by Miller and Rollnick to facilitate behavioural change in people are especially helpful. These four techniques are: reflective listening, asking open-ended questions, affirmations and summarising. These four techniques will be further explained.

## REFLECTIVE LISTENING

Reflective listening involves responding to a person's statement by stating back to him the essence or a specific aspect of the statement. This technique has three functions: 1) to ensure what the professional thinks the person means is accurate, 2) to diminish the person's resistance and 3) to encourage a discussion about the person's reasons for making any changes (Levensky et al., 2007).

When a professional reflects something a juvenile told him, **the juvenile can clarify** when the professional did not accurately understand him. When a juvenile exhibits resistance to changing his behaviour it works counterproductively when the professional gives a response that attempts to solve the problem or a response that attempts to persuade the person. These responses typically cause continued or increased resistance in people. With reflective listening the goal is to reflect back to the person the meaning of what he said. When the professional shows that he understands and acknowledges the thoughts and feelings of the young person, his resistance will diminish. Finally, the professional can selectively reflect back statements of the juvenile about changing his behaviour (Levensky et al., 2007). This can also involve the reframing of negative statements into more positive ones. This way, statements in favour of change can be encouraged. Instead of repeating negative emotions they can be turned into more positive ones by asking for example what the juvenile would like to change about his situation or what his wish for the future is.

Reflections can be very simple: just repeat what the juvenile said. However, reflections can also be more complex by changing or amplifying juveniles' statements. It is advisable that the reflection is closely tied to the juvenile's expressions or implications. The juvenile should be given space to correct or elaborate on the reflection. This way he will feel that he is better understood and this facilitates progression in the young person's thoughts about change (Levensky et al., 2007; Naar-King, 2011).

### EXAMPLE

"You feel that your social worker is not able to help you with your problems. And the situation at home is not getting any better. You're feeling stuck. What do you see as a solution to this problem?"

## OPEN-ENDED QUESTIONS

Open questions do not direct a person to respond in a particular manner. Instead, they enable a person to think through and to provide richer responses. Closed questions generally require a simple 'yes' or 'no' or numeric answer (Erickson et al., 2005). Research has indicated that open-ended questions encourage adolescents to give longer, more detailed, more accurate and less self-contradictory responses.

Moreover, children are more **reluctant to admit that they do not know the answer** to a question when a closed-ended question is asked. Children will more often guess instead of saying that they do not know the answer (Saywitz et al., 2010). In general, children are reluctant to admit that they do not know the answer to a question, because when they do not give an answer they feel like failing. In the school situation,

children are often asked to answer questions the teacher already knows the answer to, and when the child does not know it, they feel like they failed. When someone asks a question twice, a child will often think that he gave the wrong answer the first time. This is even more so the case when a closed-ended question is asked, because not only is the question asked, but the alternative answer is also suggested to the child.

Furthermore, when a professional asks the juvenile questions, it is important that these **questions are short, direct and that they ask for explanations and clarifications**. In some situations it might be useful to start the conversation with a couple of **closed-ended questions**, for example when the child is very reserved and not eager to talk to the professional. These questions are neutral and easy to respond to. Simple closed-ended questions can help the child open up to the professional. Next, the professional should continue with open-ended questions to enable the young person to give his own views. It is important to ask questions in an appropriate pace. Asking a question in a rather slow manner gives the young person the opportunity to process the question and it gives him the feeling that he is in a position to react to the question (Delfos, 2005). The professional can keep the conversation going by asking follow up questions or just by stating a single word that incites a continuation of the story, such as “so...?”, “and...?” or “because...?”. It is advisable to **avoid the ‘why-question’**, because it can elicit a defensive position on the part of the juvenile. Although this might seem difficult with regard to asking about criminal charges, it is possible to rephrase questions in different ways (see for examples the box below).

Apart from gathering the juvenile’s opinion, questions can also elicit changes in the views of young people about their behaviour. This can be done by asking the young person what life would be like if the problematic behaviour were to continue or how his life looked like before this behaviour. These questions can **elicit reasons for change**. Another way to help a juvenile gain insight into his behaviour is by asking to look into the future and how his behaviour helps or hinders him in achieving certain goals. Giving unwanted advice or well-intentioned warnings is not advisable, because it often revokes resistance (Naar-King, 2011). Behavioural change has to be internally motivated and, therefore, when the juvenile comes up with his own reasons for change, these will be most effective.

#### EXAMPLES

- “Tell me about what happened?”
- “What happened right before? Right after?”
- “How did your parents find out about what happened?”
- “What kind of difficulties have you experienced with your aggression problem?”
- “If you were to stop smoking, what would it be like?”
- “How do you imagine your life one year from now?”

#### AFFIRMATIONS

To support a juveniles’ self-efficacy and to build rapport it is important to directly affirm and **support the young person** during the conversation. Affirmations are, for example, complimenting the juvenile for making an effort to be present, acknowledging small successes and showing appreciation or understanding (Levensky et al., 2007).

When giving affirmations to juveniles these should be honest and specific. Affirmations concerning a specific strength or effort that are close to what the young person already said are most effective (Naar-King, 2011).

### EXAMPLES

- “Thank you for coming today.”
- “It’s smart that you are thinking of your options.”
- “It’s great that you decided to stop smoking marijuana.”
- “You are willing to consider difficult decisions to make the best choice for yourself”.

## SUMMARISING

When summarising the statements of a juvenile a **full picture of pros and cons** of his views should be provided. This should be followed by checking whether the professional has accurately reflected the young person’s views (Erickson et al., 2005). When the summary is not given at the end of the conversation, the professional should encourage the juvenile to continue his statement. This can be done by asking an open question such as: “What else?” (Levensky et al., 2007).

### EXAMPLE

“It’s important for you to fit in with your friends. Sometimes that gets you in trouble, which hurts your mother. On the other hand, you find it difficult to say ‘no’ to your friends and because of that you do things you then regret. Is there anything that you would like to add that I may have missed?”

## SPECIFIC SITUATIONS

Sometimes it is particularly difficult to have a conversation with a young person because he displays a certain behaviour. This is the case, for example, when a young person is indifferent to the situation, when he denies the problem or when he is aggressive. In the following box, points of departure are given as to how to break through this negative behaviour and start a constructive dialogue with the young person.

