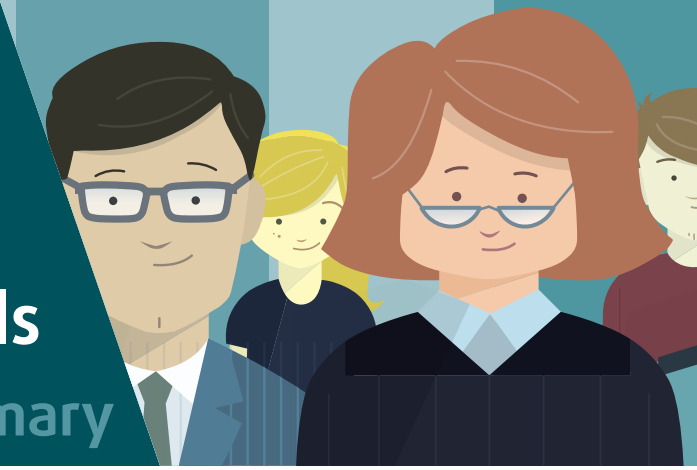


Child-friendly justice – perspectives and experiences of professionals

Summary



The Charter of Fundamental Rights of the European Union sets out rights that are of particular relevance to the rights of children in judicial proceedings, the most important of which are human dignity (Article 1); the prohibition of torture and inhuman or degrading treatment or punishment (Article 4); the right to liberty and security (Article 6); respect for private and family life (Article 7); the protection of personal data (Article 8); non-discrimination (Article 21); the rights of the child (Article 24) and the right to an effective remedy (Article 47).

All European Union (EU) Member States have a duty to ensure that children's best interests are the primary consideration in any action that affects them. This consideration is of particular importance when children are involved in criminal and civil judicial proceedings.

Such proceedings can be stressful for anyone. Even more so for children, who may become traumatised if the procedures are not child-friendly, the settings unsuitable and the professionals involved inadequately trained. Thousands of children are affected. Data show that in 11 Member States alone, around 74,000 children were victims of crime and 495,000 were affected by parental divorce in 2010.

The treatment of children in judicial proceedings is an important fundamental rights concern, addressed by the United Nations (UN) in its [Convention on the Rights of the Child \(CRC\)](#), which all EU Member States have ratified. The EU further shows its commitment to this issue by promoting the Council of Europe's (CoE) 2010 *Guidelines on child-friendly justice* and helping its Member States improve the protection of child rights in their judicial systems.

These CoE guidelines promote children's rights to be heard, to be informed, to be protected and to non-discrimination. To determine the extent to which these rights are respected and fulfilled in practice, the European Union Agency for Fundamental Rights (FRA), in cooperation with the European Commission, collected and analysed the data presented in this summary. The findings show that there is a long way to go to make justice more child-friendly across the EU.

Practices of child participation in criminal and civil judicial proceedings vary considerably not just across, but also within Member States, pointing to a need for clear and consistent standards and guidelines and the systematic monitoring of their implementation. Children are not sufficiently supported when participating in criminal or civil proceedings; court settings that can be intimidating for children are not always adjusted to their needs. Concrete measures, such as preventing a child from directly confronting defendants or witnesses in court or ensuring that a child is informed about and understands the proceedings, are not yet common practice. The research also revealed, however, a number of promising practices, some of which are outlined in this summary.

Making justice systems more child-friendly improves the protection of children, enhances their meaningful participation and at the same time improves the operation of justice. The findings in this summary can provide Member States with useful tools to identify barriers, gaps or weaknesses in their judicial proceedings, especially in the process of transposing and implementing relevant EU directives. Such a child-friendly approach, in line with the Council of Europe guidelines, will make participation in judicial proceedings a safer experience for children in the EU.

Data collection and coverage

In its Agenda for the Rights of the Child, the EU noted that a lack of reliable and comparable data was obstructing the development and implementation of evidence-based policies. To address this lack of data, the European Commission and FRA took stock of existing work in this area. The coordinated and systematic data collection included the child rights indicators that FRA developed in 2010 and further elaborated in 2012 in regard to family justice. The indicators follow the rights-based model, developed by the United Nations (UN) High Commissioner for Human Rights (OHCHR),* which is designed to measure:

- duty bearers' commitments (structural indicators);
- efforts (process indicators) to fulfil these standards;
- the results (outcome indicators).

To gain a comprehensive understanding of the situation, FRA conducted interview-based fieldwork research in 10 EU Member States, selected to reflect a diversity of judicial systems and different practices regarding the involvement of children in justice – Bulgaria, Croatia, Estonia, Finland, France, Germany, Poland, Romania, Spain and the United Kingdom.** It collected the experiences, perceptions and views of professionals involved in criminal and civil judicial proceedings, as well as the experiences of children who have been involved in such proceedings, as victims, witnesses or parties.

The first part of FRA's work on children and justice, presented in this summary, concerns the

perspectives of professionals. It examines the responses of 570 judges, prosecutors, lawyers, court staff, psychologists, social workers and police officers who are in daily contact with children going through judicial proceedings. This work contributed to the initial population of process and outcome indicators with qualitative data for the 10 EU Member States. Evidence from the second part of FRA's fieldwork research based on interviews with children themselves will further populate process and outcome indicators. Based on a combined analysis of the professional's and children's interviews, FRA will issue opinions on child-friendly justice.

In parallel, the European Commission collected statistical data from all EU Member States, where available, on children's involvement in judicial proceedings. The data covers the legislation, regulations, and policies as of 1 June 2012 that affect the treatment of children in judicial proceedings, identifying strengths and potential gaps. This work contributed to the population of the structural indicators.

