

Strasbourg, 18 November 2009
*[cdcj/cdcj et comités subordonnés/CJ-S-CH /
CJ-S-CH document/CJ-S-CH (2009)13f]*

CJ-S-CH (2009) 13

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

**2nd DRAFT OF THE COUNCIL OF EUROPE GUIDELINES ON
CHILD-FRIENDLY JUSTICE**

© Council of Europe – Illustration: Eric Puybaret

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, in co-operation with the Chair and the Secretariat following the 2nd meeting of the Group on 28-30 September 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),
 - 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 Article 6 of the European Convention on Human Rights 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 ECtHR, 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 and that member states should not prevent themselves 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 lack of access, 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 look for child-friendly solutions;
- (n) Encouraging in particular the enforcement of the right of children to participate in procedures involving or affecting them;
- (o) 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;
- (p) Noting that the guidelines aim to contribute to identify practical remedies to existing shortcomings in law and in practice;

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.

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

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 child’s level of maturity and understanding and the circumstances of the case;²
- (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 and the voice 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 and to participation are fully respected and, in this view, refer to case law and concrete examples of good practices, where possible.

II. OVERARCHING PRINCIPLES

- (1) The guidelines build on the existing principles enshrined in the United Nations Convention on the Rights of the Child and in the European Convention on Human Rights 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. Best interests of the child

- (1) Member states shall guarantee the effective implementation of the right of children to have their best interests be the 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 should 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 child³.

² 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)

³ See *Elsholz v Germany*, 13.07.2000, no. 25735/94, and *Sommerfeld v Germany*, 08.07. 2003, no. 31871/96

- (3) The best interests of all children involved in the same procedure or case should be assessed and balanced with a view to reconciling possible conflicting interests of the children. The same principle should apply in cases where competing interests between children and other parties have to be balanced.
- (4) While the judicial authorities have the ultimate competence and responsibility for making the final decisions, member states should support and encourage the establishment of multidisciplinary mechanisms with the objective of assessing the best interests of children in every procedure or case involving them.

B. Dignity⁴

- (1) Children should be treated respectfully throughout any procedure or case, with special attention for their personal situation and specific needs, and with full respect for their physical and psychological integrity.
- (2) Children should be treated with care, sensitivity and respect, regardless of their legal status and capacity in any procedure or case.
- (3) Children shall be protected by all means against any inhuman, harmful or degrading treatment in proceedings involving or affecting them.

C. Participation⁵

- (1) Member states shall respect and implement the right of all children to be informed on their rights, consulted and heard at all stages of proceedings involving or affecting them. This includes giving due weight to the child's opinion and to his/her evolving capacities in order to make this participation meaningful⁶.
- (2) Children shall be considered and treated as full holders of rights. Insofar as they are holders of substantial rights, they should also be entitled to exercise their rights according to their evolving capacities.

D. Protection from discrimination

- (1) The rights of children shall be secured without discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
- (2) Specific protection needs to be granted to more vulnerable children, such as migrant children, refugees and asylum seeking children, non accompanied minors, children with disabilities, homeless and street children and children in residential institutions.

⁴ 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)

⁵ 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)

⁶ 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)

E. Rule of law

- (1) The rule of law principle should at least apply to children as it applies to adults.
- (2) Elements of fair trial, such as the principle of legality, proportionality, presumption of innocence, right to legal counsel, right to appeal and others, should be guaranteed for children as they are for adults and should not be minimised or disappear under the umbrella of the child's best interests. This is especially important for children as offenders since their liberty is 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 are invited not to make use of the possibility to derogate from Articles 5 and 6 of the ECHR as far as children are concerned.

III. THEMATIC ISSUES OF CHILD FRIENDLY JUSTICE

A. General elements of child friendly justice, before, during and after proceedings

1. Information and legal advice

- (1) Children and their parents or guardians and legal representatives, from their first contact with the justice process or competent authorities (such as social and health care services as well as the police) and throughout that process, should be promptly and adequately informed by the competent judicial and non-judicial authorities, to the extent feasible and appropriate, of, inter alia:
 - (a) Their rights – in particular specific rights the child has in judicial or non-judicial proceedings in which he/she is or might be involved, as well as 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 possible access to appeals and complaints mechanisms.⁷
 - (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 judicial or non-judicial process
 - (d) The appropriateness and consequences of a given in- or outside court proceeding;
 - (e) Where applicable the charges, 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 the possible outcome of the proceedings or other interventions;
 - (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 if applicable.

