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**GROUP OF SPECIALISTS ON CHILD-FRIENDLY JUSTICE
(CJ-S-CH)**

**4th DRAFT OF THE COUNCIL OF EUROPE GUIDELINES ON
CHILD-FRIENDLY JUSTICE**

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**Draft Guidelines of the Committee of Ministers of the Council of Europe
on child-friendly justice**

*(as prepared by Ms Ankie VANDEKERCKHOVE, Scientific Expert of the CJ-S-CH,
following the 3rd meeting of the Group on 8-10 December 2009)*

PREAMBLE

The Committee of Ministers under the terms of Article 15.b of the Statute of the Council of Europe,

- (a) Considering that the aim of the Council of Europe is to achieve a greater unity between the member states, in particular by promoting the adoption of common rules in legal matters;
- (b) Considering the necessity of ensuring the effective implementation of existing binding European and international standards protecting and promoting children's rights including in particular:
 - the United Nations Convention on the Rights of the Child,
 - the Convention for the Protection of Human Rights and Fundamental Freedoms (1950, ETS No. 5) (hereafter the ECHR),
 - the revised European Social Charter (1996, ETS No. 163),
 - the European Convention on the Exercise of Children's Rights (1996, ETS No. 160),
 - the Council of Europe Convention on contact concerning children (2003, ETS. No. 192),
 - the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007, ETS. No. 201);
- (c) Considering that, as guaranteed under Articles 6 and 13 of the ECHR and in line with the case-law of the European Court of Human Rights, the right of any person to have access to justice and to a fair trial – in all its components (including in particular the right to be informed, the right to be heard, the right to a legal defence, and the right to be represented) - is necessary in a democratic society and equally applies to children;
- (d) Recalling relevant case-law of the European Court of , decisions, reports or other documents of other Council of Europe institutions and bodies including reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) as well as statements and opinions of the Council of Europe Commissioner for Human Rights and Recommendations of the Parliamentary Assembly of the Council of Europe;
- (e) Recalling the Council of Europe Resolution n°2 on Child-friendly Justice, adopted at the 28th Council of Europe Conference of Ministers of justice (Lanzarote, October 2007);
- (f) Referring to the Council of Europe programme 'Building a Europe for and with children';
- (g) Considering the importance of safeguarding children's rights by other accepted rules and guidelines such as:
 - the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules", A/Res/40/33, November 29th 1985),
 - the UN Rules for the Protection of Juveniles Deprived of their Liberty ("The Havana Rules", A/Res/45/113, December 14th 1990)

- the UN Guidelines for the Prevention of Juvenile Delinquency (“The Riyadh guidelines”, A/res/45/112, December 14th 1990) ,
 - the UN Guidelines on Justice in matters involving Child Victims and Witnesses of Crime (ECOSOC Res 2005/20, July 22nd 2005);
- (h) Recalling the need to guarantee the effective implementation of existing binding principles concerning children's rights, without preventing member states from introducing or applying higher standards or more favourable measures;
- (i) Appreciating the progress made in member states towards implementing child-friendly justice;
- (j) Noting, nonetheless, existing obstacles for children within the justice system such as, among others, the partial, conditional or non existing legal right to access to justice, the diversity in and complexity of procedures, possible discriminations on the basis of age or nationality or any other status;¹
- (k) Recalling the need to prevent children from possible secondary victimisation by the judicial system in procedures involving or affecting them;
- (l) Calling upon the member states to speedily take all necessary steps to ratify, if not yet done so, all Council of Europe conventions concerning children’s rights;
- (m) Inviting member states to investigate the lacunae and problems and identify areas where child-friendly justice principles and practices could be introduced;
- (n) Calling upon member states to take all necessary steps to enforce the right of children to participate in procedures involving or affecting them;
- (o) Encouraging, through education and support, the parents or legal representatives of children to exercise their own parental responsibilities in a positive way, including assisting children to access justice²;
- (p) Ensuring that competent authorities exercise all the obligations making up for the absence of parental care for children living in institutions for residential care or detention, including the right to have access to justice;
- (q) Considering that all concerned professionals working in contact with children in justice should receive appropriate support and training as well as practical guidance in order to guarantee and implement adequately the rights of children, in particular while assessing children’s best interests in all types of procedures involving or affecting them;
- (r) Noting that the guidelines aim to contribute to the identification of practical remedies to existing shortcomings in law and in practice;
- (s) Calling upon member states to ensure the implementation of these guidelines by means of legislative and policy reforms;

¹ See Convention of the Rights of the Child, art.2

² Recommendation Rec(2006)19 of the Committee of Ministers to member states on policy to support positive parenting on policy to support positive parenting.

Adopts the following guidelines to serve as a practical tool for member states in adapting their judicial systems to the specific rights, interests and needs of children and invites member states to ensure that they are widely disseminated among all authorities responsible for children's rights in justice.