* OHCHR (2012), *Human Rights Indicators, A guide to measurement and implementation*.

** In France, the fieldwork was carried out in Île-de-France, Provence-Alpes-Côte d'Azur, Franche-Comté, Rhône-Alpes, Poitou-Charentes, Nord-Pas de Calais, Brittany, and La Réunion; in Germany, in Berlin-Brandenburg, Hessen, Bavaria, Lower Saxony, Rhineland-Palatinate, North-Rhine Westphalia, Niedersachsen, Hamburg, Saarland, Brandenburg, Thüringen, and Mecklenburg-Vorpommern; in Spain, in Andalusia, Catalonia and Madrid; and in the United Kingdom, in England, Wales and Scotland.

Key findings and evidence-based advice

Right to be heard

The right to be heard and express one's views is essential for effective participation in judicial proceedings. It is a right guaranteed to children by the EU, the Council of Europe and the UN.

But simply capturing a child's views is not enough. Meaningful participation requires that the relevant authorities create a safe and friendly environment and use appropriate methods of questioning to determine and take into account a child's specific needs.

"During my career I have noticed major changes: [...] previously child hearings were simply considered a formality of the proceedings and this is no longer the case." (Spain, court clerk, female)

Some respondents consider that hearing children is not always meaningful and necessary, and suggest limiting the number of hearings when possible. Others strongly promote children's rights to be heard and express their views, advising that their developmental phase, linguistic capabilities and state of health should always be kept in mind.



“What young people want is to know that the person making the decision was aware of their views at the point they made the decision. A lot of young people don’t want to make the decision themselves, they understand that it’s not for them to make it, they don’t want that pressure. But they want to feel that the person making the decision has heard their voice in the process.”

(United Kingdom, social worker, male)

FRA fieldwork findings show that children are heard more often in criminal than civil proceedings, due to the need for evidence in criminal cases. Children are not always required to participate in civil proceedings, such as in family law cases involving issues including divorce and custody. There are more procedural safeguards in criminal than in civil proceedings, particularly when the child is a victim rather than a witness. Authorities in civil proceedings also grant certain procedural rights more often to child plaintiffs than witnesses or parties. Video recordings and child-friendly hearing rooms are more often available and used for criminal than civil proceedings.

All interviewees underlined the importance of coordinated professional work by all the specialists involved, to limit and alleviate any negative effects children may experience. On the whole, if trained professionals hear children and guidelines on how to hear children exist, professionals are assessed to behave more appropriately. Children feel more secure if there are fewer hearings, fewer people present and if only one trained professional hears them. They can also make better use of their rights and provide more valid, less influenced statements.

“[...] the child comes with his parents to the police and says, I’ve said it to the police, thinking that the police are the state institution where one should not lie. He/she comes to the investigation, says I’ve said it in court, a county court during the investigation, and now for the third time we call him/her to come here and say, now you repeat it again. Terrible.” (Croatia, psychologist, female)

The evidence FRA collected in the 10 EU Member States studied shows that Member States sometimes fail to deliver on the right of a child to be heard in judicial proceedings. Hearings in both civil and criminal proceedings are seen as traumatising for children. Both criminal and civil proceedings have, however, made progress in making justice more child-friendly. They have done so by ensuring that social care professionals participate more throughout judicial proceedings, especially in civil law hearings. The adoption of special measures to protect children from re-victimisation has also helped.

The following general considerations for action can help ensure that children’s right to be heard takes place in as child-friendly a manner as possible, ensuring that children feel comfortable and safe and are able to effectively and freely express their opinions.

Establishing specialised courts for children

- Not all Member States have specialised criminal and civil courts. Yet, such structures are more likely to have child-friendly facilities, safeguarding tools and trained child specialists. If they do not yet have them, EU Member States should set up such specialist structures as well as a system of legal/judicial professionals with competences on the rights of the child and child-friendly justice.

Defining the child’s maturity

- The child’s maturity is critical to determining how he or she should participate in judicial proceedings. EU Member States should introduce a clear legal definition of maturity.
- Currently, failing such clear criteria, individual judges may use their own discretion to assess the child’s maturity. EU Member States should adopt a more objective method to assess children’s maturity, taking into account their age and capacity for understanding.

Establishing procedural safeguards to ensure child participation

- Professionals consider that procedural safeguards in criminal proceedings, such as the child-friendly adaptation of the hearing environment, reduce children’s stress and the risk of secondary victimisation. For criminal and civil proceedings, EU Member States should video record hearings, including pre-trial hearings, to avoid unnecessary repetition and ensure they are legally admissible evidence. For criminal proceedings, EU Member States should introduce measures to avoid contact between the child and the defendant and any other parties that the child may perceive as threatening. For civil proceedings, EU Member States should consider the use of mediation more often as an alternative to trial.

- Eight of the 10 Member States studied have criminal law provisions on the child's right to be heard as a victim and six on his or her right to be heard as a witness. In civil law, depending on the type of case, hearing the child can be mandatory, optional or not regulated at all. The Member States and, as appropriate, the EU should apply a more inclusive approach, so that procedural safeguards cover all cases involving children in judicial proceedings, while applying an assessment of a child's maturity.
- EU Member States should ensure that only trained professionals hear children and increase the presence of specialised, trained professionals during hearings. This requires providing training for professionals in child-friendly hearing techniques. Authorities should also ensure that a person of trust, independent of the child's parents, supports the child during all stages of judicial proceedings, particularly in informing and preparing the child for hearings. EU policy planning should also focus on training professionals and harmonising curricula.