⁷ 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;
- (2) The information shall be provided to children in a manner and a language adapted to their level of understanding.
- (3) Provision of the information to the parents or legal guardians should not be an alternative to communicating the information to a child. Ideally, both the child and parents or legal guardians should receive the information.
- (4) Child-friendly materials containing relevant (legal) information should be made available and widely distributed. However, providing such materials may not be sufficient and an oral explanation may often be necessary.
- (5) Children should be given the opportunity to indicate that they do not wish to receive information listed under the above guideline.
- (6) Member states are encouraged to establish special information services for children such as hotlines and specialized websites.

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, including photos or detailed descriptions of the child or the child's family, obvious clues or too detailed information, names, addresses, etc. or obvious clues in those regards⁸.
- (2) Member states should encourage the media to protect the private life of children through self-regulation or through (co-)regulatory measures.⁹
- (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. The reasons for excluding a case from public scrutiny must be subject to careful examination considering the special features of the case (*Moser v. Austria*). The ECtHR considers that a long-established practice to hold hearings in camera (even in juvenile cases) can amount to breach of Art.6 §1 ECHR.

⁸ See *T. v. UK*, 16.12. 1999, no. 24724/94, *V. v. UK*, Dec. 16th 1999, no. 24888/94 and *B and P v. UK*, 24.04.2001, nos. 36337/97 and 35974/97)

⁹ See Council of Europe Convention on Action against Trafficking in Human Beings, art 11.3

3. Safety (Special preventive measures)

- (1) Children should be protected against intimidation, retaliation and secondary victimisation.¹⁰
- (2) All efforts should be made to identify possible risks, and extra precautions need to be taken accordingly.
- (3) All personnel working with children in judicial or non judicial proceedings or interventions should be subject to regular checks on their criminal records to ensure their suitability to work with children.

4. Training of professionals

- (1) Judges, prosecutors, lawyers, police, social workers, psychologists and all other professionals working with children in justice matters should receive appropriate, ongoing and in-depth 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 disabilities or learning difficulties.

5. Multidisciplinary approach

- (1) Although, within the judicial system, taking a final decision remains the responsibility of the judge, a common assessment framework should be established for several professions working with or for children in justice settings (such as lawyers, psychologists, psychiatrists, police, social workers and bailiffs) in proceedings that involve or affect children to provide a judge with all necessary support (compromising, assessment, evaluation and all forms of advice) in taking decisions that will best serve the rights and interests of children in a given case.
- (2) 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. This applies in particular to interviews of the child.
- (3) Deontological rules on confidentiality and professional secrecy should be taken into consideration.

B. Child-friendly justice before and outside 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.

¹⁰ See Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, art. 31,1, f.

- (2) Alternatives to judicial proceedings such as mediation, early intervention, diversion, restorative justice 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 used as a barrier to the child's access to justice.
- (3) Children should have the opportunity to give their free and voluntary consent and must be given the opportunity to obtain legal and other advice and assistance in determining the appropriateness and desirability of the proposed alternatives.¹¹
- (4) Alternatives to court proceedings should not offer fewer legal safeguards. 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 inside and outside court settings

C. Child-friendly justice during judicial proceedings

1. Access to court and to the judicial process¹²

- (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 facilitated 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, also be taken into consideration.
- (3) Possible barriers to access to court, such as the cost of the proceedings, the lack of legal counsel, a conflict of interest between the parent(s) and the child etc., should be avoided.
- (4) In specific cases of crimes committed against children, 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.¹³

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.

¹¹ General comment of the Committee on the Rights of the Child No. 12 on the right to be heard, par. 59.

¹² ECHR, art. 34

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

¹³ 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

- (2) Lawyers representing children should be trained in children's rights and related issues and capable of communicating with children and young people on their level of understanding.¹⁴
- (3) Children should have access to legal aid free of charge. The legal aid should be effective and of high quality and should be monitored by either the bar association or a public service.
- (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.
- (5) Lawyers should provide all necessary information and explanation concerning the possible consequences of the child's views and/or opinions. It is the lawyer's task to determine the views of the child and to represent these views in court.¹⁵
- (6) In cases where there are conflicting interests between parents and children, a guardian *ad litem* should be appointed for the child. Independently from the child's lawyer, who brings forward the own views and opinion of the child, this guardian has the task to determine and defend the child's best interests.