I. DEFINITIONS, SCOPE AND PURPOSE

(1) For the purposes of these guidelines:

a. A ‘child’ means any person under the age of 18 years;

b. ‘Child-friendly justice’ refers to justice systems which guarantee the effective implementation of all children's rights in the best possible manner, 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;³ It is, in particular, justice that is accessible, age appropriate, expeditious (without unnecessary delay), 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 participation and to understanding the proceedings, to privacy and to integrity and dignity.

c. A ‘parent’ refers to the adult(s) with parental authority, according to the law. In case the parent(s) is/are absent or no longer holding parental authority, this can be a guardian or an appointed legal representative.

(2) The guidelines on child-friendly justice (hereafter “the guidelines”) shall apply to all ways in which children are likely to be, for whichever reason and in whichever capacity, brought into contact with all competent bodies and services involved in implementing criminal, civil or administrative law, be it as a party or otherwise.

(3) The guidelines deal with the issue of the place, the voice and the needs of the child in judicial proceedings as well as in alternatives to such proceedings.

(4) The guidelines aim to ensure that, in the any such proceedings, the rights of children, among which the right to information, to representation, to participation and to protection are fully respected.

(5) The guidelines aim to serve as a practical tool and refer to case law and concrete examples of good practices, where possible.

II. FUNDAMENTAL PRINCIPLES

(1) The guidelines build on the existing principles enshrined in the United Nations Convention on the Rights of the Child and in the ECHR which all 47 Council of Europe member states have both signed and ratified.

(2) These principles are further developed in the following sections and shall apply to all chapters of these guidelines.

A. Participation⁴

(1) Member states shall respect and implement the right of all children to be informed on their rights and consulted and heard at all stages of proceedings involving or affecting them. This

³ In the UN Guidelines on Justice in matters involving Child Victims and Witnesses of Crime the wording ‘child sensitive’ is used as ‘an approach that balances the child’s right to protection and that takes into account the child’s individual needs and views’ (ECOSOC Res 2005/20, July 22nd 2005)

⁴ Rec 8 (1998), par. 5: “Participation of children is crucial in influencing the conditions of their own lives.” UN Guidelines on Justice in matters involving Child Victims and Witnesses of Crime, par. 18: “Age should not be a barrier to a child’s right to participate fully in the justice process.” (ECOSOC Res 2005/20, July 22nd 2005)

includes giving due weight to the child's opinion bearing in mind their maturity and any speech, language or communication difficulties they may have in order to make this participation meaningful⁵.

- (2) Children shall be considered and treated as full holders of rights and should be entitled to exercise their rights according to their evolving capacities.

B. Best interests of the child

- (1) Member states shall guarantee the effective implementation of the right of children to have their best interests be a primary consideration in all matters involving or affecting them.
- (2) In assessing the best interests of the involved or affected children,
 - a. their views and opinions shall be given due weight;
 - b. all other rights of the child, such as the right to dignity, liberty and equal treatment shall be respected at all times;
 - c. a comprehensive approach shall be adopted by all relevant authorities so as to take due account of all interests at stake, including psychological and physical well-being and legal, social and economic interests of the child⁶.
- (3) The best interests of all children involved in the same procedure or case shall be separately assessed and balanced with a view to reconciling possible conflicting interests of the children. Respecting children's best interests should not jeopardise the rights of other parties involved.
- (4) While the judicial authorities have the ultimate competence and responsibility for making the final decisions, member states should actively engage in the establishment of multidisciplinary mechanisms with the objective of assessing the best interests of children in every procedure or case involving them.

C. Dignity⁷

- (1) Children shall be treated with care, sensitivity, fairness and respect throughout any procedure or case, with special attention for their personal situation, wellbeing and specific needs, and with full respect for their physical and psychological integrity. This treatment shall be given to them, in whichever way they have come into contact with the justice system and regardless of their legal status and capacity in any procedure or case.
- (2) Children shall be protected by all means against any inhuman, harmful or degrading treatment or punishment in proceedings involving or affecting them.

D. Protection from discrimination

- (1) The rights of children shall be secured without discrimination on any grounds such as sex, race⁸, colour, age, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation or other status.

⁵ See *T. v UK*, 16.12.1999, no. 24724/94, *V. v UK*, 16.12.1999, no. 24888/94, *Hokkanen v. Finland*, 23.09.1994, no. 19823/92, and *Sahin v. Germany*, nr to be added)

⁶ See *Elsholz v Germany*, 13.07.2000, no. 25735/94, and *Sommerfeld v Germany*, 08.07. 2003, no. 31871/96

⁷ See also UN Guidelines on Justice in matters involving Child Victims and Witnesses of Crime, III, 8, (a): "Every child is a unique and valuable human being and as such his or her individual dignity, special needs, interests and privacy should be respected and protected." (ECOSOC Res 2005/20, July 22nd 2005)

⁸ "Since all human beings belong to the same species, ECRI (European Commission against Racism and Intolerance) rejects theories based on the existence of different "races". However, in this Recommendation ECRI uses this term in order to ensure that those persons who are generally and erroneously perceived as

- (2) Specific protection and assistance need to be granted to more vulnerable children, such as migrant children, refugees and asylum seeking children, unaccompanied children, children with disabilities, homeless and street children and children in residential institutions.