Making free legal aid available, including children's free and easy access to legal representation

- In criminal cases, some EU Member States make free legal aid available only to those who are financially eligible. In civil cases, respondents from all countries report a lack of legal representation for children. EU Member States should provide legal aid unconditionally to all children. This should include free access to legal representation throughout the proceedings and the removal of bureaucratic hurdles, such as lengthy proceedings or economic means testing.
- EU Member States should ensure that clear guidelines on accessing legal aid be provided to all children and their parents/guardians, and that specialised child lawyers be available to represent children in both civil and criminal proceedings.

Promising practice

Introducing tandem guardians

In the United Kingdom (England and Wales), any child who is party to a civil case is appointed a guardian from the Child and Family Court Advisory and Support Service to conduct the proceedings on the child's behalf. Guardians stand in for children at court, and are responsible for reporting on the children's wishes and feelings. They are also responsible for explaining the legal process and keeping the children informed about the case's progress and its final outcome. Guardians also appoint solicitors to provide legal representation for the children in what is known as the 'tandem model' of representation. Where the guardian's opinion on the child's best interest conflicts with the child's view, a second solicitor can represent the child separately.

In Finland, when a conflict of interests prevents a child's parents from being their guardians during a legal proceedings, a guardian is appointed to represent the child's best interests in court. In some Finnish municipalities of Finland (for example in the Kouvola-Kotka region), both a social professional and a legal counsel can be appointed as guardians *ad litem*, a system of cooperation also known as the 'tandem model'.

Reducing the length of proceedings

- Seven of the 10 EU Member States examined have specific legal provisions to prevent undue delays in child justice cases in the criminal field, while only three Member States fast-track cases involving children in the civil field, and then only under certain conditions. EU Member States should introduce effective safeguards to avoid undue delays.
- Member States should introduce clear rules to limit the overall number of child interviews and hearings permitted in both civil and criminal cases. EU Member States should strengthen cooperation between professionals from the different disciplines involved to reduce the number of hearings.



Providing professionals with rules and guidelines on how to hear children

- FRA fieldwork findings show that hearing practices generally depend on individual professional skills and vary by court and region. Standardised, detailed rules or guidelines, such as those used in Finland or in the United Kingdom, help reduce the number of hearings and improve communication with the child. EU Member States should

ensure that all professionals involved in all judicial proceedings are provided with clear and child-friendly rules and guidelines on how to hear children. These should go hand in hand with a standardisation of procedures and coordination among different actors to harmonise hearings. Promising practices can serve as points of reference. An exchange of guidelines and promising practices within and between EU Member States would help improving procedures.

Promising practice

Elaborating guidelines for interviewing children

In the United Kingdom (England and Wales), the Ministry of Justice developed guidelines for interviewing child victims and witnesses in a 2011 report. The guidelines, *Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses and guidance on using special measures (ABE)*,* are directed at all those involved in relevant investigations, including the police, adults' and children's social care workers, and members of the legal profession. Children's ABE interviews may be video recorded and shown later instead of the child's primary testimony.

The Scottish Government also set guidelines for best interviewing practices in its 2011 publication, *Guidance on Joint Investigative Interviewing of Child Witnesses in Scotland*.** These guidelines prescribe joint, video recorded, interviews by specially trained police officers and social workers. Social workers trained to conduct joint investigative interviews are partnered and co-located with police officers to facilitate a rapid response to interview requests. Although these interviews are video recorded, it is standard practice for the child to give live oral evidence.

In Finland, both police and psychologists follow guidelines for hearing and informing children. The guidelines were drafted by the National Research and Development Centre for Welfare and Health (*Sosiaali- ja terveysalan tutkimus- ja kehittämiskeskus, Stakes/Forsknings- och utvecklingscentralen för social- och hälsovården, Stakes*).*** Finland has also developed a special set of guidelines on interviewing children who are victims of sexual abuse and/or assault and battery.

* Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses and guidance on using special measures: www.justice.gov.uk/downloads/victims-and-witnesses/vulnerable-witnesses/achieving-best-evidence-criminal-proceedings.pdf.

** Guidance on Joint Investigative Interviewing of Child Witnesses in Scotland: www.scotland.gov.uk/Publications/2011/12/16102728/o.

*** Stakes 2003: *Guidelines on investigating sexual abuse and assault and battery against children*, *Opas lapsen seksuaalisen hyväksikäytön ja pahoinpitelyn selvittämisestä*, are not publically available.

Using child-friendly facilities to hear children

- Even when child-friendly rooms are available for use in criminal proceedings, they are rarely used in civil cases. Member States should ensure that child-friendly interview rooms are available not only for all criminal justice cases, but are, in the absence of other child-friendly facilities, also an option for civil cases. Such rooms should be available throughout a country, including in rural areas.

- Member States also vary widely in their use of existing child-friendly rooms, hinging upon factors such as access to locations with recording equipment. They should remove technical and logistical obstacles to make the use of child-friendly rooms standard practice.
- Child-friendly rooms usually contain toys, video recorders, and tools to collect evidence, but professionals say that the equipment is often not age-group appropriate. EU Member States should ensure that such child-friendly waiting, interviewing and hearing rooms are equipped to address the needs of different age groups.

Promising practice

Using child-friendly interview tools

Several countries use toy-like material to make it easier for children to communicate during hearings. Child-friendly interview rooms in Estonian police stations come equipped with anatomical dolls that can be dressed and undressed for sexual abuse cases, a tool that a number of countries use. In Finland, social workers often use ‘Teddy Bear Cards’ to help children articulate their emotions. Versions of these cards have also been designed for older children.



Finland, Kuovola. Material used during children's hearings dependent upon their age and development.



Tallinn, Estonia. Dolls used during child hearings.