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

- (1) Judges shall ensure respect for the right of all children to be heard and shall provide them with all necessary information on how to effectively use this right. Judges should invite children to use this right in a manner the judge views to be the most appropriate for them/the particular child. 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.¹⁶
- (2) The right to be heard is a right of the child, not a duty. This implies the right to remain silent; children should never be forced to give their opinion.¹⁷
- (3) A child shall not be precluded from being heard solely on the basis of age.¹⁸

Whenever a child takes the initiative to be heard in a civil 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 grounded in all or any such views. They should also be informed of the possible

¹⁴ See *T. v. UK*, 16.12. 1999, no. 24724/94, and *V. v. UK*, Dec. 16th 1999, no. 24888/94

¹⁵ See also art. 10 of the European Convention on the Exercise of Children's Rights.

¹⁶ 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

¹⁷ See General comment of the Committee on the Rights of the Child No. 12 on the right to be heard

¹⁸ 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.

consequences of compliance with their views and the possible consequences of any decision.¹⁹

- (5) All judgments and court rulings should be duly motivated and explained in a language that children can understand, particularly those decisions in which the child's opinion has not been followed.
- (6) Persons/third parties appointed to hear children should be trained and qualified professionals.
- (7) Any written report on what children have said should be available for review and possible correction by them within an appropriate delay.

4. Confidentiality

- (1) Children should be able to rely on the confidentiality principle in their relation to their lawyer. The lawyer-client privilege should be respected.
- (2) Professionals involved in the implementation of court rulings or decisions by other competent authorities should keep the information confidential in all their external contacts.²⁰

5. Element of time, speedy procedure

- (1) In all proceedings involving children, the principle of immediacy should be applied to provide a expeditious and consistent response and protect the welfare of the child, while respecting the rule of law and avoiding miscarriage of justice.²¹
- (2) In family law cases (in particular custody, parental abduction, filiation and adoption cases), courts should exercise exceptional diligence to avoid any risk of permanent adverse consequences on the family relations such as alienation. It is in the interest of the child to have a decision within a reasonable period of time in order to maintain a personal relation with both parents²².
- (3) When necessary, judicial authorities should be allowed to consider the possibility of taking provisional decisions or making 'temporary' (or preliminary) judgements 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 as can reasonably demanded in the special circumstances of the case.²³

¹⁹ European Convention on the Exercise of Children's Rights, art 3c.

²⁰ General Comment, nr, 10, par. 66.

²¹ Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, art. 30§3 ('no unjustified delay')

²² 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*

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

6. 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. Cases involving children should be dealt with in non-intimidating and child sensitive settings.²⁴
- (2) Children should be familiarised with the layout of the court and the court actors.
- (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.²⁵
- (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 and therefore regular breaks should be foreseen and hearings should not last too long.
- (9) To facilitate participation of children to their full cognitive capacity and to support their emotional stability, disruption and distractions in between court sessions should be kept to a minimum.
- (10) As far as appropriate, interviewing and waiting rooms should be arranged for children in separate facilities.
- (11) When more than one court is dealing with a certain issue, court links should be ensured in all matters affecting children in order to obtain a comprehensive view of the whole situation.

²⁴ *V. vs. UK*, 16.12.1999, no. 24888/94, *S.C. vs. UK*, 15.06.2004, no. 60958/00

²⁵ Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, art. 35, 1, f.

7. Evidence / testimony of children²⁶

- (1) Member states are encouraged to invest in research into child sensitive interviewing and disseminating information and training on such techniques.
- (2) 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 or language difficulties the child may have.
- (3) Whenever possible, audio or video recorded testimonies should be encouraged, while respecting the rights of the defence to question the child's testimonial. Children should be allowed to choose the medium they are most comfortable with.²⁷
- (4) Undue delay between the testimony of a child and the report of the forensic expert on the child's credibility should be avoided, when such reports are required; ideally such reports should be provided as expeditiously as possible.²⁸
- (5) When several interviews are necessary, they should preferably be carried out by the same person, in order to ensure consistency and coherence of approach in the interests of the welfare of the child.
- (6) The number of interviews should be as limited as possible and their length should be adapted to the child's age and attention span.
- (7) Direct contact, confrontation or interaction between a child victim or witness with alleged perpetrators should be avoided unless at the request of the child. This request should be balanced against the need to protect the child from further potential abuse.
- (8) The existence of less strict rules on giving evidence (for instance no requirement for oath or other similar declarations) should not in itself diminish the value of a child's testimony or given evidence.
- (9) Interviewing protocols need to be designed and implemented as to minimize risks and avoid suggestive, leading or inductive questions.²⁹
- (10) 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.
- (11) Member states should consider the possibilities, to exclude children from being a witness in court in criminal cases in the presence of the alleged perpetrator, or to arrange for them to give their testimony remotely via video link or in a child-friendly environment Bearing