E. Rule of law

- (1) The rule of law principle shall apply fully to children as it does to adults.
- (2) Elements of due process such as the principle of legality, proportionality, presumption of innocence, right to legal counsel including right to lawyer⁹, access, right to appeal, access to court and other instances, shall be guaranteed for children as they are for adults and should not be minimised or denied under the pretext of the child's best interests. This applies to all possible proceedings and certainly in cases where the liberty of children may be at stake.
- (3) While recognising member states' rights according to Article 15 of the ECHR, in times of emergency and under exceptional circumstances, member states should not derogate from Articles 5 and 6 of the ECHR as far as children are concerned.

III. CHILD-FRIENDLY JUSTICE BEFORE, DURING AND AFTER JUDICIAL PROCEEDINGS

A. General elements of child-friendly justice

1. Information and advice

- (1) From their first contact with the justice system or other competent authorities (such as the police or social, educational, immigrant and health care services) and throughout that process, children and their parents shall be promptly and adequately informed of *inter alia*:
 - (a) Their rights – in particular the specific rights the children have with regard to judicial or non-judicial proceedings in which he/she is or might be involved, as well as the instruments available to remedy possible violations of their rights including the opportunity to have recourse to either a judicial or non-judicial proceeding or other interventions. This includes information on the likely duration of proceedings, possible access to appeals and independent complaints mechanisms;¹⁰
 - (b) The system and processes involved taking into consideration the particular place the child will have and the role he/she may play in it and the different procedural steps;
 - (c) The existing support mechanisms for the child when participating in the judicial or non-judicial process;
 - (d) The appropriateness and possible consequences of a given in or out of court proceeding;
 - (e) Where applicable, the charges or the follow-up given to their complaint, etc.;
 - (f) The time and place of court proceedings and other relevant events (such as hearings);
 - (g) The general progress and outcome of the proceeding or intervention;
 - (h) The availability of protective measures;
 - (i) The existing mechanisms for review of decisions affecting the child;
 - (j) 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;

belonging to “another race” are not excluded from the protection provided for by the legislation.”, ECRI General Policy recommendation No. 7 on national legislation to combat racism and discrimination, p.5

⁹ *Saldouz vs. Turkey, Okali vs. Turkey*

¹⁰ See *T. v. UK*, 16.12. 1999, no. 24724/94, and *V. v. UK*, Dec. 16th 1999, no. 24888/94

- (k) The availability of the services (health, psychological, social and other) or organisations which can provide support as well as the means of accessing such services along with emergency financial support, where applicable;
 - (l) Any special arrangements available in order to protect their interests if they are resident in another state.
- (2) The information shall be provided to children in a manner adapted to their age and maturity and in a language which they can understand.
 - (3) Provision of the information to the parents shall not be an alternative to communicating the information to a child. Normally, both the child and parents or legal representatives should directly receive the information.
 - (4) Child-friendly materials containing relevant legal information should be made available and widely distributed. Member states are encouraged to establish special information services for children such as hotlines and specialised websites;
 - (5) In proceedings affecting them directly, children should be given the opportunity to indicate that they do not wish to receive information listed under the above guidelines.

2. Protection of privacy

- (1) The privacy of children who are or have been involved in judicial or non-judicial proceedings and other interventions shall be fully protected. This implies that no information may be made available or published, particularly in the media, which could reveal or indirectly enable the disclosure of the child's identity, such as photos, detailed descriptions of the child or the child's family, obvious clues, too detailed information, names or addresses.
- (2) Member states should prevent violations of the privacy rights as mentioned under (1) by the media, through legislative measures or monitoring self-regulation by the media.¹¹
- (3) Member states should stipulate a limited access to all records or documents containing personal and sensitive data of children, in particular in proceedings involving them. If the sharing of personal and sensitive data is unavoidable and remains in the best interests of the child, member states should regulate this data transfer in line with relevant data protection conventions/statutes.
- (4) Whenever children are being heard or giving evidence in judicial or non-judicial proceedings or other interventions, it should preferably take place behind closed doors, open to a limited number of persons only¹².
- (5) Children should be able to rely on the confidentiality principle in their relation to their lawyer *vis à vis* others. Professionals involved in the implementation of court rulings or decisions by other competent authorities should keep the information confidential in all their external contacts.¹³

¹¹ See Council of Europe Convention on Action against Trafficking in Human Beings, art 11.3

¹² See *T. v. UK*, 16.12. 1999, no. 24724/94, *V. v. UK*, 16.12.1999, no. 24888/94 and *B and P v. UK*, 24.04.2001, nos. 36337/97 and 35974/97.

¹³ General Comment, nr, 10, par. 66.

3. Safety (Special preventive measures)

- (1) Children should be protected against intimidation, retaliation and secondary victimisation.¹⁴
- (2) All efforts should be made to identify possible risks, and extra precautions need to be taken accordingly.
- (3) All personnel coming in contact with children in judicial or non judicial proceedings or interventions should be subject to regular and comprehensive vetting to ensure their suitability to work with children.