## KEY POINTS IN TALKING WITH ADOLESCENTS

### How do you break through a lifeless, lackadaisical, indifferent attitude of the young person?

- show interest in his environment
- relate environment behaviour to consequences
- continue to ask questions
- share something about yourself
- ask what is going well
- ask indirect questions
- use humour
- respond paradoxically
- emphasise own interest
- give young person himself responsibility

### How do you break through the young person's denial of the problem?

- look for the cause of denial
- respond paradoxically "we might just as well stop as there is no problem"
- show extreme amazement
- confront with the facts
- let the young person take the initiative
- ask about his perception
- see what goes well
- emphasise the young person's interests

### How do you motivate uncooperative young people to be of assistance?

- (paradoxal) identify process: "well then we are stuck, so we just give it up"
- Confront with the consequences of not cooperating
- Explain the 'benefits' of the assistance
- Compliment young person with what goes well

### What do you do about contradictory messages? (young person says that nothing is wrong but you see irritation in his behaviour)

- Identify: "I see that you are angry"
- Provide evocative counterbalance: "I don't believe that"

### How do you deal with aggression from the young person and belligerent, provocative behaviour?

- identify process: "I don't want you to talk to me like that!"
- be extra calm
- ask the reason why he is so angry

### How do you break through a strong external locus of control of the young person (it is all other people's fault) or a strong internal locus; it is all my fault

- work to promote understanding (sketch the situation)
- confront
- stimulate empathising with others

### How do you deal with very closed young people?

- take care not to fill in everything for the young person
- look for the cause of his reticence (for example anxiety)
- look for topics in his environment, clothes, music hobbies
- involve the young person's network

### How to deal with a young person with an anti-social personality disorder or conduct disorder.

- keep it short and restricted
- do not lose the direction
- show that you see through them
- hold the young people themselves accountable and have them come up with their own solution
- confront the young person with consequences of behaviour
- give little room to negotiate
- be very consistent

### How to deal with abused, mistreated young people

- take them seriously, acknowledgement of pain, give them space to tell their story
- support
- always put the interests of the young person first and foremost
- respect boundaries
- be aware of strongly 'misplaced' loyalty

Source: Van Rheeën, 2016

### 4.3. LANGUAGE USAGE AND EXPLANATIONS

As was explained in chapter 1, juveniles generally lack knowledge and understanding of the juvenile justice system and its procedures. Research shows that children experience less negative feelings and stress about attending a court hearing when they have more legal knowledge (Quas et al., 2009; Griffiths & Kandel, 2000). Therefore, it is important that professionals adapt their language to the age and the level of understanding of the juvenile. The following three sections will discuss: the use of age appropriate language, the use of jargon and judicial terms and giving explanations.

#### LANGUAGE USE

In order to make sure that the juvenile understands what is discussed during, for example, a court hearing, it is important to avoid complex and lengthy sentences and difficult words in general. It is therefore advisable to use **short sentences and simple grammatical constructions** when talking to children and adolescents. It is also recommended to avoid compound utterances, embedded and relative clauses, double negatives, subjunctives, conditionals, multi-word verbs, pronouns and a passive voice (see Saywitz et al., 2010).

##### SUGGESTIONS TO SIMPLIFY LANGUAGE

1. Use short sentences and simple grammatical constructions. Avoid long compound utterances and embedded and relative clauses, double negatives, subjunctives, conditionals.
2. Use simple tenses (e.g. was, did, has, what happened?). Avoid multi-word verbs (e.g., might have been).
3. Repeat proper names; avoid pronouns (e.g. him, her, she, they).
4. Use active voice ("Did Joe talk to Sally?"); avoid passive voice ("Was Sue spoken to by Joe?").
5. Avoid jargon and unclear references (e.g. those things). Avoid prepositions, referents and relational terms (above, below, around, more, less). Repeat the antecedent instead.
6. Be cautious with legal terms, especially those that have more than one meaning. To young children, "Court is a place to play basketball," "A hearing is something you do with your ears," and "A minor is someone who digs coal."

Source: Saywitz et al., 2010

#### JARGON AND JUDICIAL TERMS

Juveniles involved in judicial procedures are often confronted with legal terms. Research shows that juveniles do not always understand what is discussed during a court hearing (Hazel et al., 2002; Plotnikoff & Woolfson, 2002). As a consequence, they can feel **anxious and insecure** during the hearing and they can have unrealistic fears about the hearing and its consequences (Saywitz et al., 2010; Crawford & Bull, 2006; Grisso et al., 2003). When discussions are held between the professionals in court, which the young person does not understand, his attention will decrease, he will be distracted and he will give up trying to be involved in the hearing.

## EXAMPLES OF LEGAL TERMS

Judge	Defendant	Statement	In association
Prosecutor	Evidence	Allegation	Case law
Defence lawyer	Usher	Trial	Alternately
Jury	Oath	TV link	Notice of objection
Witness	Summons	(Un)conditional	Criminal offence
Magistrate	Cross-examination	Adjourn	Liability

Partly derived from: Crawford & Bull, 2006

## EXPLANATIONS

To (partly) overcome the difficulties juveniles have in understanding the procedures and language used in the juvenile justice system, it is important to provide them with explanations during the process.

To start, the young person should understand what **the goal of the interview or hearing** is. Moreover, the intentions of the professional should be made clear to the juvenile. When the professional makes his intentions clear, the young person understands the goal of the conversation better, as well as the professional's viewpoint.

At the start of a conversation the professional should give an introductory talk to the young person in which he explains the purpose of the meeting and the order of the procedures that will be followed during the meeting. He should also **introduce the different people** who are present and explain their roles briefly. Children often have misperceptions about the different actors present during judicial proceedings and their roles. Providing children with explanations reduces stress and increases the effectiveness of their participation (Saywitz et al., 2010). Once it is clear to the juvenile that he is expected to give his own views on a matter, it makes sense to start the conversation with open-ended questions.

During the meeting it is important to ensure that the juvenile follows what is being discussed or that **additional explanations** are given regarding legal discussions between the professionals. It must be noted in this regard that young people often say that they understand everything, because they are reluctant to acknowledge any difficulties in understanding what is discussed. Research shows that when children practice saying "I don't know", which can be done by asking them a few unanswerable questions beforehand, it helps them admit when they do not know or understand something during the conversation. Simply telling a child that they can say "I don't know" is not enough for them to actually do so during the conversation (Saywitz et al., 2010; see also the Conversational ground rules). Moreover, relying on the young person to indicate verbally when he does not understand anything that is being discussed cannot be considered sufficient. Professionals should also be aware of non-verbal cues of misunderstanding on the part of the young person (Delfos, 2005; Plotnikoff & Woolfson, 2002; see also Kilkelly & Donnelly, 2011; Griffiths & Kandel, 2000).

Giving explanations is necessary for the young person to give his **informed views**. It should be clear to the young person what is being asked of him, i.e. when and where he is expected to give his views. He should have enough knowledge to be able to give his views on a certain matter, such as for example the proposed measure or sanction. As was explained in chapter 3, the juvenile should be properly 'informed not only

of the charges, but also of the juvenile justice process as such and of the possible measures' (General Comment No. 10, para. 44). The right to information is a prerequisite for the child to be able to give his informed views (see General Comment No. 12, para. 25). Moreover, it is important to give the young person an idea about the possible outcomes of a procedure and the implications those outcomes might have. In chapter 5 the explanation of the final decision will be elaborated upon.

