

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 23 April 2015

DECS-ENF (2015) 4

**Committee of Experts on the Council of Europe Strategy for the Rights of the Child
(DECS - ENF)
2nd meeting**

**Conclusions of the European Conference on the “Best Interests of the Child”
(Brussels, 9-10 December 2014)**

**and decision taken by the Committee of Ministers
at its 1225th meeting on 15 April 2015**

**Conclusions of the European Conference on the “Best Interests of the Child”
within the framework of the 25th anniversary of the United Nations Convention
on the Rights of the Child (Brussels, 9-10 December 2014)**

DD(2015)266

Decisions

The Deputies

1. took note of the Conclusions of the European Conference on the “Best Interests of the Child” of 9 and 10 December 2014 in Brussels, Belgium;
2. invited the Committee of Experts on the Council of Europe Strategy for the Rights of the Child (DECS-ENF) to take these into account when developing the next Strategy for the Rights of the Child.

**European Conference on the “Best Interests of the Child”
(Brussels, 9-10 December 2014)**

Conclusions

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

UNCRC, Art. 3, para. 1

On 9 and 10 December 2014 the Belgian authorities, in cooperation with the Children’s Rights Division of the Council of Europe, organised the European Conference on the “Best Interests of the Child” in Brussels. The Conference, which permitted a dialogue between theory and practice, was organised within the framework of the Belgian Chairmanship of the Committee of Ministers of the Council of Europe in the perspective of strengthening human rights protection. This event celebrated, at the same time, the 25th anniversary of the United Nations Convention on the Rights of the Child (UNCRC).

The Conference pursued three objectives:

1. to take stock of the understanding and application of the child’s best interests in the international context as well as in the various national contexts;
2. to identify factors that hinder and those that drive as observed by decision makers in the application of the child’s best interests and to outline solutions;
3. to find and develop ethical, procedural and practical standards which support practitioners and policy makers when they take into consideration the child’s best interests.

Belgium considers that all objectives of the Conference have been accomplished.

The first day of the Conference focused on different perspectives on the child’s best interests in general and the second day on the child’s best interests in family matters. For Belgium, as well as for the Council of Europe, it was essential that experts, decision-makers, practitioners, but also children could contribute to the discussions at the Conference and share their points of view. We would like to thank all those who were involved in this event. We hope that the Conference will contribute to a further enhancement of the position of children and their rights in all member States of the Council of Europe.

For Belgium the key messages of the Conference were the following:

- The Conference recalled the importance of Article 3, para 1 of the UNCRC and General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration. The UN Committee on the Rights of the Child has pointed out that “an adult’s judgment of a child’s best interests cannot override the obligation to respect all the child’s rights under the Convention.”¹ There is no hierarchy of rights in the Convention; all the rights provided for therein are in the “child’s best interests” and no right could be compromised by a negative interpretation of the child’s best interests².
- Article 12 of the UNCRC on children’s participation is complementary to the best interests principle. The views of all children, including of those who are invisible and marginalised, and taking into account their evolving capacities (Art. 5 UNCRC), are an integral part of the assessment and determination process of the best interests of the child. Therefore children must have access to appropriate information (Art. 17 UNCRC). The new Optional Protocol to the UNCRC establishing a communications procedure was considered relevant in this context as a way to strengthen children’s access to justice and their participation in the determination of their best interests.

¹ General Comment No. 13 (2011) on the right to protection from all forms of violence, para. 61.

² General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), para. 4.

- The concept of the best interests of the child is broad and vague and thus risks being used to justify decisions that run contrary to the rights of the child. Therefore, the assessment and determination of the child's best interests must be made on a case by case basis and founded on objective criteria. The non-exhaustive and non-hierarchical list of elements suggested in General Comment No. 14 (2013) should be considered in the determination of the best interest of the child. Furthermore, all, even political, decisions affecting children should be made on the basis of a child rights impact assessment. Children's interests should indeed be paramount and not just one of several considerations in decisions affecting children.
- In addition to an assessment of the best interests of the child at the moment a decision is taken, decisions affecting children should also be subject to independent monitoring to ensure that the best interests of the child serve as guiding principle also in the implementation of decisions.
- Both parents have the joint primary responsibility to bring up their children. The relationship between children and their parents is considered to be highly important. The Conference showed that this relationship can be subject to severe tensions, e.g. due to the imprisonment of one of the parents, divorce of the parents, child maltreatment, the child's removal from the family or when children are insecure about their origins such as in the case of adoption or conception through medically assisted reproduction. In such situations, it is important to assess and determine the best interests of the child in a way that the ties with both parents and other significant family members can be maintained while ensuring that the child has the opportunity to fully develop his or her potential.
- To safeguard the application of the best interests of the child principle in practice, member States need to ensure training of all professions involved in decisions for and with children: judges, lawyers, social workers, educators, teachers etc. Member States should also support parents in a way that they can fulfil their responsibility for the upbringing and development of the child.

By this way Belgium wants to thank the secretariat of the Council of Europe and especially the Children's Rights Division of the Council of Europe, for its involvement and constructive support in the organisation of the Conference. Belgium hopes that the results of the Conference will strengthen the position of children and their rights in the member States of the Council of Europe. Therefore, Belgium would welcome, in co-operation with the Secretariat, to publish all expert contributions to the Conference by the end of this year.