4. Training of professionals

- (1) Judges, prosecutors, lawyers, police, social workers, psychologists, immigration officials and all other professionals working with children should receive ongoing and in-depth multidisciplinary training on the specific rights and needs of children of different age groups, as well as on proceedings that are adapted to children.
- (2) These professionals should also be trained in communicating with children at all ages and stages of development, including children with special needs, disabilities and/or learning difficulties.

5. Multidisciplinary approach

- (1) With full respect of the child's right to privacy, close co-operation between different professionals should be encouraged in order to get a comprehensive understanding of the child as well as an assessment of his/her legal, psychological, social, emotional and cognitive situation.
- (2) A common assessment framework should be established for professionals working with or for children (such as lawyers, psychologists, psychiatrists, police, social workers and bailiffs) in proceedings or interventions that involve or affect children to provide any necessary support to those taking decisions that will best serve the rights and interests of children in a given case.
- (3) While implementing a multidisciplinary approach, ethical rules on confidentiality and professional secrecy shall be observed.

B. Child-friendly justice before judicial proceedings

- (1) Children shall be thoroughly informed and consulted on the opportunity to have recourse to either a court proceeding or alternatives outside court settings. This information should also explain the possible consequences of this choice. Based on adequate information, both legal and otherwise, a choice should be given to use either court procedures or alternatives for these proceedings whenever they exist.
- (2) Alternatives to judicial proceedings such as mediation, diversion and alternative dispute resolution should be encouraged, whenever these may best serve the child's best interest. The preliminary use of such alternatives should not be obligatory nor should they be used as a barrier to the child's access to justice.

¹⁴ See Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, art. 31,1, f.

- (3) Children must be given the opportunity to give their free and informed consent and to obtain legal advice and other assistance in determining the appropriateness and desirability of the proposed alternatives.¹⁵
- (4) Alternatives to court proceedings should guarantee the same level of legal safeguards.
- (5) Respect for children's rights as described in these guidelines and in all relevant conventions on the rights of the child should be guaranteed to the same extent in both in and out of court settings.¹⁶

C. Child-friendly justice during judicial proceedings

1. Access to court and to the judicial process¹⁷

- (1) As bearers of rights, children shall have recourse to remedies to effectively exercise their rights or act upon violations of their rights. The domestic law of the member states should facilitate the possibility of direct and autonomous access to court for children.
- (2) Access to court should be granted for children who have sufficient understanding of their rights as well as of the use of remedies to protect these rights, based on adequately given (legal) advice. The level of understanding and the age of discernment should not be determined solely on the basis of fixed age limits; the physical, mental and psychological capacities of the particular child, as far as possible and appropriate, should also be taken into consideration.
- (3) Possible and existing barriers to access to court, such as the cost of the proceedings, the lack of legal counsel, etc., should be removed.
- (4) In cases of certain specific crimes committed against children or matters of family law, access to court should be granted for a set time after the age of majority. Member states are encouraged to review their statutes of limitation for certain crimes against children for this purpose.¹⁸

2. Legal counsel and representation

- (1) Children should have the right to their own legal counsel and representation, in their own name, especially in proceedings where there is, or could be, a conflict of interest between the child and the parents or other involved parties.
- (2) Children should have access to legal aid free of charge under the same conditions as adults.
- (3) Lawyers representing children should be trained in and knowledgeable on children's rights and related issues, receive ongoing and in-depth training and be capable of communicating with children and young people at their level of understanding.¹⁹

¹⁵ General comment of the Committee on the Rights of the Child No. 12 on the right to be heard, par. 59.

¹⁶ See Recommendation Rec(2005)5 on the rights of children living in institutions.

¹⁷ ECHR, art. 34 Convention of the Rights of the Child, art 40.3b

Rec. 1121 (1990), par. 6: "Children have rights that they may independently exercise themselves even against opposing adults."

¹⁸ See *DS v. UK* [date to be added]; See also art. 33 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse

¹⁹ See *T. v. UK*, 16.12. 1999, no. 24724/94, and *V. v. UK*, Dec. 16th 1999, no. 24888/94

- (4) Children should be considered as fully-fledged clients with their own rights and lawyers representing children should bring forward the opinion of the child.²⁰
- (5) Lawyers should provide all necessary information and explanations concerning the possible consequences of the child's views and/or opinions.
- (6) In cases where there are conflicting interests between parents and children, the competent authority should appoint a guardian *ad litem*. The guardian *ad litem* has the task of defending the child's best interests vis à vis those of other involved parties.

3. Right to be heard and to express views and concern

- (1) Judges shall ensure respect for the right of children to be heard and shall provide them with all necessary information on how to effectively use this right. 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 a particular case.²¹
- (2) The right to be heard is a right of the child, not a duty. It implies the right to remain silent; children should never be forced to give their opinion.²²
- (3) A child shall not be precluded from being heard solely on the basis of age.²³ Whenever a child takes the initiative to be heard in a case that affects him/her, the judge shall not refuse to receive the child and listen to his/her views and opinion on matters concerning him/her in the case.
- (4) Children should be informed from the outset that their right to be heard and to have their views taken into consideration does not imply that the subsequent decision will be based on all or any of these views. They should also be informed of the possible consequences.²⁴
- (5) All judgments and court rulings should be duly motivated and explained in language that children can understand, particularly those decisions in which the child's opinion has not been followed.