## GOAL-ORIENTED MATRIX TO LISTEN TO YOUNG PEOPLE

This chapter concludes with presenting a matrix to have an effective conversation with children and young people. This matrix helps guide professionals in structuring the conversation by presenting different steps from the introduction until the end of the conversation. Moreover, when following the matrix the views of a young person on a certain issue can genuinely be obtained and taken into account by the professional.

### GOAL-ORIENTED MATRIX: LISTENING TO CHILDREN AND YOUNG PEOPLE

(freely adapted from Kouwenhoven's coaching matrix)

#### I. Introduction

- how do you ensure that you yourself are at ease?
- how do you ensure that the child is at ease?
- explain your own role (if necessary, refer to the invitation letter) and ask about the expectations of the child
- make the framework clear

#### II. Facts/ experience (focusing on the past)

THINKING

- what led to you being here; what happened?
- how do you see your situation?

#### III. Conviction/ interpretation/ significance (focusing on the present)

FEELING

- what is happening/going on for you now?
- how do you feel about it; what does this mean for you?

#### IV. Decision/ goal (focusing on the future – needs/'dream')

WANTING

- what is needed to solve the issues? Is there anything that needs to be done?
- what would you want/ desire?

#### V. Reaction/ behaviour (focusing on the future – action (short-term)/ expectation (long term))

DOING

- what do you intend to do?
- what do you think will happen?

#### VI. Rounding off

- what has been said – summarise?
- what are you going to do with it/ what are you going to write down/ what are you going to decide to do about it?
- make the transition with the child/ young person to the present moment – bring the conversation to a close

Source: Hendriks & Van Rheeën, 2016

## SUMMARY

With regard to communicating with juveniles the following is important:

- The setting should be geared towards talking with the young person. Building trust and confidentiality is essential, because the young person will feel safer.
- Certain conversation techniques should be used that can help facilitate the conversation between a juvenile and an adult and help increase mutual understanding between them.
- Adapting language to the understanding of juveniles and providing the juvenile with explanations and clarifications is important. Explanations are vital, because these relate to the right to information of the juvenile and it enables the juvenile to give his informed views in a case.





## CHAPTER 5

# Follow-up and support



# Chapter 5. Follow-up and support<sup>32</sup>

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In this concluding chapter, the central issue is the follow-up and support regarding decisions that are taken in the juvenile justice process. In section 5.1, the importance of incorporating and giving weight to the views of the juveniles in decisions that are taken will be elaborated upon. In section 5.2, how to clarify decisions that are taken in the different stages of the juvenile justice process will be discussed.

## 5.1 INCORPORATING THE VOICE OF THE JUVENILE IN DECISIONS

Another important element of the juvenile's participation is that the decision maker **takes the views of the juvenile seriously**. This does not only mean that he shows genuine interest in the views of the young person (see chapter 3), but that he also seriously considers the views of the juvenile in the decision that he takes. In this section it is discussed how the views of the juvenile should be considered in decisions taken in the juvenile justice process.

It is important to note that **in every phase of the juvenile justice process** decisions are taken that affect the juvenile. Decisions are initially taken at the police stage, to charge the juvenile or to take him into custody. Further on, the police or the prosecutor might have the possibility to divert the case. In court, decisions are taken with regard to pre-trial detention (or other pre-trial measures) and eventually the case is handled by a judge in court who delivers a judgment and possibly a sentence in the case. At the phase of disposition the youth probation service (or other social service) takes decisions with regard to the concrete implementation of a measure. Moreover, decisions are taken when the juvenile does not comply with a measure. Finally, when a juvenile is deprived of his liberty, decisions that affect his life are taken as well, for example with regard to the daily programme, education, treatment or disciplinary measures in case of rule breaking.

Moreover, these **decisions can take different forms**. Not every decision will be provided in writing, as some decisions will only be provided orally to the juvenile. This has implications for the manner in which the views of the juvenile are incorporated and the clarifications that should be given to the juvenile. In this chapter the different phases of the juvenile justice process are not distinguished, as they have been in the previous chapters, however, in the following sections the different phases and the decisions that can possibly be taken, should be borne in mind.

## RELEVANT INTERNATIONAL AND EUROPEAN STANDARDS

The right to be heard, as laid down in article 12 CRC, incorporates the notion that the views of the child should be given due weight in accordance with his age and maturity. This means that that 1) the child's level of maturity should be taken into account when he is heard and 2) that the views of the child should be weighed in accordance with his age and level of maturity.

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<sup>32</sup> Parts of this chapter are derived from Rap, S. (2013). *The participation of juvenile defendants in the youth court: A comparative study of juvenile justice procedures in Europe*. Amsterdam: Pallas Publications (dissertation).

In article 5 CRC the ‘evolving capacities’ of the child are acknowledged. This implies that maturity increases when the child grows older and, as a consequence, the weight to be given to the child’s views becomes heavier. However, in some instances, it can be in the best interests of the child not to follow his views entirely in the decision-making process. Although the views of the child must be seriously considered, the final responsibility of making the decision about the child lies with the adult decision maker (Krappmann, 2010).

The CRC Committee explains in General Comment No. 12 that when the child is able to form his views the decision-maker must consider these views as a significant factor in the decision that is taken (para. 44).

#### GENERAL COMMENT NO. 12

##### (c) Assessment of the capacity of the child

44. The child’s views must be given due weight, when a case-by-case analysis indicates that the child is capable of forming her or his own views. If the child is capable of forming her or his own views in a reasonable and independent manner, the decision maker must consider the views of the child as a significant factor in the settlement of the issue. Good practice for assessing the capacity of the child has to be developed.

##### (d) Information about the weight given to the views of the child (feedback)

45. Since the child enjoys the right that her or his views are given due weight, the decision maker has to inform the child of the outcome of the process and explain how her or his views were considered. The feedback is a guarantee that the views of the child are not only heard as a formality, but are taken seriously. The information may prompt the child to insist, agree or make another proposal or, in the case of a judicial or administrative procedure, file an appeal or a complaint.

Furthermore, the Committee provides that the child has to be informed about the outcome of the process and that it should be explained to the child how his views were considered. The feedback provided by the decision-maker serves as a guarantee that the views of the child are actually taken seriously and not only heard as a matter of formality. Moreover, as will be explained in section 5.2, this also contributes to the understanding and acceptance of the judgment on the part of the juvenile.

The CRC Committee considers feedback to the juvenile on how his views have influenced the decision as one of the basic requirements for the implementation of the right to be heard. The Committee states that:

‘(...) in any research or consultative process, children must be informed as to how their views have been interpreted and used and, where necessary, provided with the opportunity to challenge and influence the analysis of the findings. Children are also entitled to be provided with clear feedback on how their participation has influenced any outcomes. Wherever appropriate, children should be given the opportunity to participate in follow-up processes or activities. Monitoring and evaluation of children’s participation needs to be undertaken, where possible, with children themselves’ (General Comment No. 12, para. 134(1)).