Right to information

The right of children involved in judicial procedures to be informed is crucial to their effective participation and well-being. Concrete information offered in small, digestible doses throughout all stages of the proceedings can relieve children's anxiety at facing a potentially intimidating justice system for what is likely to be the first time. Well-informed children gain greater trust and confidence in themselves and the judicial system. They then feel more secure and talk more freely, which means their statements are more taken into account and they can participate more fully in proceedings.

“My opinion is that they are quite scared and frightened about coming here and they don't actually know what is happening to them, why they are brought here and they are scared, this is the child's perception. For instance, a little girl once asked me: “Are you going to give me an injection?” (Romania, judge, female)

For criminal judicial proceedings, the right to information is enshrined in the legislation of all the EU Member States studied except Scotland in the United Kingdom. The interviews show, however, that there is significant variation in the way children are informed, in terms of what information is provided, when and by whom. The right to information is less regulated in civil judicial proceedings, where legal and social professionals have more freedom to judge what information should be provided to a child.

“[Information] is very important because if we don't communicate the child's rights, the child could not find out about them from any other place. [...] I believe it is an advantage for the child to know that the child can benefit from something, allowing him or her to want and wish to benefit of it.” (Romania, psychologist, female)

Parents are usually the first to receive information on proceedings and play a major role in providing it. They are often expected to act as the primary informer, explaining the material to their children, even when that same information is also sent

directly to their children. This practice was a contested issue among the professionals interviewed, since parental influence is liable to be biased, particularly in civil proceedings.

“It’s true that nothing is planned. We don’t really worry about getting to know what information is given to the child.” (France, prosecutor, female)

When it comes to what type of information to give, professionals in both the criminal and civil justice field agreed that children should be informed about their rights, the stages of the proceedings, what to expect from the hearings and the availability of protective measures. Several professionals discussed how to find the right balance between properly informing children and not overwhelming them with information. Concrete understandable information can ease anxiety, whereas an overload of information can increase it.

“The child must have some information, but it needs to be dispensed in certain dosages.” (Estonia, lawyer, female)

The age and the developmental level of the child affect his/her ability to understand information about the proceedings. Thus, information should be tailored to children’s age, developmental phase, background and psychological condition. Professionals agreed that children need to be given adequate information and that even very young children are able to understand the importance of their testimony. Professionals felt, however, that younger children needed only to understand the general process and their role in it, not the fine legal details.

Channels used for how information is provided range from online material guiding professionals how and

on what to inform children, letters of summons or informational letters written with adults in mind, oral explanations given to children about their rights, or specifically developed information booklets for children of different age groups and language backgrounds. Parents and professionals supporting the child (social workers, legal representatives) should also receive the information material prepared for children, so that they can convey the information in simple and accessible language.

“Every new person who comes has a different approach towards the children, he/she has a different view and understanding of the work that should be performed [...] things do not work effectively. For example, if a year ago we had a case for something [...] and some colleague (or I) worked with the child, then, if some time after that a new colleague has a new subpoena and new case with the same child, he/she goes and presents the information in a different way. The child might be confused, or he or she might not be confused.” (Bulgaria, social worker, female)

The right to information does not only apply when children are already involved in judicial proceedings but also before proceedings start, to raise their awareness of their right to be heard on matters that affect them. France takes a comprehensive approach.

Respondents said that the overall fulfilment of the child’s right to information in both criminal and civil proceedings can be improved. If information material is adapted to children’s needs, taking into account their age and level of maturity, and specific information services are available, such as pre-trial visits, children feel more secure and talk more freely, which also means that their statements are more taken into account.

Promising practice

Making legal information and advice accessible to children

In France, contact points have been established in several cities where children can access specialised lawyers for information about their rights, and advice and support on civil or criminal legal matters. These meetings are free and confidential, and often offer drop-in services, as well as hotlines and awareness-raising sessions in schools.

This advertisement is for a child lawyer programme (Avoc'enfants), where children and young adults involved in civil or criminal cases may contact a lawyer specialising in children’s issues for advice and information on their rights.

Mandatory procedures on how to inform children when, on what and by whom

- In both criminal and civil law, professionals usually consider national frameworks too general. They lack details on where, when, what, how and by whom children are to be informed. The information given thus varies, often leaving children inadequately informed. The Member States and, as appropriate, the EU should ensure that the right to information is guaranteed to all children and for all judicial proceedings through statutory provisions.
- The provision of information on the court decision seems to be the weakest element in all Member States studied. Post-trial information should include clear reference to the child's rights and the options available to them, including appeal rights and aftercare services. Such information should always be conveyed in a child-friendly language and formatted as appropriate for their age and maturity.
- The obligation to provide information to children in the field of civil justice is even less prominent than in the field of criminal justice. Before reaching the age of legal capacity, children are mainly informed through their parents or legal representatives. Member States should consider increasing the role of psychologists and relevant social professionals in such provisions and expanding the scope of information provided to a child.

Promising practice

Informing child victims of the outcome of proceedings

In Germany, the Victims Protection Act of 1986 and two Victims' Rights Reform Acts strengthened victims' and witnesses' rights. These include the obligation to inform victims about the final verdict and to ensure that they have access to the court files. Similarly, practices in Finland ensure that child victims are informed of the outcome of proceedings. The verdict for victims under 15 years old is delivered to the child's legal counsel or guardian. The legal counsel is then responsible for informing the child and the family. The guardian or the legal counsel also informs the child about all practicalities of a verdict, for example the payment of damages. If the child is over 15, the verdict is delivered personally.