²⁶ 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)

²⁷ See *WS. vs. Poland*, June 19th 2007, no. 21508/02, *S.N. vs. Sweden*, July 2nd 2002, no. 34209/96

²⁸ See *P.S. vs. Germany*, Dec. 20th 2001, no. 33900/96

²⁹ See *S.N. vs. Sweden*, July 2nd 2002, no. 34209/96

in mind the potential for secondary abuse of the child he need for and nature of any cross-examination should also be considered.

- (12) Member states should consider taking specific measures as to protect the safety of child victims, such as avoiding direct contact with the alleged perpetrators, using court-ordered restraining orders and no-contact bail conditions, offer police protection or other effective measures.³⁰

IV. CHILD-FRIENDLY JUSTICE AFTER JUDICIAL PROCEEDINGS

A. After the judgment or decision

- (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 complaint mechanisms.
- (2) Judgments should be executed without undue delay. This should be particularly the case in family law proceedings in order not to curtail the family relations between a child and the parents.³¹
- (3) Any forced execution should be avoided when children are involved, especially with regard to custody or contact arrangements. A limited amount of force can be used to the extent necessary and only when proper guidance for the child is available as well.
- (4) After judgments of highly conflictual proceedings, in particular in family law, guidance and support should be offered to children and their families.
- (5) When enforcement is weak or ineffective, children should be able act against this, either through complaint mechanisms or access to justice.

B. Children in detention

- (1) While deprivation of liberty should be avoided as much as possible, the fullest possible respect for all children's rights should be guaranteed in detention settings as well as the aims of education and reintegration as stated in the Convention of the Rights of the Child.³²
- (2) Specialised institutions for detaining children should be available and during detention, attention should be primarily aimed at the reintegration of the child in society.

To this end, member states are encouraged to implement as fully as possible the existing standards such as the UN Rules for the Protection of Juveniles Deprived of their Liberty (A/Res/45/113, December 14th 1990), the recommendations of the General Comment of the Committee on the Rights of the Child, nr 10 on children's rights in juvenile

³⁰ 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)

³¹ See *Elsholz v. Germany*, July 13th 2000, no. 25735/94, and *Sommerfeld v. Germany*, July 8th 2003, no. 31871/96

³² *Bouamar v. Belgium*, Feb. 29th 1988, no. 9106/80, *Mubilanzila Mayeka and Kaniki Mitunga vs. Belgium*, Oct. 12th 2006, no. 13178/03, and *Bati vs. Turkey*, [nr to be added]

justice (CRC/C/GC/10, April 25th 2007)³³, the European Prison Rules³⁴ and the CPT standards³⁵.

In particular the following rules should be guaranteed:

- children should not be detained with adults,³⁶
- 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
- children have the right to be protected against all forms of violence, be it physical, psychological, sexual or otherwise,
- 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
- children's rights to education, vocational training, religion, leisure, medical care and such must be respected in detention settings as well
- specific complaints procedures and access to court need to be accessible for children in detention.

(3) 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.

V. ADDITIONAL PROVISIONS FOR SPECIFIC VULNERABLE GROUPS OF CHILDREN AND SPECIFIC PROCEDURES

A. Children as victims³⁷

- (1) Children who have been victims of crime, in particular of violence, trafficking or other serious crimes, should not be prosecuted as offenders.
- (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 violent crimes against children shall not be dependent upon report or accusation by the child and may even continue after withdrawal of the child's statement.³⁸

³³ in particular par. 78-89

³⁴ European Prison Rules, Rec (2006)2, Jan.. 11th 2006, in particular art 11.1 and 35.

³⁵ CPT Standards, chapter VI on juveniles

³⁷ See also UN Guidelines on Justice in matters involving Child Victims and Witnesses of Crime (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 32.