## RELEVANT STANDARDS IN PRACTICE: BASIC REQUIREMENTS

The question of how to incorporate the voice of juveniles into a decision made in the juvenile justice process closely relates to the weight that should be given to the voice of the young person. The views of children should be given more weight when their capacities have matured to a greater extent. The **competence of children to participate** in the decision-making process varies and evolves over time, which implies that adults still play an important role in the decision-making concerning the child, when the child has not reached full levels of maturity (see also Sloth-Nielsen, 1995).

As explained in chapter 1 adolescent development varies among individuals. Several factors influence the development towards maturity, such as trauma, mental health and the IQ level of the young person. Therefore, an **individual assessment** of the level of maturity and the weight to be attached to the young person's views is necessary. In some cases, a social work report concerning the juvenile might be available, in which case an assessment is made of the cognitive and emotional maturity and the mental health of the juvenile. This is a very helpful tool for the decision-maker in order to determine the level of maturity. Otherwise, the decision-maker is solely dependent upon the impression he gets from the young person during the personal hearing. This once more shows the importance of a face-to-face hearing of the views of the juvenile.

Furthermore, the notion of **procedural justice**, as explained in chapter 3, is also of importance here. People perceive a procedure as more fair, when they are able to participate in the procedure and when they feel that they are treated with dignity and respect. Research shows that when people can give their opinion, they will perceive the procedure as fair, even when their contribution does not have any influence on the final outcome of the procedure. However, this is only true when people feel that the decision maker takes their contribution into account and when they feel that they are being treated with respect (Tyler & Blader, 2003). This is of particular importance for juvenile justice procedures, in which juveniles are sentenced because they have committed an offence. When the young person is able to give his views and these views are taken seriously, the final decision is, most probably, not perceived as unfair, harsh or arbitrary, but the young person might be able to accept and abide by the final decision.

To conclude, a link can be drawn to one of the overarching principles of juvenile justice, which is enshrined in article 40(1) CRC. This is the idea that the **child's sense of dignity and worth** should be promoted in juvenile justice proceedings. In light of the CRC, this principle should also be abided by to promote the reintegration of the child into society. The right to dignity and worth has to be respected and protected throughout the entire process, from the first contact with the police and all the way to the implementation of measures for dealing with juveniles and by all the key actors involved in the juvenile justice process (General Comment No. 10, para. 13). Procedural justice, moreover, has shown the exact same thing, that when people are treated with respect by authorities, this will contribute to their reintegration.

#### VICTIM-OFFENDER MEDIATION IN FINLAND

In Finland the Act on Conciliation in Criminal and Certain Civil Cases (2005) provides for victim-offender mediation (VOM) services for every citizen free of charge. VOM can be applied when citizens (of every age) are in conflict with the law or with other citizens or institutions. Voluntary trained local mediators provide this service.

When a young person is acting against the rules or the law in shopping centers or in railway stations, street mediation can be used immediately before any other procedures start. The mediation is led by trained voluntary street mediators.

## 5.2. CLARIFYING THE DECISION

Closely related to what has been discussed in the previous section – incorporating the voice of the child in judicial decisions – is to explain the decision to the juvenile. In this section the main issue to be addressed is how to clarify the decision to the juvenile.

## RELEVANT INTERNATIONAL AND EUROPEAN STANDARDS

The right to a fair trial entails that the judgment should be given to the juvenile defendant in public (art. 6(1) ECHR). The CRC Committee also provides that ‘The **verdict/sentence should be pronounced in public** at a court session in such a way that the identity of the child is not revealed’ (General Comment No. 10, para. 66). Moreover, the judgement should be duly reasoned, as part of a fair trial (see art. 6 ECHR). It is important to note that the official judgment is not always provided orally to the juvenile. It can be the case that the judgment is pronounced at a later hearing (e.g. in the case of a serious offence) or that the judgment is only in writing and sent to the juvenile by post. Moreover, the presence of the juvenile is not always compulsory.

The right to be heard implies that children are given feedback on the outcome of the case in which they are heard. In the *Guidelines on Child-friendly Justice* it is stated that ‘Judgments and court rulings affecting children should be duly reasoned and explained to them in language that children can understand, particularly those decisions in which the child’s views and opinions have not been followed’ (para. 44). Moreover, the *Guidelines* specify that in any given judicial procedure the child’s lawyer or other legal representative should communicate and explain the final decision or judgment to the child in a language that he understands. Moreover, the legal representative should give information on possible steps that he could take, such as appeal or a complaint mechanism (para. 75). Communicating and explaining the decision or judgment is seen as a child-friendly practice. This information should be supplemented, though, with an explanation to the child of the possible measures he can take next, such as appeal.

In the European Rules for juvenile offenders subject to sanctions or measures (ERJO) a related provision can be found. Decisions made by (judicial) authorities should always be provided in writing. Moreover, the decision-maker must explain the procedures to be followed if the juvenile wishes to appeal against the decision (See Rules 26, 33.2 and 48.5). Hereby it is guaranteed that the juvenile receives information on how to act when he does not agree with the decision that has been made.

## RELEVANT STANDARDS IN PRACTICE: BASIC REQUIREMENTS

When a decision is taken against the wishes of a young person – which is often the case in juvenile justice proceedings – it is important that he understands how the decision has been reached, to what extent his own views have played a role in the considerations and what the decision means for him (Archard & Skivenes, 2009). To **explain the outcome** – such as a sentence – is of great importance, because it might help the young person understand what the consequences of his behaviour are, and to accept the decision.

Explaining the reasons behind a certain **decision and the concrete content** of that decision should take place in a manner and language that is comprehensible for the young person. Young people often do not understand what the concrete consequences will be of a certain decision, especially when they are first-time offenders (Plotnikoff & Woolfson, 2002). For example, it is often unclear to a juvenile what a community service measure entails, e.g. when he should perform the community service, what the work will be and where it will take place and how much time it will take him to complete the measure.

When the decision maker is aware of an existing lack of understanding on the part of the young person, a more suitable and **child-friendly clarification** should be added by the professional, next to stating the decision in legal terms and referring to the relevant provisions of law only. It is therefore advisable to allow extra time during the meeting to explain the grounds of a decision and the implications of the decision.

As has also been explained in the previous section, research shows that the degree of **acceptance of a decision** is higher when the young person understands the reasons behind the decision that has been taken (Cashmore & Parkinson, 2007; Schuytlot, 1999; Tyler, 2006; 2003). A comprehensible explanation

of the reasons behind a certain decision leads to further reflection on and a better insight of the young person into his delinquent behaviour.

Clarifying the decision shows a strong relationship with serious consideration of the child's views. When explaining the decision to the child, the influence that their views have had on the final decision should also be incorporated in the explanation. Archard and Skivenes (2009) note that when the child's views are not followed in the decision-making process, it is important to give the child reasons as to why that was not the case. This way the child will understand the reasons behind a certain decision better.