4. Avoiding undue delay

- (1) In all proceedings involving children, the principle of immediacy should be applied to provide an expeditious and consistent response and protect the welfare of the child, while respecting the rule of law and avoiding miscarriage of justice.²⁵
- (2) In family law cases in particular (custody, parental abduction, filiation and adoption cases), courts should exercise exceptional diligence to avoid any risk of adverse consequences on the family relations such as alienation. It is in the interest of the child to have a decision taken

²⁰ See also art. 10 of the European Convention on the Exercise of Children's Rights.

²¹ According to the ECtHR the substantial violation here was the failure to hear the child's view. See also *Sahin v. Germany*, nr to be added

²² See General comment of the Committee on the Rights of the Child No. 12 on the right to be heard

²³ See also art. 12 of the Convention of the Rights of the Child, which is considered to be one of the basic principles of the Convention of the Rights of the Child. See also, the general comment nr 12 by the committee on the Rights of the Child (CRC/C/GC/12, 1 July 2009). In par. 19 of the comment it is clearly stated that there is no leeway for member states in implementing this right and par 28 to 31 elaborate on the fact that age alone cannot determine the significance of a child's views.

²⁴ European Convention on the Exercise of Children's Rights, art 3c.

²⁵ Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, art. 30§3 ('no unjustified delay')

within a reasonable period of time in order to maintain a personal relationship with both parents²⁶.

- (3) When necessary, judicial authorities should be allowed to consider the possibility of taking provisional decisions or making preliminary judgments to be monitored for a certain period of time in order to be reviewed later.
- (4) Judicial authorities should have the possibility to take decisions which are immediately enforceable in cases where this would be in the best interests of the child.
- (5) National authorities should take all necessary steps to facilitate the execution of judicial decisions/rulings involving children.²⁷

5. Organisation of the court, child-friendly environment and child-friendly language

- (1) In all court proceedings, children should be treated with respect for their age, their special needs, their competence and level of understanding and bearing in mind any speech, language or communication difficulties they may have. Cases involving children should be dealt with in non-intimidating and child sensitive settings.²⁸
- (2) Before proceedings begin, children should be familiarised with the layout of the court and the roles and identities of the court officers.
- (3) Language appropriate to age and level of understanding should be used to make children feel at ease. All court decisions as well as the underlying reasoning need to be carefully explained so that the child understands the reason why the decision has been made and what the implications are or will be.
- (4) 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 sensitivity, avoiding unnecessary contacts or intimidation.
- (5) 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.²⁹
- (6) Interview mechanisms such as video or audio-recording or pre-trial hearings in camera should be used and considered valid whenever possible.
- (7) Children should be protected against images or information that could be harmful to their welfare. In deciding on disclosure of possibly harmful information to the child, the judge should seek advice of other professionals, such as psychologists and social workers.
- (8) Court sessions involving children should be adapted to the child's pace and attention span: regular breaks should be foreseen and hearings should not last too long. To facilitate 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.

²⁶ See *Elsholz vs. Germany*, July 13th 2000, no. 25735/94, *Sommerfeld vs. Germany*, July 8th 2003, no. 31871/96 *W. vs. UK, B. vs. UK, Paulsen Med & Svensson vs. Sweden*

²⁷ *Hokkanen v. Finland*, Sept. 23rd 1994, no. 19823/92, *Nuutinen v. Finland*, June 27th 2000, no. 32842/96

²⁸ *V. vs. UK*, 16.12.1999, no. 24888/94, *S.C. vs. UK*, 15.06.2004, no. 60958/00

²⁹ Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, art. 35, 1, f.

- (9) As far as appropriate, interviewing and waiting rooms should be arranged for children in a child-friendly environment.
- (10) Courts shall ensure that all authorities dealing with children work in co-operation with each other respecting the child's rights and in particular his/her confidentiality.

6. Evidence / testimony of children³⁰

- (1) Interviews of children should always be done by trained professionals. Every effort should be made for children to testify under the most favourable conditions, in regard to their age, maturity and level of understanding and any speech, language or communication difficulties the child may have.
- (2) Whenever possible, audio or video recorded testimonies should be encouraged, while respecting the rights of the defence to question the child's testimony. Children should be allowed to choose the medium they are most comfortable with.³¹
- (3) When more than one interview is necessary, they should preferably be carried out by the same person, in order to ensure consistency and coherence of approach in the interest of the welfare of the child.
- (4) The number of interviews should be as limited as possible and their length should be adapted to the child's age and attention span.
- (5) Direct contact, confrontation or interaction between a child victim or witness with alleged perpetrators should be avoided unless at the request of the child victim. This request should be balanced against the need to protect the child from further potential abuse.
- (6) Member states should encourage excluding children from being a witness in court in criminal cases in the presence of the alleged perpetrator. Exceptions to this practice should be permitted only when this is in the best interests of the child.
- (7) The existence of less strict rules on giving evidence (for instance no requirement for oath or other similar declarations) or other child-friendly procedural measures should not in itself diminish the value of a child's testimony or given evidence.
- (8) Interviewing protocols should be designed and implemented so as to minimize risks and avoid suggestive or leading questions.³²
- (9) With regard to the best interests and well-being of children, it should be possible for a judge to allow a child not to testify. Such decision should be duly motivated and the child should be informed of the possible consequences of such refusal.
- (10) Member states should consider taking specific measures so as to protect the safety of child victims, such as avoiding direct contact with the alleged perpetrators, using court-ordered