Availability of support services to properly inform children and their parents

- Support services, particularly victim and witness support services, play an important role in providing information to children and their parents, preparing children for trial hearings, accompanying them through proceedings, monitoring their understanding and ensuring their overall protection. Their services can include pre-trial visits to familiarise children with the courts, home visits, and support provided before, during and after trial. The EU Member States and, as appropriate, the EU should ensure that support services are established and available to all children participating in judicial proceedings.
- While most Member States offer support services, there is a shared perception, particularly among social professionals, that much more should be done. Member States where no mandatory requirements for information procedures exist seem to focus their support programmes on severe cases and specific types of crimes, such as trafficking or sexual abuse, and on victims, not necessarily witnesses. Furthermore, children and their parents are often not given sufficient information about the support services available to them and are therefore unable to take advantage of their benefits. Steps should be taken to ensure that information on support services and how to access them is communicated to children and their parents or guardians. Member States should also acknowledge the important role that parents play in informing and supporting children, supporting efforts to increase parents' awareness and support.

Promising practice

Providing an intermediary for interviews and hearings

Intermediaries are an important addition to the legal support measures available to children in the United Kingdom (England and Wales). An intermediary can assist in planning and executing the police interview, provide a written report to the court on the child's communication capabilities and advise during the child's hearing if questioning is inappropriate. The cost and limited availability of intermediaries, however, prevents them from becoming a standard support measure. While registered intermediaries are increasingly used to support very young children or children with a specific disability that makes communication difficult, they are not generally available to young people without additional vulnerabilities. Judges report that they have been encouraged by their experience with intermediaries, however, to stop inappropriate questioning techniques even in an intermediary's absence.

For additional information, see Youth Justice and Criminal Evidence Act 1999, www.legislation.gov.uk/ukpga/1999/23/ contents

Single person responsible for preparing, informing and supporting a child before, during and after judicial proceedings

- In both criminal and civil law, national frameworks are usually too general and do not specify who is to inform children. Parents may thus be left to provide the information, regardless of whether they themselves are well informed or are neutral parties. In other cases, professionals may develop their own, often differing, practices. The Member States and, as appropriate, the EU should ensure that professionals are provided with clear rules and guidelines for informing children, to guarantee a consistent, standardised child-friendly approach. This also requires appropriate training of all professionals informing children.
- Research shows that children are under-informed unless there is a single professional assigned as contact point person to inform and prepare them throughout the proceedings. Member States should thus consider designating one such responsible person. This person should be sufficiently trained and available at all stages of the proceedings, and act as an intermediary between the child and support and child protection services, police officers, judges, prosecutors and lawyers and parents. Social professionals are considered

well suited for this role, as they can support a child longer than judges and other legal professionals. If a single contact point is not made available, Member States should ensure that the different actors with information responsibilities coordinate efficiently amongst one another.

Availability of child-friendly information

- A number of countries have developed child-friendly materials to explain the legal process, child rights, the roles of those involved, children's letter of summons and legal notifications and what children will experience in court. Others simply give children the same material used to inform adults and even that may not be available systematically. Member States should establish clear standardised rules for the provision of child-friendly information to children involved in all judicial proceedings, to ensure their equal treatment. They should use a variety of channels and formats, such as brochures and leaflets available online and as print-outs, and including written and oral information. Material that has already been developed should be shared and used, within and between EU Member States.

Promising practice

Providing child-friendly informational booklets

The Scottish Children Reporter Administration has developed a range of leaflets for children about the Children's Hearing system and their role in it. They are available for different age groups: five-to-eight years of age; eight-to-12; and 13 and above.* The Children's Reporter sends these leaflets to the child (or, for under 12s, to the child's parents) at the same time as he/she sends the 'Grounds for Referral'. The social worker bases discussions with the child on these materials, explaining what will happen at the hearing and answering any questions. Depending on the child's age and abilities the social worker may engage in play therapy. The Scottish Children's Reporters Administration conducted research with children on the effectiveness of its current child advocacy, finding that children were not given enough information. The administration devised a project to revise its materials with input from children with experience in the system.**

* *Scottish booklets: www.scotland.gov.uk*

** *Getting It Right For Every Child – Children and young people's experiences of advocacy support and participation in the Children's Hearings System: Big Words and Big Tables: www.gov.scot/Publications/2006/04/27142650/0*

Right to protection and privacy

International standards clearly prioritise the protection of children involved in judicial proceedings, while at the same time encouraging their participation. A protective and safe environment is necessary for children to participate fully and effectively and to avoid any potential re-traumatisation.

Measures to protect children exist on many different levels throughout the proceedings, and their implementation should be considered a key way of ensuring child-friendly justice. They are relevant to ensure a child's right to be heard and informed in a non-discriminatory way, while taking into account the best interests of the child, which include measures to protect his/her privacy. In general, the existence of consistent and systematic child-friendly practices that follow clear regulations and guidelines increases the likelihood of a child being protected and safe. Nevertheless, professionals claim that in some areas flexibility is important to be able to adapt their approach on a case-by-case basis.

“Of course you can't secure, that it [information] always creates security, quite the opposite, it can even create more anxiety. In a way we shouldn't think about it too much as adults, that children must be protected. Of course you inevitably have to think of that element too, that the function of protecting the child is more important than the function of the child being part of the case. [...] But then again if you only talk about the case and how it's going to go there can't ever be any harm in that.”
(Finland, guardian (other specialist), female)

FRA fieldwork findings and the European Commission's data collection show that the vast majority of Member States studied have made significant efforts to keep children participating in criminal proceedings safe from harm and protect their privacy. Children's rights to protection and privacy appear to be the most advanced from both a structural and procedural point of view. The right of children to privacy is also regulated in several forms in civil law.

