

# Policy Advice.

## Establishing child-friendly justice

Reflections on how to bring the child forward in the future justice policy of the European Union





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## **Establishing child-friendly justice. Reflections on how to bring the child forward in the future justice policy of the European Union**

*This reflection paper is mainly based on (1) the Council of Europe Guidelines on child-friendly justice, adopted in November 2010; (2) the Children's Rights Knowledge Centre's (KeKi)<sup>1</sup> vision statement regarding children's rights and (3) findings and reflections that arose at the ChildONEurope seminar on complementarities and synergies between juvenile justice and the social services sector (held on April 19<sup>th</sup>, 2012 in Florence, Instituti degli Innocenti).*

*Key words: child-friendly justice, fundamental rights, children's rights*

### ***I. Introduction***

On 17 November 2010, the Committee of Ministers of the Council of Europe (CoE) adopted new Guidelines on child-friendly justice (hereafter: the CoE Guidelines), based on the fundamental principles of participation, best interests of the child, dignity, protection from discrimination and rule of law. More specifically, these Guidelines define child-friendly justice systems as "justice systems which guarantee the respect and the effective implementation of all children's rights at the highest attainable level". KeKi takes the opportunity of the open forum 'Assises de la justice' on EU justice policies for the upcoming years to elaborate on these guidelines, as well as to identify current European challenges. In line with the Guidelines, this paper starts from the general premise that realizing child-friendly justice requires a flexible justice system targeting reintegration and based on a children's rights framework.

The reflections in this paper are based on the principles documented in KeKi's vision statement on children's rights. This vision has been the result of a yearlong trajectory involving an in-house research seminar and different reflection meetings between KeKi board members and staff, consisting of academics in the fields of law and (juvenile) justice, children's rights, criminology, educational studies, social work and anthropology. In addition, the paper is inspired by the findings presented on the ChildONEurope seminar on complementarities and synergies between juvenile justice and the social services sector (hereafter: the ChildONEurope seminar), which took place in 2012, after the CoE Guidelines had already been finalized and presented.

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<sup>1</sup> Abbreviation of the Dutch name 'Kenniscentrum Kinderrechten' which will be used throughout this paper.

The goal of this text is to point out six key challenges to take into account in developing a broader European justice policy for the future. As such, this paper does not aim to provide an exhaustive or detailed overview of particular child-friendly justice initiatives. The reflections do not apply to the specific concretization of a justice system, but rather target the foundations of justice as a whole. Unless otherwise specified, the reflections are directed at all children in contact with the justice system - children as offenders, victims or witnesses - and therefore have a broader focus than just the juvenile justice system.

## ***II. Safeguarding the position of children and youth in the EU justice policies***

### 1. Children's rights as the human rights of children

KeKi defines children's rights as the human rights of children (2012). This means, on the one hand, that children's rights are inevitably connected to human rights, and that, when the rights of the child and the rights of others are to be realized simultaneously, a balance between these rights needs to be maintained. On the other hand, this vision implies that, even though KeKi does recognize the importance – and limitations – of the CRC and its protocols, children's rights are considered to be broader than the rights described in these instruments. More specifically, children's rights can also be found in other conventions and legislation, as well as in broader social practices. Thus, *in bringing the child forward in future justice policies, it is important to not only use the CRC as a framework, but to also consider the human rights of children existing in other (inter)national and local documents or practices.*

In this light, according to Blaak, Bruning, Eijgenraam, Kaandorp & Meuwese (2012), a European challenge relates to different member states only restrictedly applying children's rights standards in the context of justice, crime prevention and the (re)formation of the legal position of minors (also see Muncie & Goldson, 2006). In this case, it is recommended to assess European justice systems not only based on the CRC, but also on other relevant instruments - such as the Charter of Fundamental Rights of the European Union, the European Social Charter or the UN Convention on the Rights of Persons with Disabilities - as well as (local) children's rights determinations that may not (yet) be documented in a (legal) instrument.<sup>2</sup>

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<sup>2</sup> For example: the New Zealand Family Group circles, the native healing circles in the US and Canada, restorative group counseling (HERGO) in Belgium... are now all integrated practices in the respective juvenile justice systems.