- (5) Particular care and appropriate therapeutic interventions for victims of abuse or violent crimes should be provided and children will be promptly and adequately informed of the availability of such services.
- (6) Reparation in order to achieve full redress and recovery should be available as soon as possible and should be proportionate to the gravity of the violations and the damage to the child. Whenever possible, the costs should be covered by the state and recovered from the perpetrator.³⁹
- (7) Interference with the victim's private life should be limited to the minimum, while maintaining high standards in evidence collection.⁴⁰
- (8) Child victim's testimonies should never be presumed invalid or untrustworthy by reason of the child's age alone.⁴¹
- (9) Child victims should be informed, if they wish, of the (even temporary) release of the persons being prosecuted or convicted.⁴² The information has to be given, irrespective of the child's wishes in cases where the child may be in a concrete danger.

B. Children in conflict with the law

- (1) Member states are encouraged to implement the existing and elaborated standards on juvenile justice, in particular the UN Standard Minimum Rules for the Administration of Juvenile Justice (A/Res/40/33, November 29th 1985) and to follow-up on the recommendations put forward in the General Comment of the Committee on the Rights of the Child, nr 10 on children's rights in juvenile justice.⁴³
- (2) In conformity with the Convention of the Rights of the Child, art 40 (3) b, alternatives for court proceedings – such as diversion, Alternative Dispute Resolutions, Family Group Conferencing, restorative justice - should be set up or reinforced for children in conflict with the law, while fully respecting the principles of the rule of law.⁴⁴
- (3) Children shall not be criminalised for committing acts that are not legally defined as criminal offences for adults.⁴⁵
- (4) Children who commit administrative offences must not be criminalized at all, and they should not be punished by a fine either. A response aiming at their education may be

³⁹ UN Guidelines on Justice in matters involving Child Victims and Witnesses of Crime, XIII (ECOSOC Res 2005/20, July 22nd 2005)

⁴⁰ See also UN Guidelines on Justice in matters involving Child Victims and Witnesses of Crime, V, 12 (ECOSOC Res 2005/20, July 22nd 2005)

⁴¹ UN Guidelines on Justice in matters involving Child Victims and Witnesses of Crime, VI, par. 18 (ECOSOC Res 2005/20, July 22nd 2005)

⁴² See Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, art 31, 1, b

⁴³ See *T. vs. UK*

⁴⁴ See also General Comment of the Committee on the Rights of the Child, nr 10 on children's rights in juvenile justice, par. 24-27 (CRC/C/GC/10, April 25th 2007) and the Council of Europe Commissioner for Human Rights issue paper 'Children and Juvenile justice: proposals for improvements' (CommDH/IssuePaper(2009)1, p. 7-8.

⁴⁵ *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)

appropriate. This response should be dealt with in a welfare sitting and not in criminal law settings.

- (3) As far as possible specialist courts (or court chambers), procedures and institutions should be established for children in conflict with the law.⁴⁶ This includes 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.⁴⁷
- (4) Referral of children to adult procedures and adult sentencing should not be allowed.⁴⁸
- (5) A minimum age of criminal responsibility should be set, under which children cannot be prosecuted. This age should not be set too low⁴⁹.
- (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 a way that they understand the exact charge as well as the possible consequences.^{50 51}
- (7) Measures and sanctions for children in conflict with the law should always be constructive and individualised responses to the committed acts with the least possible emphasis on punitive sanctions⁵², 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.⁵³ The link with education, vocational training, work, rehabilitation and reintegration should always be kept in mind.⁵⁴
- (8) Deprivation of liberty, including pre-trial detention or police arrest, of children should always be a measure of last resort⁵⁵, and when imposed children shall be detained separately from adults, for a limited time⁵⁶ and in adequate detention premises. This requires the provision of alternatives.

⁴⁶ 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)

⁴⁷ 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)

⁴⁸ 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)

⁴⁹ Convention of the Rights of the Child, art. 40.3(a). The Committee on the rights of the child has stated that the age of 12 should be an absolute minimum and that no child under 18 should ever be treated as an adult criminal. See General Comment of the Committee on the Rights of the Child, nr 10 on children's rights in juvenile justice, par. 32-33 and 38 (CRC/C/GC/10, April 25th 2007). UN Standard Minimum Rules for the Administration of Juvenile Justice, rule 4 (A/Res/40/33, nov 29th 1985)

⁵⁰ 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)