Preventative measures should be adopted to keep children safe from wrongs such as reprisals, intimidation and re-victimisation. These measures are particularly important when the child is a victim of domestic violence or abuse by close caregivers. A child's privacy is also at serious risk when he or she comes into contact with the justice system,

especially when the case catches the attention of the media. Bearing this in mind, the Council of Europe Guidelines establish a range of safeguards to ensure that children's privacy is fully protected. In particular, personal information about children and their families, including names, pictures, addresses, should not be published by the media. The use of video cameras should be encouraged whenever a child is being heard or giving evidence. In these cases, the people present should be limited to those who are directly involved, and any information provided by the child should be kept confidential if there is a risk that the child might be hurt. Furthermore, access to and transfer of personal data should take place only when absolutely necessary, and taking into account the child's best interests.

Child protection systems

- Member States must ensure that children involved in judicial proceedings are treated as persons in need of special protection, taking into account their age, maturity, level of understanding and any communication difficulties they may have. Child protection systems should be based on an integrated and targeted approach that bears in mind not only children's special needs in general but also any other vulnerabilities, such as for victims or witnesses of sexual abuse or domestic violence, those with disabilities or a migrant status. This would include strengthening a system of professionals in charge of child-related cases, with expertise in child protection and safety and the ability to help identify any specific protection needs. EU policy planning should focus on providing guidance to effective, co-ordinated child protection systems.

Promising practice

Protecting children's identities online

In Estonia, court documents available to the public (including on the court's website) do not publish a child's identifying details, referring to a child only by his/her initials.

French press liberty laws also mandate protection against the public disclosure of the names of child victims.

Source: Loi du 29 juillet 1881 sur la liberté de la presse (1881), Article 39 bis

Establishing procedural safeguards to ensure child protection

- National legal frameworks foresee a variety of protection measures for court hearings that should be considered basic to ensuring child-friendly justice. In practice, however, these measures are often underused and generally left to the judges' discretion. Some may also be limited by the child's age or role in the proceedings, covering them for instance as victims, but not as witnesses. Member States should establish procedural safeguards and monitor their implementation to ensure that all children involved in all judicial proceedings are protected from harm, potential re-traumatisation and identification before, during and after proceedings.
- Such protective measures include video recordings, the use of which should be standard practice in criminal and optional in civil proceedings. The setting should also be adapted to limit the number of interviews, regulate the presence of professionals, provide access to support services and regular child support persons throughout and following proceedings.
- Police stations, courthouses, and other locations where children are heard should be equipped with functioning recording technology, and professionals should be trained to use it. Human and financial resources need to be appropriately allocated.
- Identity-protection measures should protect the privacy of children involved in judicial proceedings, such as ensuring that recordings are safely stored with due regard of data protection legislation.
- Member States should not only establish measures to avoid contact with the defendant during hearings (such as live video links, screens to shield the child from the defendant, or excluding the defendant from the courtroom during child testimony) but also before and after hearings. The Member States and, as appropriate, the EU should ensure a child-friendly environment for all stages of proceedings and that all courts and police stations are equipped with appropriate, child-friendly waiting rooms and separate entrances. Those shall be systematically used to protect the child from meeting the alleged perpetrator or a family member in conflict with the child, and to safeguard the child from a harsh environment while waiting to be heard.

Promising practice

Preventing contact between the child and the defendant

The Tartumaa Victim Support Center (*Tartumaa Ohvriabikeskus*) in Estonia has set up a separate entrance at the back of the building for especially traumatised children. Some courtrooms in Finland also have separate entrances, and separate entrances and waiting rooms are highly valued aspects of courts in the United Kingdom.



Estonia. Separate entrance at the back of the building of Tartumaa Victim Support Center.

Right to non-discrimination

The Council of Europe Guidelines identify non-discrimination, best interests of the child, dignity and rule of law as fundamental principles of child-friendly justice. The professionals interviewed stated that non-discrimination is of particular importance for children with disabilities or of different national or ethnic backgrounds.

Despite existing legal provisions regarding equal treatment, respondents highlighted the existence of problems concerning children in vulnerable situations, the nature of which varied depending on the country. In some countries respondents focused on the treatment of Roma children, in others on victims of trafficking. In all cases, respondents stressed the need to adapt to the specific needs of the child and voiced concerns about the lack of expertise of persons in contact with children and the accessibility of the settings.

"[...] There is no system to take care of those children [with disabilities] in the system, everyone passes the problem to the others. [...] I would say as soon as we are confronted with a child with those problems and who needs different stakeholders – social, medical, educational and judicial – all of a sudden we see the failure of the system which was not conceived in order to take care of those children."
(France, prosecutor, male)

Children should be treated equally in judicial proceedings regardless of sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, sexual orientation, gender identity or gender expression. Member States should pay particular attention to children in especially vulnerable situations, such as those living in extreme poverty or separated migrant children.

Ensuring that all children involved in judicial proceedings are treated equally

- The Member States and, as appropriate, the EU should ensure that all relevant procedural safeguards and any services provided to children before, during and after their involvement in judicial proceedings treat children equally. Data on children's access to justice should be available for all children, broken down by groups (such as children in particularly vulnerable situations), to ensure a targeted approach and monitor the accessibility of justice.
- Respondents raised concerns about the lack of expertise on diversity issues, which can make services less accessible. All professionals should be made aware of the different vulnerabilities children may have and either delegate or work with experts on these vulnerabilities. Guidelines and protocols should be put in place to guide professionals through such procedures, and should form part of packages on protection and safety measures.
- British respondents regarded favourably the United Kingdom's initiative to translate the existing child-friendly material into different languages. They pointed to other positive practices, including female police officers interviewing girl victims of sexual abuse and the United Kingdom prosecutors' guidelines on how to interview persons with intellectual disabilities. Member States should ensure that specific guidelines and provisions regulate and specify how to support children involved in judicial proceedings, including through the provision of adequate information in a language and form that they can understand, taking into account interpretation and translation needs or barriers linked to physical or other impairments.
- Member States should pay particular attention to facilitating access to justice and providing the necessary legal aid, legal representation and support for children in especially vulnerable situations.