## 2. Childhood and child images

In the CoE Guidelines, a child is defined as “any person under the age of 18 years”. Attention is being paid to differences in maturity between children, in order to ensure flexibility and making the system adaptable to the specific wishes and needs of every individual child. In line with these ideas, KeKi underlines the relativity of the definition of ‘child’ as a concept. ‘Childhood’ is not just a biological given; it is also based on sociological construction. Children and youth develop differently, based on their age and the social transitions they experience. These evolutions should be taken into account in child-friendly justice policies. Moreover, it is recommended *to keep the demarcation of childhood a topic of permanent reflection.*

In this case, a European challenge lies in determining the age of criminal responsibility, which differs between the member states. Some states, such as Belgium, maintain a rather high age of criminal responsibility (18 years). Although this assures attention for the evolving capacities of children and youth, questions can be raised regarding the principle of legal equality. In this system, children and youth under the age of 18 are not sanctioned, but placed under a protective measure based on their individual needs. Despite this system ensuring an individually adapted measure, a common critique formulated in this matter consists of the risk that children who commit similar offences may be treated very differently (Discussion at the workshop ‘The participation of social services in the youth court and their potential for the prevention of re-offending’ at the ChildONEurope seminar). Put & Walgrave (2006) more specifically argue that, in such a system, it may be difficult to safeguard elementary legal rights, due process and proportionality.

Other countries, such as the UK, maintain a lower age for criminal responsibility (10 years), making sure that children under this age limit do not come in contact with the justice system. Although this system is in accordance with the principle of legality, it may not concur with the evolving capacities of the child (Discussion at the workshop ‘The participation of social services in the youth court and their potential for the prevention of re-offending’ at the ChildONEurope seminar). Therefore, even though the demarcation of criminal responsibility is in principle a decision for the member states to be made, European input can be provided to feed the (local) debates regarding this issue in order to come to more theoretically supported (local) age demarcations.

### 3. Human dignity during and after court proceedings

A fundamental principle of the CoE Guidelines is that “children should be treated with care, sensitivity, fairness and respect throughout any procedure or case”. KeKi agrees with this principle, but wishes to further elaborate on it based on its critical-emancipatory approach towards children’s rights. *A child-friendly justice system should not only treat children with dignity, it should also actively contribute to raising the child’s dignity and welfare in the broader society.* This way, the justice process can be used as a lever to change the relations in our society towards more human dignity by providing children and youth with new opportunities to enhance their life circumstances. This is especially the case given the observation that socially vulnerable children and youth are more likely to come in contact with the justice system (Vettenburg & Walgrave, 2002). Through providing adequate assistance, alternative solutions and profound social networking and reintegration opportunities, the underlying attributes of juvenile delinquency and victimization may be proactively addressed. Doing so, justice can be integrated in a broader social policy targeted at increasing welfare for all individuals, and children in particular.

Based on this argument, the need for a child-friendly justice system to be an active rather than a passive system - in which reintegration and the creation of positive prospects for the future take a central place - is underlined. Muncie & Goldson (2006: 210) argue that “community safety, reparation, community work, courses in social training and so on [...] have all been advocated as means to achieve participative justice [...]”. In this light, the consolidation of alternative and/or restorative measures for young offenders remains a European challenge. This challenge is especially remarkable given that a wide range of ‘good practices’ is available (such as the Danish example, where young offenders follow intensive social, educational and employment training programs (Foussard, 2012), the Belgian example, where restorative justice is legally consolidated (Blaak et al., 2012)...). Investing in the development and implementation of alternative measures can be considered a main strategy to approach an important provision of the CoE Guidelines: to limit the deprivation of liberty of children.