⁵¹ See *T. vs. UK, Dec. 16th 1999, n. 24724/94, and S.C. vs. UK, June 15th 2004, no. 60958/00*

⁵² 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)

⁵³ UN Standard Minimum Rules for the Administration of Juvenile Justice, rule 5 (A/Res/40/33, nov 29th 1985)

⁵⁴ See *Tyrer vs. UK*, [ref. to be added] and *Bouamar vs. Belgium*, Feb. 29th 1988, no. 9106/80)

⁵⁵ 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)

⁵⁶ Rec (2003) 20, sept 24th 2003, art 16 calls for a maximum of 6 months before commencement of trial

- (9) Children shall be given the opportunity to contact a lawyer and their parents or guardian or a person who the child trusts, immediately after being deprived of their liberty.⁵⁷
- (10) No interrogation of suspected or accused children should take place without the presence of a lawyer.
- (11) Records of child offenders should be kept strictly confidential and closed to third parties. In order to promote the reintegration within society, criminal records of children should be cleared when they attain the age of majority.⁵⁸ Criminal records of children should be cleared, as a rule, when they attain the age of majority.⁵⁹ Exceptions are permitted in cases of serious offences.

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 of 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.
- (2) Where a child is brought to a police station 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 behaviour in respect of which he or she has been detained; the child shall also be informed of his or her entitlement to consult with a legal representative and how to avail of the entitlement.
- (3) Where appropriate, the parent or guardian shall be informed of the child's presence in the 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 guardian or, if they are not available, another adult.
- (5) The parent or guardian may be excluded if he or she is the victim of the suspected criminal behaviour or has also been involved in it or is engaging in conduct which amounts to an obstruction of justice.
- (6) Police shall ensure that any child detained in the police station shall have contact with any adult detainees while in the station.

D. Children in asylum proceedings

- (1) The best interests and wellbeing of children should be duly taken into consideration and protected in all administrative decisions involving and affecting them, even only

⁵⁷ See *Okkali vs. Turkey*, Oct. 17th 2006, no. 52067/99

⁵⁸ 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)

⁵⁹ 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)

indirectly, in particular in detention, eviction or expulsion procedures targeting one or both of their parents.

- (2) Enforcement of administrative procedures, such as detention, eviction or expulsion procedures, should be carried out in a way that protect 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 in charge by their family and carers or, when necessary, by the competent state services.
- (3) Expulsion should not be forced whenever there is established evidence of the strong link a child has with the country of residence, relating to for instance the length of the stay, attendance of school educational achievement, presence of family etc. Unaccompanied minors, who are or have not been judged for any crime, should never be returned to the country of origin against their will, unless sufficient and affective measures of care and support is guaranteed in the country of origin, before the expulsion of the child.⁶⁰
- (4) Separation of children from their families and caregivers in detention centres should be prevented.⁶¹
- (5) 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.

VI. OTHER CHILD FRIENDLY STRATEGIES

Member states are encouraged to:

- (1) Set up, or maintain and reinforce where necessary, information offices for children's rights, possibly linked to bar associations, welfare services, ombudsmen, NGOs etc.
- (2) Set up a system of specialised lawyers for children and young people.
- (3) Facilitate the role of NGOs and other independent bodies or institutions such as ombudsmen in supporting children and young people to access courts, both on the national and international level.⁶²
- (4) Facilitate the possibility to conduct class actions for groups of children
- (5) Make human rights and children's rights a mandatory component in school curricula and for professionals working with children.
- (6) Systematise the edition, publication and dissemination of child-friendly versions of laws and conventions.
- (7) Facilitate children's access to complaint mechanisms.

⁶⁰ 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

⁶¹ *Mubilanzila Mayeka and Kaniki Mitunga vs. Belgium*, Oct. 12th 2006, no. 13178/03

⁶² 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.

- (8) Set up specialised victim help lines and accessible support services.
- (9) 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.

VII. MONITORING AND ASSESSMENT

- (1) Developed working methods within the child friendly justice setting should be reviewed, researched and evaluated regularly.
- (2) 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 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.
- (3) 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.
- (4) Professionals working with children should get on-the-job training and be tested on their knowledge of children's rights and child friendly working methods on a recurrent basis in order to keep up with current and new evolutions in this field.
- (5) Reviewing methods should be developed to involve children who are or have been in contact with the justice system and alternative systems in or outside 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 drafted and implemented in reviewing schemes.

VIII. APPENDICES