³⁰ See also UN Guidelines on Justice in matters involving Child Victims and Witnesses of Crime, XI, 29, d: "use child-sensitive procedures, including interview rooms designed for children, interdisciplinary services for child victims integrated in the same location, modified court environments that take child witnesses into consideration, recesses during a child's testimony, hearings scheduled at times of day appropriate to the age and maturity of the child, an appropriate notification system to ensure the child goes to court only when necessary and other appropriate measures to facilitate the child's testimony" (ECOSOC Res 2005/20, July 22nd 2005)

³¹ See *WS. vs. Poland*, June 19th 29007, no. 21508/02, *S.N. vs. Sweden*, July 2nd 2002, no. 34209/96

³² See *S.N. vs. Sweden*, July 2nd 2002, no. 34209/96

restraining orders and no-contact bail conditions, offering police protection or other effective measures.³³

(11) The child's testimonies should never be presumed invalid or untrustworthy by reason of the child's age alone.³⁴

D. Child-friendly justice after judicial proceedings

- (1) The child's lawyer should explain the given decision or judgment to the child in a language adapted to the child's level of understanding and should give the necessary information on possible measures that could be taken, such as appeal or independent complaint mechanisms.
- (2) Judgments and decisions should be executed without undue delay. When enforcement is ineffective, children should be informed of available remedies either through complaint mechanisms or access to justice.
- (3) With regard to family matters, forced execution should be avoided when children are involved except in circumstances of imminent risk to the child.
- (4) After judgments in highly conflictual proceedings, guidance and support should be offered to children and their families by specialised services.

IV. SPECIFIC ISSUES RELATED TO CHILD-FRIENDLY JUSTICE

A. Children as victims³⁵

- (1) Children who have been victims of crimes such as trafficking, sexual exploitation or other serious crimes should not be prosecuted as perpetrators or accomplices for the crimes in question.
- (2) All children who are victims of crime deserve to be treated with equal care. When the alleged perpetrator is a parent, a member of the family or a caregiver, special precautionary measures should apply.
- (3) Adequate representation and the right to be represented independently from the parents should be guaranteed, especially in proceedings where the parents, members of the family or caregivers are the alleged offenders.
- (4) Prosecution of (alleged) offenders of crimes against children shall not be dependent upon the report or accusation made by the child victim and may continue even after withdrawal of the child's statement.³⁶
- (5) Particular care and appropriate social and therapeutic interventions for victims of neglect, abuse or other crimes should be provided and children and their carers will be promptly and adequately informed of the availability of such services.

³³ See also UN Guidelines on Justice in matters involving Child Victims and Witnesses of Crime, XII, 32-34. (ECOSOC Res 2005/20, July 22nd 2005)

³⁴ UN Guidelines on Justice in matters involving Child Victims and Witnesses of Crime, VI, par. 18 (ECOSOC Res 2005/20, July 22nd 2005)

³⁵ See also UN Guidelines on Justice in matters involving Child Victims and Witnesses of Crime (ECOSOC Res 2005/20, July 22nd 2005)

Güvec vs. Turkey, Jan. 20th 2009, nr 70337/01

³⁶ See Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, art 32.

- (6) Reparation in order to achieve full redress and recovery should be available as soon as possible and should be based on an assessment of the child's needs. Whenever possible, the costs should be covered by the state and recovered from the perpetrator.³⁷
- (7) Child victims of serious crimes and their carers should be informed, if they wish, of the (even temporary) release of the persons being prosecuted or convicted.³⁸

B. Children in conflict with the law

- (1) Children shall not be criminalised for committing acts that are not legally defined as criminal offences for adults.³⁹
- (2) Children involved in low level offending should not be criminalised.
- (3) As far as possible, specialist courts (or court chambers), procedures and institutions should be established for children in conflict with the law.⁴⁰ This should include the establishment of specialised units within the police, the judiciary, the court system, the prosecutor's office as well as specialised defenders or other representatives of the child.⁴¹
- (4) Referral of children to adult courts and procedures and adult sentencing shall not be allowed.⁴²
- (5) A minimum age of criminal responsibility should be set, under which children cannot be prosecuted. Children under the age of criminal responsibility should be considered as incapable of committing a criminal offence and can only be subject to social or welfare measures. Regardless of the age of criminal responsibility, all children should be given access to legal aid remedies for their defence when their liberties are restricted.
- (6) Information on the specific 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.^{43 44}
- (7) Deprivation of liberty, including pre-trial detention or police arrest, of children should always be a measure of last resort⁴⁵ and, when imposed, children shall be detained separately from

³⁷ UN Guidelines on Justice in matters involving Child Victims and Witnesses of Crime, XIII (ECOSOC Res 2005/20, July 22nd 2005)