### 4. An elaborate view on participation

#### *4a. Interpretation of ‘participation’*

In the Guidelines, much attention is being paid to participation of children and youth in justice matters. It is stipulated that participation is a right of the child, not a duty on the child. This idea can be expanded by the argument that, in shaping child-friendly justice

policies, *a negative interpretation of participation and all related concepts (such as autonomy, agency or self-determination) should be avoided*. More specifically, it is the translation of these concepts as a burden of individual responsibility that is to be precluded. In this case, the existing fundamental interdependency between children as well as adults can be underlined, making a balanced interpretation of the mentioned concepts a necessity.

#### *4b. Participation rights*

The CoE Guidelines demarcate ‘participation’ as hearing the child’s voice in court proceedings by “giving due weight to the children’s views bearing in mind their maturity and any communication difficulties they may have in order to make this participation meaningful”. KeKi supports the idea of participation as a right of children and youth to be heard and to express views in all matters that affect them. The justice system can enhance this right by providing opportunities for dialogue between different actors, with specific attention for the voice of children and youth. However, based on a broader vision on child participation, *KeKi proposes to expand this practice by also actively involving children and youth in (juvenile) justice policy processes as well as in monitoring activities* (see §6 ‘The importance of knowledge-based monitoring’). A European challenge in this regard exists in increasing the attention for the voice of youth, not only in court proceedings but also in shaping the justice system. In this light, it is recommended to explore and include young people’s ideas and opinions regarding the concepts of justice, equity and fairness.

#### 5. Multidisciplinarity as more than just collaboration

In its Guidelines, the CoE promotes a multidisciplinary approach in realizing child-friendly justice. Moreover, the Guidelines operationalize this approach as the installation of a close co-operation between different professionals in order to obtain a comprehensive understanding of the child.

A European challenge that can be identified at this level of co-operation in or with a child-friendly justice system, is related to the concept of professional confidentiality and the protection of the child’s privacy. As the Guidelines state that “while implementing a multidisciplinary approach, professional rules on confidentiality should be respected”, it is recommended *to invest in fundamental research regarding the creation of successful co-operative networks within and between the justice and care sectors*, with specific

attention to the limits of local confidentiality rules and how these limits are impacted by new collaborations.<sup>3</sup>

Also, the concept of a multidisciplinary justice could still be expanded. Not only the individual child should be addressed from a comprehensive perspective; *the whole justice entity and specifically the position of the child throughout the different proceedings should be constituted and monitored from a multi-disciplinary point of view*. This way, the system is not only based on legal considerations, but also on social, educational and criminological perspectives, in order to come to an organization that is adapted to the specific needs of children in contact with the law, as well as to the underlying causes of juvenile delinquency and (secondary) victimization.

#### 6. The importance of knowledge-based monitoring through research

In the Guidelines, the CoE urges member states to “periodically review and evaluate their working methods within the child-friendly justice setting”. KeKi encourages the idea of making the installed system a topic of constant methodical and critical reflection, and wishes to underline that *in this monitoring task, specific attention should be given to follow-up (new) scientific insights regarding the causes of delinquency and the effects of victimization, as well as the (international) development of alternative solutions*. This argument also relates to the need for long-term investment in fundamental (longitudinal) data-collection and research into the causes of and meaningful approaches towards (recurrent) offending and victimization, as well as to the need for clear evaluation criteria to follow-up on new pilot projects. This way, a knowledge-based policy regarding juvenile justice can be created, in which the question on how to better implement the rights of the child in justice takes a central place.

In Europe, a challenge in this area appears to be the lack of common standards and comparable data, making cross country analysis or meta analysis impossible (Jacomy-Vité, 2012). In line with this observation, a set of common indicators on child-friendly justice that can be used for comparative analysis, can be suggested.

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<sup>3</sup> For example, new co-operations between justice and care workers in combating child abuse in Antwerp (Flanders, Belgium) have been thoroughly evaluated, based on an extended theoretical framework and with specific attention to confidentiality rules (Op de Beeck, Tans, Put, Pleysier & Hermans, 2013).



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