### THE JUDGMENT OF THE JUVENILE JUDGE IN CYPRUS

Court decisions in Cyprus are considered an official court document and thus need to be in writing. The language used in the written format of the decision is naturally not in a child-friendly manner. However, the judge gives a summary of the decision orally and in a manner that can be understood by the parties involved. The written text of the decision is handed to the parent or legal guardian or lawyer of the minor. It is then the parents'/guardian's or lawyer's duty to further explain the details of the case and its outcome.

### SUMMARY

In this chapter the following key issues concerning follow-up and support regarding decisions that are taken in the juvenile justice process are raised:

- The views of the young person should be given weight and incorporated in the decisions that are taken.
- Incorporating the voice of juveniles implies that their views are taken seriously by the decision-maker and this in turn affects the juvenile's perception of the procedure and its outcome.
- Decisions taken in the different stages of the juvenile justice process should be clarified to juveniles.
- Taking into account the views of young people and clarifying the decision will contribute to the perceived fairness of both the procedure and its outcome and this will contribute to their reintegration.



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# List of relevant children's rights standards

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## INTERNATIONAL STANDARDS

### **Convention on the Rights of the Child 1989**

United Nations General Assembly, Convention on the Rights of the Child, resolution 44/25 (20 November 1989).

### **General Comment No. 10**

Committee on the rights of the child, General Comment No. 10, Children's rights in juvenile justice, CRC/C/GC/10, 25 April 2007.

### **General Comment No. 12**

Committee on the rights of the child, General Comment No. 12, The right of the child to be heard, CRC/C/GC/12, 1 July 2009.

### **The Beijing Rules**

General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), resolution 40/33 (29 November 1985).

### **The Havana Rules**

General Assembly, United Nations Rules for the Protection of Juveniles Deprived of their Liberty ("The Havana Rules"), resolution 45/113 (14 December 1990).

### **The Riyadh Guidelines**

General Assembly, United Nations Guidelines for the Prevention of Juvenile Delinquency ("The Riyadh Guidelines"), resolution 45/122 (14 December 1990).

### **Standard Minimum Rules for the Treatment of Prisoners**

United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), E/CN.15/2015/L.6/Rev.1 (21 May 2015).

## RELEVANT EUROPEAN STANDARDS

### **New ways of dealing with juvenile delinquency and the role of juvenile justice 2003**

Council of Europe, recommendation rec (2003)20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice (24 September 2003).

### **European Rules for juvenile offenders subject to sanctions or measures 2008**

Council of Europe, recommendation CM/rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures (5 November 2008).

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### **Guidelines on Child-friendly Justice 2010**

Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (17 November 2010).

### **CPT Standards 2015**

Council of Europe, CPT standards, 2015 (Rev. 2015).

**Directive 2010/64/EU** of the European Parliament and the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings.

**Directive 2012/29/EU** of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

**Directive 2013/48/EU** of the European Parliament and the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

**Directive 2012/13/EU** of the European Parliament and the Council of 22 May 2012 on the right to information in criminal proceedings.

**Directive** of the European Parliament and the Council on procedural safeguards for children suspected or accused in criminal proceedings, 16 December 2015, 2015/2203 (COD) (It is expected that the Directive will be adopted and enter into force in the course of 2016).

## **CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS**

*Bouamar v. Belgium*: ECtHR 29 February 1988, No. 9106/80.

*T. v. the United Kingdom*: ECtHR, 16 December 1999, Appl. no. 24724/94

*S.C. v. the United Kingdom*: ECtHR, 15 June 2004, Appl. no. 60958/00

*Salduz v. Turkey*: ECtHR, 27 November 2008, Appl. no. 36391/02

*Panovits v. Cyprus*: ECtHR 11 December 2008, no. 4268/04

*Güveç v. Turkey*: ECtHR, 20 April 2009, Appl. no. 70337/01



# ANNEX

The Voice of  
Children &  
Young People

EXPERIENCES BY **CHILDREN AND YOUNG PEOPLE** OF THE POLICE  
AND YOUTH JUSTICE SYSTEM IN **NORTHERN IRELAND**

**TRANSCRIPT OF THE VIDEOS**



# ANNEX

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## TRANSCRIPT OF THE VIDEOS

### THE VOICE OF CHILDREN & YOUNG PEOPLE:

#### EXPERIENCES BY CHILDREN AND YOUNG PEOPLE OF THE POLICE AND YOUTH JUSTICE SYSTEM IN NORTHERN IRELAND

*These videos were made by Include Youth as part of the 'Improving Juvenile Justice Systems in Europe' project, led by the International Juvenile Justice Observatory. 74 children and young people participated in focusgroups and five youth people agreed to take part in these training videos.*

### Video 1

## Young people's experience of the formal youth justice system

[0:28min]

- Woodlands Juvenile Justice Centre, Bangor
- Danielle Boyd, Residential Social Worker Youth Justice Agency

Woodlands Juvenile Justice Centre is a secure custodial setting for young people aged between 10 and 17 years old.

The centre accommodates both boys and girls and holds a maximum of 48 young people at one time. Within the Northern Ireland justice system, adults and children are accommodated separately.

Staff who work within Woodlands Juvenile Justice Centre are '**youth and community**' and '**social work**' qualified. This enables us to promote effective communication skills and **child-centred values** within our practice, such as, the use of **empathy**, showing **understanding**, **open communication** and **honesty** are particularly important when engaging young people.

Staff don't wear uniforms. We dress very comfortably and in casual clothes. We also **avoid the use of prison terminology**, for example, we use '**bedrooms**' instead of 'cells', '**young people**' instead of 'prisoners' and '**staff**' not 'prison officers'.

Within Woodlands, staff are trained in therapeutic crisis intervention, which uses communication approaches to deescalate young people going through crisis situations or are displaying challenging behaviours. This helps us **avoid the use of physical restraint**.

When a young person is first admitted to Woodlands Juvenile Justice Centre they are allocated a Key Worker, this is a staff member who holds the **responsibility for making sure that the young person's needs, wishes and views are central to the case management process**.

This means the Key Worker is available to the young person, providing support, encouraging them to participate at initial planning meetings, case reviews and pre-release meetings to **ensure the young person's views are central to decisions being made**.

Young people attend a weekly progressive regime meeting, held within the house units in Woodlands. This gives

them the opportunity to discuss issues or concerns and have their voices heard in terms of their behaviours, activities and day-to-day running of the unit. It enables the young people to discuss things directly with the staff and the unit manage in order to effect change and influence the decisions being made regarding that particular house unit.

### [2:47min]

#### - John's Story

I'm John. I'm 16 and have been here (in Woodlands Juvenile Justice Centre for) five months. I'm close to my family and I have two younger sisters. I stopped going to school a year ago when I was 15 because I got expelled. I got charged with armed robbery, this is my first offence. I've never had any other charges. My case is quite unique. I'm one of the youngest people to be charged with armed robbery in 15 years.

### [3:11min]

When I first came here I thought it was going to be a proper prison with orange jumpsuits and chains around my ankles, but it wasn't like that. It was easier than I first thought. Anyone could do in here because we are under 18 and **they can't treat us the same as adults**.