³⁸ See Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, art 31, 1, b

³⁹ *Nullum crimen sine lege principle*, as stated in a.o. ECHR, art. 7, Convention of the Rights of the Child, art. 40.2(a), the UN Guidelines for the Prevention of Juvenile Delinquency, art 56 (A/res/45/112, dec 14th 1990) and the General Comment of the Committee on the Rights of the Child, nr 10 on children's rights in juvenile justice, par 8 (CRC/C/GC/10, April 25th 2007)

⁴⁰ This is also stated very clearly in the General Comment of the Committee on the Rights of the Child, nr 10 on children's rights in juvenile justice, par. 90-95 (CRC/C/GC/10, April 25th 2007)

⁴¹ See also General Comment of the Committee on the Rights of the Child, nr 10 on children's rights in juvenile justice, par 92 (CRC/C/GC/10, April 25th 2007)

⁴² Convention of the Rights of the Child, art 2 and 40.3, General Comment of the Committee on the Rights of the Child, nr 10 on children's rights in juvenile justice, par. 38 (CRC/C/GC/10, april 25th 2007)

⁴³ See also General Comment of the Committee on the Rights of the Child, nr 10 on children's rights in juvenile justice, par. 47-48 (CRC/C/GC/10, April 25th 2007) and General Comment nr. 12 on the right of the child to be heard, par. 60 (CRC/GC/12, July 1st 2009)

⁴⁴ See *T. vs. UK*, Dec. 16th 1999, n. 24724/94, and *S.C. vs. UK*, June 15th 2004, no. 60958/00)

⁴⁵ Convention of the Rights of the Child, art. 37 (b), General Comment of the Committee on the Rights of the Child, nr 10 on children's rights in juvenile justice, par. 23 (CRC/C/GC/10, April 25th 2007)

adults, for a limited time⁴⁶ and in adequate detention premises. This requires the provision of alternatives. The length of pre-trial detention should be restricted by law.

- (8) Measures and sanctions for children in conflict with the law should always be constructive and individualised responses made with the least possible emphasis on punitive sanctions⁴⁷, bearing in mind the principle of proportionality, the best interests of the offender as well as his/her age, physical and mental well-being and development and circumstances of the case.⁴⁸ The link with education, vocational training, work, rehabilitation and reintegration should be maintained.⁴⁹
- (9) No interrogation of suspected or accused children should take place without the presence of a lawyer⁵⁰ unless the right is waived.
- (10) In order to promote the reintegration within society, criminal records of children should be non disclosable on reaching the age of majority.⁵¹⁵² Exceptions are permitted in cases of serious offences or in cases of employment with vulnerable adults or young people.

C. Police treatment of children suspected of criminal behaviour

- (1) In any investigation of the involvement, or possible involvement, of children in criminal activity, police shall respect the personal rights and dignity of children and have regard to their vulnerability as children, i.e. take account of their age and level of maturity and any special needs of those who may be under a physical or mental disability or have speech, language or communication difficulties.
- (2) Whenever a child is apprehended by the police on suspicion of involvement in criminal behaviour, the child shall be informed in a manner and in language that is appropriate to his or her age and level of understanding of the reason for which he or she has been detained. Children shall be given the opportunity to contact a lawyer, free of charge, and their parents or a person who the child trusts, immediately after being deprived of their liberty.⁵³
- (3) Where appropriate, the parent shall be informed of the child's presence in the police station, given details of the suspected involvement in criminal behaviour and be requested to attend the station.
- (4) A child who has been detained shall not be questioned about suspected involvement in criminal behaviour, or asked to make or sign a statement in respect of such involvement, except in the presence of the child's parent or, if they are not available, another appropriate adult. The parent may be excluded if suspected of involvement in the criminal behaviour or is engaging in conduct which amounts to an obstruction of justice.
- (5) Police shall ensure that no child in the police station shall be detained together with adults.

⁴⁶ Rec (2003) 20, Sept 24th 2003, art 16 calls for a maximum of 6 months before commencement of trial

⁴⁷ See also General Comment of the Committee on the Rights of the Child, nr 10 on children's rights in juvenile justice, par 71, where it is stated that a strictly punitive reaction is not in accordance with the Convention of the Rights of the Child, art 40(1) (CRC/C/GC/10, april 25th 2007)

⁴⁸ UN Standard Minimum Rules for the Administration of Juvenile Justice, rule 5 (A/Res/40/33, nov 29th 1985)

⁴⁹ See *Tyrer vs. UK*, [ref. to be added] and *Bouamar vs. Belgium*, Feb. 29th 1988, no. 9106/80)

⁵⁰ Saltouz case

⁵¹ See also General Comment of the Committee on the Rights of the Child, nr 10 on children's rights in juvenile justice, par. 66-67. (CRC/C/GC/10, April 25th 2007)

⁵² See also General Comment of the Committee on the Rights of the Child, nr 10 on children's rights in juvenile justice, par. 66-67. (CRC/C/GC/10, April 25th 2007)