FRA ACTIVITY

Focusing on hostility against children with disabilities

Targeted hostility against children with disabilities is an area which presents huge data gaps across EU Member States. FRA envisaged an innovative project to address the under-reporting of abuse, lack of support and poor awareness of rights among children with disabilities and to map practices addressing those problems.

Comprehensive comparative information on legislation, policies and services available across the EU will assist EU institutions, EU Member States and civil society to efficiently counteract such hostility. The report will be available in 2015.

For more information, see: <http://fra.europa.eu/en/project/2012/children-disabilities-targeted-violence-and-hostility>

Principle of the best interests of the child

The Council of Europe Guidelines identify the best interests of the child as one of the four fundamental principles of child-friendly justice.

But although the concept of the child's best interests is embedded within the normative framework of most of the EU Member States studied, the majority of respondents perceived it as a complex and vague term, subject to interpretation, and suggested that tools to identify, assess and report on how such best interests may have been met are missing. They criticised the lack of a concrete definition, which they said could lead to manipulation, subjectivity and decisions taken which do not in reality protect children's rights.

"'Best interests of the child' in what sense? In criminal law the important thing is the truth, the objective truth. For the child it means that if he/she is a victim of crime the perpetrator should be punished." (Bulgaria, judge, female)

The Committee on the Rights of the Child¹ points out "that an adult's judgment of a child's best interests cannot override the obligation to respect all the child's rights under the Convention. It recalls that there is no hierarchy of rights in the Convention; all the rights provided for therein are in the 'child's best interests' and no right could be compromised

¹ Committee on the Rights of the Child (2013), General comment No. 14 on the Right of the child to have his or her best interests taken as a primary consideration (Art. 3, para. 1), CRC/C/GC/14.

by a negative interpretation of the child's best interests."

To facilitate the understanding and use of this principle, the Committee defines seven elements to be taken into account when assessing the child's best interests: the right of children to express their views in every decision that affects them; the child's identity; the preservation of the family environment and maintaining relations; care, protection and safety of the child; situation of vulnerability; right to health; and right to education.

Applying the principle of the best interests of the child

- Implementing the best interests of the child is about implementing children's rights. As the CRC Committee explains, the best interests of the child must be seen as a right, a principle and a rule of procedure. It requires clear legal criteria to avoid any negative interpretation which appear to be lacking.
- Professionals also address the lack of tools on how to identify, assess and report on how the child's best interests may have been met. Legal provisions should therefore also include the need for decisions to include an "explanation that shows how the right has been respected in the decision, that is, what has been considered to be in the child's best interests; what criteria it is based on; and how the child's interests have been weighed against other considerations".²

Training of professionals

The Council of Europe 2010 Guidelines³ make it clear that to ensure their effective participation, children should be in contact with specialised and trained professionals who should inform, hear and protect them.

This does not, however, necessarily occur. The need for professionals working with children to be given training becomes particularly clear when considering the low awareness of the Council of Europe Guidelines on child-friendly justice among the professionals interviewed. Professionals should thus receive training on children's needs and rights, communication techniques, and child-friendly proceedings,

taking into account differences in age and personal circumstances.

"A lot of things [...] where I had the feeling that I've done it somehow intuitively right before, maybe, but of course it's good once to hear how to do that right from a psychological view, and then be able to correct mistakes, and see to it that you also keep up with these guidelines a little bit. I wish there were many more trainings, because there are absolutely none in the judicial education."
(Germany, family judge, female)

Among the professionals interviewed, approximately two thirds have participated in training programmes, with social professionals more likely to undergo training than legal professionals. Although legal regulations in a number of countries stipulate that training is mandatory, it is generally offered and attended on a voluntary basis. There are a number of successful training programmes in place, but their availability seems to be severely lacking in some Member States. Many professionals suggested improvements such as more training on child communication for judges and more training on legal systems for social professionals. Professionals also stated that success in child justice techniques depends on a number of factors including personality, parenthood and cooperation.

"We should not allow a case to fail as a result of the incompetence and lack of experience of investigators, prosecutors, investigating policemen and/or judges or law enforcing bodies in general, when it could have been solved by an experienced professional. At some point people get disappointed by the justice system. Where is the problem? The problem is the lack of training of these officials, of us, of the state. This lies in our competence."
(Bulgaria, judge, male)

Many perceive there to be a lack of specialisation and of adequate training on working with children across all professional areas in the child justice system. Respondents believe that legal professionals would benefit from training on how to interact with children, while social professionals would gain from training on child-related legislation.

General and in-service training for all professionals in contact with children

- EU Member States as well as national and European professional associations should ensure that professionals dealing with children have appropriate mandatory training on child rights, communication with children and child-related legislation. This includes not only judges and prosecutors but also front-line practitioners such as police officers and court staff.

² *Ibid.*

³ Council of Europe, Committee of Ministers Guidelines on Child-friendly Justice (2010), 25 April 2007, Section IV A 4, 5, CRC/C/GC/10.

- Training courses should be organised at a national level, with harmonised curricula, to provide equal opportunities for professionals to receive instruction and to avoid unequal treatment of children depending on where they live. The exchange of promising practices within and between Member States as well as the development of EU training modules is to be encouraged.
- Training should also be complemented by supervision and multidisciplinary exchange of practices among professionals.