I didn't think the staff were going to be like this. They (staff) are alright to talk to and they're not that strict. **You get to make decisions in here**. You can go to the school Principal and ask to get your classes changed but we don't have a say in if we can smoke or what we can eat. You obviously have a lot more freedom on the outside, so it is always going to be different.

School in here is just different classes. If you don't do them you get locked up. There is maths, English, woodwork and cars (mechanics). It is nowhere near the same as normal school. In here **there are two or three of us in each class, so it is better**.

I like the staff in here with experience, I can relate to them. **They (staff) give me better advice and I take it on-board**. The staff wear normal clothes, like tracksuits or jeans. It's really casual. They dress like we do.

I have a mentor; I meet them once a week. They are from the town where I live. I can phone them and chat. We hang out and do stuff when we meet up. He is there to help me keep busy.

### [4:15min]

#### - Advice for the police

When the police arrested me I felt really bad, because **they didn't talk to me in a respectful way**. I had respect for them when they came through the door, but they destroyed it with the words they said and it wasn't professional. The **police need more training to talk to young people** and be respectful when they are arresting them. It's not the same as when they usually arrest adults. **You can't talk to children and adults in the same way**.

### [4:47min]

#### - Future plans

When I get out of here I'm looking forward to attending my new school. It is an Alternative Education Provider (AEP), which means it will have small classes. I will need to have lots of stuff to do as having nothing to do all day is why I ended up in here in the first place.

### [5:05min]

#### - Mick's story

I'm Mick. I'm 14 years old and I have 63 convictions. Convictions are the number of crimes I have been brought to court for.

The first time I was brought to court I was 11 years old. The first time I walked in to the juvenile justice centre I was the first out of my group of friends to be sent here. I went to House Three, which is the girls unit. I was very small and the youngest boy sent here.

### [5:40min]

For activities we play tennis, we play football and we have a swimming pool. We have a gym as well and we also have a sports hall.

Well, I was only 10 the first time the police had contact with me. Whenever I was arrested and they told me what I was being charged with, I ran away. **The police need to be more respectful**, they should give respect if they want to get it... but at the end of the day, no one is really going to give respect to the police because of the reputation they have.

When I am older I want to be a car mechanic because I have already finished my Level 1 qualification and I am studying for my Level 2 qualification at the minute. I think I could get a job as a car mechanic no problem.

### [6:24min]

#### - Louise's story

The first time I was sent here I was 11 years old. I was scared, it was just really scary, but the staff team were lovely. They (staff) helped me settle in well, even though I was only here for one night. The first couple of times **I was remanded the juvenile justice centre under PACE**, this means the **police felt it was the safest place to put me**. Then I was sent to the juvenile justice centre for a couple of weeks at a time.

### [6:48min]

The girl's rooms are similar to the boy's rooms. We can't decorate the bedrooms or anything like that but we can put up posters and pictures of our family. The only time the girls and boys mix is during education, but it isn't very often.

School is very easy; you get your basic qualifications and more. **They teach you on a one-to-one basis and you get more support**. You feel like you are learning more in here. I want to go to college and start training towards being a full-time career. My social worker will be able to help me complete my application form, visit the college with me and show me around.

**Staff in here sit with you, that's what makes it different to everywhere else**. Staff help you realise what you have done and get you to think about how not to do it again when you get out.

It could tighten up in some areas, because after young people leave they come back. I don't want to say it's a prison because it's not. **The juvenile justice centre is a place to think about what you have done and you recognise what you have done wrong when you are in here**.

[7:35min]

- *The youth justice system and the professionals working within it*

I do not mind going to court, it's not too bad. **I have had the same judge each time** for all of my charges and my care and family life. That judge has given me chances. **I would not really like a judge who doesn't know me or the things I have been through in my life.**

Young people are treated differently depending on the police officer. **A good police officer gives you loads of chances and treats you well.** Other police officers can be ignorant and disrespectful. I have been pulled out of the car by the hair by a police officer and swore at. **Police need to have more patience and show more respect to young people.**

[8.10min]

- *Life in the justice system and the care system*

Coming out of the juvenile justice centre after eight months was really weird. Inside I got used to the structure and the staff, but learned that I needed to settle down and plan for the future.

I stayed out of the centre for two years, but then **things broke down at my children's home (with social services).** So I moved home to my parents and stayed there for 10 weeks, but it didn't work out. **I moved back to a children's home and started getting in to trouble again.** In six weeks I had accumulated 12 new charges and was sentenced to 12 months. I get out soon and now I am starting to plan for my future.

If I had one thing to say to people about the juvenile justice centre, I would say it has **changed my life.** It made me realise that crime is not the way forward. **I am really thankful for the support all of the staff have given me.**

## Video 2

### Community-based restorative justice

- *Northern Ireland Alternatives, North Belfast*
- *Kelly Gill, Schools Worker at Northern Ireland Alternatives*

Northern Ireland Alternatives is a restorative justice community-based organisation that **works alongside young people, their families and communities** to promote non-violent responses to antisocial behaviour and crime that harms communities.

**We receive referrals from a range of organisations and statutory organisations, including the Youth Justice Agency, the police, social services, families and young people can also self-refer** if they are having issues with antisocial behaviour or low level crime in the community.

[0:38min]

We work with young people where they are at, responding to each of their **individual needs.** Each young person is given a Support Worker, who they can **rely on,** to **mentor them** and **help them** address some of the issues they may have caused within a community. The Support Worker works with the offender, they also work with their family and the community to help **reintegrate the young person back into the area** where they may have experienced relationship breakdowns, or other incidents as a result of their behaviour. So the Support Worker works alongside them, encouraging self-awareness, personal development and helping them to understand how their harmful behaviour impacts the community.

### [1:24min]

Another a big focus of our work is prevention. We do a lot of prevention work within the community. Some of **our prevention programmes involve work with schools**, such as the PACT programme (People And Communities Together). That involves working alongside school students and encouraging the schools to **look at how they approach discipline and conflict within a classroom setting**.

We have a Youth Safety Partnership which involves training and a lot of detached work throughout the community. We had heard of some incidents of antisocial behaviour within the local park, so our Youth Safety Partnership got involved and **used peer education methods to positively interact with their peers**. Through these **harm minimisation** approaches we were able to provide tea, coffee, water, blankets to the young people in the parks and ensure that they were safe.

### [2:27min]

**We have developed very strong relationships with the local neighbourhood police.** There have been many initiatives over the years to encourage this. We have **'pizza and police'** evenings, where **young people come along and have the opportunity to sit and chat with the police**, have a piece of pizza and **get to know the police better**, see the person behind the uniform.

There are other young people who have been referred to us by the Youth Justice Agency, who maybe previously offended against the police, and our experience of these particular young people is that they have completely turned things around. At the beginning they had been referred to us for their offending behaviour against the police, now they have come so far in their development and in trying to make things right, that they are able to work alongside the local neighbourhood police delivering outreach support within the community. They work alongside their peers and younger children, who are maybe getting involved in some low level antisocial behaviour, going out to deliver detached work in their own community alongside the local police.