⁵³ See *Okkali vs. Turkey*, Oct. 17th 2006, no. 52067/99

D. Children deprived of their liberty

- (1) Children shall not be detained with adults.
- (2) Children have the right to maintain contact with parents and family through visits and correspondence, and restrictions on this right should never be used as a punishment.
- (3) Children have the right to be protected against all forms of violence, be it physical, psychological, sexual or otherwise.
- (4) The use of restraint or force can only be allowed when the child poses an imminent threat of injury to him/herself or others, never for punishment.
- (5) Children's rights to education, vocational training, religion, leisure, medical care and such must be respected in detention settings.
- (6) Children should have the right to make complaints to an identifiable, impartial and independent body.
- (7) Children should have the right to be informed of their rights and the rules of the centre of detention in a child-friendly way.
- (8) Children in detention should be prepared in advance for their return back to their communities, with full attention given to them in respect of their emotional and physical needs, their family relationships, housing, schooling and employment possibilities and socio-economic status.

E. Children in the migration and asylum process

- (1) The best interests and well-being of children should be duly taken into consideration and protected in all administrative decisions involving and affecting them, even if only indirectly. This applies for any asylum proceedings and in particular for detention, eviction or expulsion procedures targeting one or both of their parents.
- (2) The deprivation of liberty of unaccompanied minors, whether or not asylum proceedings have been started, shall never be motivated or based solely on the absence of residence status⁵⁴. Children who are involved in asylum proceedings with their parents or caregivers, shall not be deprived of their liberty or have any of their rights violated during the course of the proceedings.
- (3) Enforcement of administrative procedures, such as detention, eviction or expulsion procedures, should be carried out in a way that protects the child as much as possible from hardship: in particular, enforcement officers should ensure that children do not attend the enforcement procedure and are duly taken charge of by their family and carers or, when necessary, by the competent state services.
- (4) Expulsion should not be forced whenever there is established evidence of a strong link between the child and the country of residence, relating to, for instance, length of stay, school attendance, educational achievement, presence of family, etc. Unaccompanied minors, who are or have not been judged for any serious or violent crime, should never be returned to the

⁵⁴ CPT, 19th General report (CPT/Inf (2009)27), par 97.

country of origin against their will, unless sufficient and effective measures of care and support are guaranteed in the country of origin before the expulsion of the child.⁵⁵

- (5) Separation of children from their families and caregivers in detention centres shall be avoided.⁵⁶
- (6) Explicit guidance should be given regarding interviewing children who are asylum seekers, in accordance with their age and level of understanding, in compliance with the UNHCR Guidelines on child-specific asylum claims.

V. PROMOTING OTHER CHILD-FRIENDLY STRATEGIES

Member states are encouraged to:

- (1) promote research into child sensitive interviewing and dissemination of information and training on such techniques and systematise the edition, publication and dissemination of relevant child-friendly versions of laws and conventions;
- (2) set up, or maintain and reinforce where necessary, information offices for children's rights, possibly linked to bar associations, welfare services, (children's) ombudsmen, NGOs etc.;
- (3) support the establishment of a system of specialised judges and lawyers for children;
- (4) recognise and facilitate the role of NGOs and other independent bodies or institutions such as children's ombudsmen in supporting children's effective access to courts and independent complaint mechanisms, both on a national and international level.⁵⁷;
- (5) make human rights, including children's rights, a mandatory component in the school curricula and for professionals working with children;
- (6) set up specialised victim help lines and accessible support services, free of charge;
- (7) further develop the concept of specialised courts, such as family courts or juvenile courts outside the criminal court, in which both legal and social measures can be taken in favour of children and their families.

VI. MONITORING AND ASSESSMENT

- (1) Member states should review domestic legislation and policies to ensure the necessary reforms to fully implement these guidelines.
- (2) Member states shall regularly review and evaluate working methods within the child- friendly justice setting.
- (3) Member states, in accordance with their legal and administrative systems, shall maintain, strengthen, designate or establish within the state party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect, evaluate and monitor implementation of the present guidelines. When designating or establishing such a

⁵⁵ See *Maslov vs. Austria*, June 23rd 2008, 1638/03, *Uner v. the Netherlands*, Oct. 18th 2006, no. 46410/99, *Mubilanzila Mayeka and Kaniki Mitunga vs. Belgium*, Oct. 12th 2006, no. 13178/03

⁵⁶ *Mubilanzila Mayeka and Kaniki Mitunga vs. Belgium*, Oct. 12th 2006, no. 13178/03

⁵⁷ See e.g. the ongoing campaign for an optional protocol to the Convention of the Rights of the Child to establish a complaints mechanism (more info on www.crin.org), now also endorsed by the Committee on the Rights of the Child and discussed in the open-ended working groups of the UN.

mechanism, member states shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.

- (4) Civil society, in particular organisations, institutions and bodies which aim at the promotion and the protection of the rights of the child, shall be involved and participate fully in the monitoring process.
- (5) Reviewing mechanisms should involve children who are or have been in contact with the justice system and alternative systems in or out of courts, since they should be considered to be experts by experience on what is child friendly in practice.
- (6) Targets and indicators on child-friendly justice should be developed and implemented in reviewing schemes.