Promising practice

Training police officers in child interviews

Finland offers a year-long interdisciplinary interview training programme for police and healthcare professionals who perform child hearings. The National Police Board and the Forensic Psychiatry Centre organise the training. Most police officers and psychologists who work in criminal proceedings have attended the course and generally agree it has contributed to child-friendliness in the preliminary hearing process.

Similarly, in Croatia, police officers are required to participate in a three-month training programme organised by the Ministry of Internal Affairs. Upon completion, they receive a certification and are authorised to sign police reports in cases involving children.

Multidisciplinary cooperation

International standards such as the CoE Guidelines call for the strengthening of professional cooperation across disciplines, to facilitate proceedings and decision making.

“You are in an adversarial system but at the same time it is a collaborative process and I don’t know of any legal practitioner around here who doesn’t work in that sort of framework. It is collaborative.”

(United Kingdom, social worker, male)

Multi- and interdisciplinary cooperation can take many forms. It can refer to general forms of cooperation that are part of a fundamental approach to proceedings or that relate to specific cases. It can

also exist across many axes: within one professional group or between different professions (such as teamwork between social and legal professionals), within or across different justice fields (such as better coordination between civil and criminal procedures), or a combination of both (such as judges and social workers exchanging good practices or working on cases with children that are involved in both criminal and civil proceedings).

Several countries have formalised agreements or protocols to encourage professional cooperation. Most multidisciplinary cooperation, however, exists on an informal basis, centred on personal networks and connections. Respondents reported examples of successes and failures among both formal and informal systems of cooperation, and it is unclear whether one system has the advantage over the other. Despite the successful examples, however, such systems are widely lacking across EU Member States.

“We work in separate chapels. It’s complicated and it’s not innate to work in a multidisciplinary way. The more we do multidisciplinary training, the more we will be able to work in a multidisciplinary way.”
(France, NGO, female)

Respondents believe it is crucial that the various professionals involved coordinate and cooperate throughout proceedings to ensure that justice is child-friendly by reducing the number of hearings, decreasing the lengths of proceedings, ensuring consistent information to children and safeguarding the ways children are heard. Thus children are better prepared, informed, protected and supported.

Cooperating to achieve best practices and results

- EU Member States, and national and European professional associations should promote institutional cooperation and a multidisciplinary approach, providing funding for related training courses.
- The respondents believe that the professional coordination mechanisms needed to promote a multidisciplinary approach are lacking, which means that practices are not harmonised and proceedings are delayed. EU Member States and, as appropriate, the EU should ensure that such mechanisms are put in place. Standard operational procedures among professionals should also be promoted to foster cooperation.



Promising practice

Coordinating criminal and civil investigations

The Munich Model (*Münchner Modell*) in Germany establishes guidelines for coordinating criminal and civil investigations to avoid multiple child hearings, particularly in cases of domestic violence and sexual abuse. It mandates that child hearings be video recorded, after which the recording is passed to children's services and shared with the investigators. It intends, through close cooperation and the providing of immediate information to all parties to the proceedings (lawyers, child protection services, experts, legal counsels for the child), to aid parents in finding a solution for custody or access-rights issues.

Establishing specialised multidisciplinary units for child victims

France has established some 50 specialised multidisciplinary medical and legal units in hospitals (*Unités d'Accueil Médico-Judiciaires*) across the country to help with criminal proceedings. These units often connect families and children with victim support NGOs on site right after the examinations. They also gather together child hearings, medical and psychological examinations. These centralised programmes ensure that interviews and examinations take place in a child-friendly setting. They also streamline the process – avoiding unnecessary delays and multiple examinations.



Each year thousands of children take part in criminal and civil judicial proceedings, affected by parental divorce or as victims or witnesses to crime. Such proceedings can be stressful for anyone. The European Union Agency for Fundamental Rights (FRA) investigated whether children's rights are respected in these proceedings. FRA's fieldwork findings, based on interviews with professionals and children, show that there is a long way to go to make justice more child-friendly across the European Union (EU). Although all EU Member States have committed themselves to ensuring that children's best interests are the primary consideration in any action that affects them, their rights to be heard, to be informed, to be protected and to non-discrimination are not always fulfilled in practice. That is why the EU is promoting the Council of Europe's 2010 *Guidelines on child-friendly justice*. It aims to help its Member States improve the protection of children in their judicial systems and enhance their meaningful participation, thereby improving the workings of justice.

Further information:

The following FRA publications offer further information on the rights of the child:

- *Mapping child protection systems in the EU* (2014), <http://fra.europa.eu/en/publications-and-resources/data-and-maps/comparative-data/child-protection>;
- *Guardianship for children deprived of parental care* (2014), Handbook, <http://fra.europa.eu/en/publication/2014/guardianship-children-deprived-parental-care-handbook-reinforce-guardianship>;
- *Fundamental rights: challenges and achievements in 2013* (2014), Annual report: <http://fra.europa.eu/en/publication/2014/fundamental-rights-challenges-and-achievements-2013>;
- *Fundamental Rights Conference 2010: ensuring justice and protection for all children* (2011), Conference paper: <http://fra.europa.eu/en/publication/2011/fundamental-rights-conference-2010-ensuring-justice-and-protection-all-children>;
- *Developing indicators for the protection, respect and promotion of the rights of the child in European Union* (2010): <http://fra.europa.eu/en/publication/2012/developing-indicators-protection-respect-and-promotion-rights-child-european-union>.

For an overview of FRA activities on the rights of the child, see: <http://fra.europa.eu/en/theme/rights-child>.



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