### [3:45min]

- Gareth's story
- Gareth Scullion, 21 years old

I was rioting with the police because of a march that I was involved in. The police sort of swarmed in on us. So we, me and my friends and the community, all thought we were under attack. So obviously, thinking you are under attack, you are going to react. Me being me, I reacted. The police have a lot of photos of me and three hours of video footage throwing a big chest of drawers... more than 100 missiles... I received four convictions for that night.

### [4:37min]

I was standing at a protest actually and a police officer came up to me and put his arm on me, his grip was really hard, and I reacted again and went like that, **'get your hand off me you...'** and called him **'whatever'**. That's when the chief of police or whoever it was... the boy in charge, said to one of the people outside, because they all brought me in to the camp out of the way so there wouldn't be any hassle. He said, **'we'll make a deal with you'**... this was on a Friday night or Saturday and he said, **'go down to the police station on Monday and hand yourself in before 6pm'**.

### [5:24min]

#### - Police Custody

I went down, handed myself in, they arrested me, put the cuffs on me, put me in the cell. People were asking me questions and I didn't have any idea what was going on. **My solicitor had to explain what the police were saying to me.** My mother was sitting behind me and my solicitor was sitting beside me. So the only two people who knew what was going on were my solicitor and my mother.

**Young people don't understand what the police are saying.** They don't understand it. They (the police) think '*we can say this and that*' and children will understand. **Young people don't understand where the police are coming from.** They don't get it.

### [6:13min]

#### - Growing up in his community

There is a lot of hassle down here, even to this day there is still a lot of hassle here. This is where we would have taken drugs, had buckets... had arranged fights, we would have fought down here and brought Catholics up and beat them up. There's a lot of stuff happened down here. Every time I go here it brings back memories of when I used to be '*mad*'. Now it's all different.

In my past there were times when I couldn't walk anywhere; I couldn't visit the city centre because there were too many people after me. There were **paramilitaries**... Catholics... people all looking to get me. Even to this day they are still looking to get me, but **I'm trying to stay away from it all. I am trying to make life better.** I don't want this anymore; I don't want all of this.

### [7:24min]

#### - How restorative justice has helped

When I was on a fishing trip with Alternatives and there was a man who came up to me, he had been standing there fishing... he started talking to me; he said "*Well, how are you? Have you caught many fish today?*" We were talking to each other. Then he asked, "*Why are you here?*" and I told him it was because I had been caught rioting and this was a type of 'community service'. Then I thought, '*he's asking me a lot of questions*'. We had been talking about football; he told me he played rugby, I told him I supported Manchester United and he said he supported Liverpool Football Club, so we were teasing each other and having good fun... then I found out he was a policeman.... As soon as he said that I told him to '*get away from me*'. I actually brought my fishing line in and walked away from him. **I didn't talk to him anymore during the fishing trip once I found out he was in the police.**

### [8:43min]

That's the opinion I had of the police. I did not like them. I hated them. They never helped me. **All the police did was... harass me... annoy me, try and get a reaction from me.** I had nothing good to say about them at all.

Through Alternatives, Joan had sent me on a football coaching course and that policeman went with me. He drove me in his car. During the journey he asked, '*Do you view me differently now that I have no police uniform on?*' I answered, '*yes*' and said '*when you wear your police uniform young people do see you as someone's father, someone's son, someone's husband, someone's brother... young people look at you as evil and scum*'.  
.....

[9:55min]

**As I started to get to know him, I viewed him differently. I realised he was okay.** He took me to get a hamburger with him. He was okay. **Nowadays I talk to the police when I see them on the street.**

[10:11min]

Recently we had an event in this park for Halloween. The police attended it. The policeman came over and talked to me and the children in the park did not understand why I was talking to the police. They thought it was unusual. But soon the children joined me and started talking to the police as well.

[10:32min]

We were doing detached work in this park on Saturday... and the police arrived. The young people would not talk to the police. The young people ran away when the police arrived. The police were only trying to talk to them, they weren't there to arrest them or take away their alcohol. The young people were scared of the police. Then they watched me walked towards the police and talk to them... the young people asked me why I was talking to the police? I told them **'just because he has a uniform on does not make him different to us'**. Ten minutes later I looked at the group of young people and they were talking to the police... Now their views are starting to change about the police. If they could experience all that I have experienced with the police, attending the police station, ate pizza with the police, they would understand things better. **Instead of young people getting community service or being sent to jail they should be sent on programmes where they get to know the police more... then the police would also learn more about the needs of young people.**

[11:56min]

Young people who get sent to prison have different experiences than young people on restorative justice programmes, who give back to their community. **My friends went to prison because of rioting; now when I meet them, they have not changed.** I'm the only one who has changed because I was sent to Alternatives restorative justice. I was going to be sent to prison, but I did not want to go there. I didn't care to be honest. I didn't even care about going to Alternatives.

[12:30min]

Then, **after I attended Alternatives for a few weeks I realised the staff actually wanted to help me....** The police don't do that. They send you to a prison cell and you sit there, it doesn't help anyone. They don't give you advice. They don't give you an opportunity to give back. All the police do is try and teach you a lesson that you do not care about. If you do not care about life and you riot with the police, then you will not care when you sit in a prison cell.

[13:02min]

**With Alternatives... you get an opportunity to give back to the community.** My worker Carly sat with me and helped me create a plan. **She asked me what I wanted to do in order to give back to the community and the police.** She asked if I wanted to meet the police, and I said 'no' because I did not like them. She gradually started to break down barriers with me and introduced me to the police. We ate pizza together, we attended an activity day together and I started to get to know them better. **I started to attend events with the police, now I coach football with them. We teach children football skills.**

[13:56min]

**Alternatives has supported me in every way possible.** If I need anything, if I need to attend a training course or something, or help to take my mind off stuff, they can do that too. It's not all about being in groups, or classes. You get to know other people and see what all young have done wrong in the past. **They help me out with jobs and all too, with job interviews.** Carly, my Support Worker, got me a job interview with Eventsec. Before I had no... thoughts about even getting a job. I was more concerned with taking drugs and drinking alcohol, fighting, rioting, getting arrested.

[14:41min]

The feedback they have given me... now I feel like I need to give them something back. Before, all of my community was against each other. The only time you saw someone was at a riot. Rioting with the other side of the community. That's the wrong idea... that's the wrong way to see it. That's the wrong way to see people. That's how I met knew people, *'I was rioting with him last night'*. People used to come up to me and ask, *'how do you know him?'* I would answer *'I was rioting with him last night'*. Now when they ask, *'how do you know?'* I say, *'through Alternatives, I attended a fun day with him and it was brilliant'*. **It's a better view on life. It's all different now. My life has changed.**

I was on a training course with them (NI Alternatives) with other young people, trying to help them out, because there was an incident in here where someone had their window smashed. So this was a good opportunity for me to help give back the community. So I asked Joan from Alternatives if it was okay if I joined and helped, that's when **I built that table there**. This is my one. Other young people built one too, but the man living here said he's going to use my one for the garden. Down here **we dug out an allotment and planted flowers**. It's all starting to come together. We had an open day for everyone in the area, the Principal from the Boys Model School attended too. **For the first time in her life she said good words about me**. I'd never heard that before. So before, when I was a student at the Boys Model School, **teachers hated me**. Now they were standing there singing my praises, it felt brilliant. People were actually saying good things about me for once. **That just shows... people can change like that with help. If you get the right help it can change your life.**

## Video 3

### A young care leavers' experience of the police

- Ballymena
- Blair, 21 years old

The first time I was arrested I was 16. I was walking down the road and the police used 'Stop and Search' on me and caught me with a small amount of drugs. The police officer arrested me and held me in the station all night.

I then came into contact with the police when I was 18, just before my 18<sup>th</sup> birthday. Again, I was caught with a diazepam 5mg tablet that I was prescribed but I could not prove at the time. So the policeman then arrested me again and held me all night.

### [0:48min]

#### - Police custody

That night I was in custody and the Custody Sergeant had brought me out and I was in my pyjamas. He asked me what size of clothes I was so he could give me sports trousers. I told him I was a small and he gave me extra-large, which were obviously going to be too big. I put them on and the whole time I had to hold them up.

The next day, when I went with my solicitor to be interviewed, I had my hands behind my back holding my sports trousers up, and the girl (police officer) kept telling me to '**remove my hands**' or she was going to handcuff me. So I removed my hands and as I walked through the door my trousers fell down. My solicitor was there and the police were there... I didn't know whether to laugh or actually pull my trousers up. **It was embarrassing.** They suggested that I agree to meet a woman once a week for three months in order to stop me from reoffending and told me it would be my Caution for my offence.

### [1:58min]

#### - Participation with Include Youth's employability programme

I became a young mum at the age of 14, which meant I left school at a very young age with no qualifications, no GCSE's (lower secondary school qualifications), no work experience, nothing. For a long time I didn't want to do anything, I was quite happy just to be lazy and do nothing.

I became involved with Include Youth through their Give and Take Scheme at the age of 17, just after I had come into contact with the police for the first time. For a while I didn't want to engage with the Scheme. I found it hard to go in to classes and to want to be there. Then one day it literally just clicked and I realised I wanted more for myself; between painting my house, having a car and going on holiday. **I wanted more; I wanted a better life, especially for my child.**

### [2:50min]

So I started engaging with them and started to see that the programme was actually good. Getting qualifications can be fun and achievable. I got into a routine and attended the programme, I took part in the activities, I was gaining qualifications and had just achieved my twelfth qualification and was just about to attend a work placement, for the very first time, when I came into contact with the police for a second time.

### [3:16min]

My life was going good, I had visions of working and wanting to work, and I had come into contact with the police and received my second caution. So whenever I was starting out, going into a youth work career, finishing off my training and talking to the professionals I realised that my Police Caution was always going to be there, no matter how much I worked towards something, what I did or the kind of work I went in to, I would always have a criminal record for the fact that I was young and silly.

### [3:47min]

**There were a lot of things the police could have done differently like, they never explained anything to me properly. They never clarified that I actually knew what was happening. They never helped or tried to offer to advice** or found out why I had even committed the offence. As soon as I was arrested it was like: '**You have committed this offence and this is how it is.**' There was no leeway with them, **they didn't understand me.**

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[4:14min]

When I got arrested I knew instantly that it was going to have some kind of impact on my career, because the career I wanted to pursue was youth work and working with young people (juveniles). So I knew having a drugs caution on my record really was not going to look good. I spoke with Kevin, my employability worker on the programme, who basically broke all the information down for me section by section. He explained this is what you could do and what you have to do or this is how we can sort out the situation out together. Unfortunately my cautions haven't been removed from my record. Four years later the Police Cautions are still there, so they're not going away, never, they will always be there now.

[4:55min]

- Advice for the police

**As a young person who grew up in the care system (in the care of social services) I think that the police should be a lot more understanding of where a young person has come from.** Through my involvement with Include Youth I have gained the chance to take part in lots of **different opportunities to participate and talk about my experience, my story, being involved with the police and the care system, how it has affected me and how everybody in general can learn from this, from young people to professionals to police to everybody.**

[5:32min]

Just recently I was at an event with Include Youth where I talked to other young people about my story and how I came into contact with the police. The police were also there. I loved it, I got the chance to tell them about my story and my experience and **the police heard first-hand what it was like for me as a young person and how they could maybe change their attitudes towards young people in general.**

[6:01min]

- Life now

I'm now 21. I've got a full-time job. I work as an *Accommodation and Community Support Worker*. I have a salary; I earn my own money every single month, I have a wage coming in. I've recently just been talking to the bank about a mortgage on my own house. I'm also doing a Level 2 qualification in Health and Social Care with the intention of moving on to complete my Level 3 qualification.

Last June I completed my Level 4 qualification in Community Youth Studies at university and right now I'm taking a year out to work before I go back to university to study for a degree. **Things are really looking up now and my life has really changed for the better.** There are a lot of positive things happening and I've now got security from my job and to pay for my own house. **So everything is going good for a change.**

ENDS







This Manual has the purpose of providing knowledge to professionals working with children who are in conflict with the law, specifically geared towards improving the communication with juveniles. In this Manual topics relating to children's legal rights, interviewing techniques, communication, child psychology and pedagogical skills are touched upon in the various chapters. The Manual aims to provide information and to give further guidance to the implementation of the provisions of the EU directive. Information is provided with regard to the content of the directive and how to implement the directive in congruence with other relevant international and European standards in juvenile justice. It is part of a training package composed of the Manual, a Toolkit for Professional and a series of videos featuring young people in conflict with the law.

The Publication *Can anyone hear me? Participation of children in juvenile justice - A manual on how to make European juvenile justice systems child-friendly* has been prepared by the Department of Child Law of Leiden University and is part of the project **Improving Juvenile Justice Systems in Europe: Training for Professionals** (JUST/2013/FRC/AG) led by the International Juvenile Justice Observatory and carried out in partnership with the Ludwig Boltzmann Institute of Human Rights (Austria); Hope for Children - UNCR Policy Centre (Cyprus); Rubikon Centrum (Czech Republic); Association Diagrama (France); Greek Ministry of Justice (Greece); Istituto Don Calabria (Italy); Providus Center (Latvia); Portuguese Ministry of Justice (Portugal); Fundación Diagrama (Spain); Include Youth (N.I., United Kingdom); Finish Forum for Mediation (Finland); University College Cork (Ireland).

## Improving Juvenile Justice Systems in Europe: Training for Professionals (JUST/2013/FRC/AG)



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