

## **Transnational Exchange Workshop on Child-Friendly Justice and Procedural Rights**

### **Event Report**

### **13-14 May 2025, Brussels**

The Transnational Exchange Workshop on Child-Friendly Justice and Procedural Rights was held in Brussels on 13–14 May 2025, as part of a series of three workshops coordinated by the International Commission of Jurists (ICJ). This first in-person event brought together a wide range of professionals working with and for children in legal settings, including lawyers, judges, academics, social workers, and representatives of Ombuds' offices and civil society organizations, from the Czech Republic, Slovakia, Malta, Austria, and the Netherlands.

The aim of the workshop was to strengthen understanding of how international, and EU legal frameworks ensure children's rights in judicial proceedings, particularly the right to be heard (Article 12 of the UN Convention on the Rights of the Child (CRC)) and the principle of the best interests of the child (BIC) (Article 3 CRC). Through expert-led discussions, comparative legal analysis, case examples, and practical group sessions, participants explored how these rights are interpreted and applied across different jurisdictions.

Day 1 of the workshop focused on international and national frameworks, covering the normative concept of evolving capacities, the child's status as a party to proceedings, and the various forms of child representation. The participants reflected on systemic social inequalities in juvenile justice and strategies for ensuring meaningful child participation in practice.

Day 2 provided opportunity for country-specific breakout sessions, allowing participants to share national challenges and good practices in areas such as adapted courtroom settings, training for professionals, and access to remedies. The workshop concluded with a plenary discussion to consolidate reflections and identify priorities for future collaboration and reform.

### **1. The right to be heard and the best interest of the child principle**

#### *Age thresholds and modalities of participation*

One of the central topics was the child's right to express their views freely in all matters affecting them, with due weight given to their age and maturity.<sup>1</sup> Experts emphasized that thresholds for the minimum age of participation in proceedings should be applied flexibly,

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<sup>1</sup> Article 12 CRC.

as all children, including very young children, should be afforded an opportunity to express their views .

In the Netherlands, various practices have been developed and implemented to ensure that children can express their views easily and in a safe environment, in line with the CRC. One common practice is allowing children to write letters directly to the judge. Other measures to facilitate meaningful child participation include child-friendly courtrooms, explanatory videos about court procedures, and the provision of coaching support to help children prepare for their participation.

In Slovakia, all child interviews in care or custody proceedings are audio-recorded to guarantee precision and transparency.

In *Sahin v. Germany*<sup>2</sup>, the European Court of Human Rights (ECtHR) held that “it would be going too far to say that domestic courts are always required to hear a child in court”. While the Court acknowledged that in these custody proceedings a child’s views could be conveyed indirectly through professionals like psychologists, it emphasized that such indirect participation must be carefully tailored to the specific circumstances of the case and to the child’s age and maturity. The Court also noted that this approach may still raise concerns regarding the accuracy and authenticity of the child’s voice.

In criminal cases of *T. and V. v. the United Kingdom*, the ECtHR ruled that: “it is essential that a child charged with an offence is dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his ability to understand and participate in the proceedings”.<sup>3</sup> The Guidelines of the Committee of Ministers of the Council of Europe (CoE) on child-friendly justice, adopted following this case and influenced by it, underline that meaningful participation requires a safe and friendly environment, appropriate methods of questioning, and procedural safeguards to ensure that participation is effective – mere presence is not sufficient.

### *Recognizing children’s emotional realities*

Several participants stressed the importance of recognising that seemingly minor details such as a child’s bond with a pet, a favourite relative, or regular contact with friends may carry significant emotional weight. While such elements may appear trivial to adults, they can be central to a child’s sense of stability and well-being and must therefore be taken seriously in both hearings and in decision-making. Listening with this sensitivity is key to truly respecting the child’s right to be heard.

Professionals working with children may overlook the significance of the relationships children associate with “home”. For children, home extends beyond physical space – it includes the people, animals, and routines that provide emotional security and stability.

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<sup>2</sup> *Sahin v. Germany*, ECtHR, Application No. 30943/96, Judgement of 8 July 2003.

<sup>3</sup> *T. v. the United Kingdom*, ECtHR, Applications No. 24724/94, Judgement of 16 December 1999, para. 84; *V. v. the United Kingdom*, ECtHR, Application No. and 24888/94, para. 86.

As noted by participants, these elements are often ignored during legal proceedings, and even protective interventions can result in further emotional harm when such attachments are disregarded. For instance, a child placed in alternative care may be separated from their pets. This example reflects a broader pattern in which the child's right to be heard is subordinated to procedural efficiency or adult-centric reasoning.

Even though Article 12 of the CRC guarantees that children who are capable of forming their own views must be given the opportunity to express them freely in all matters affecting them, the emotional realities of children are often treated as less important. Similarly, the BIC principle demands that decision-makers give weight to all relevant circumstances, yet in practice it may be interpreted narrowly, focusing on physical aspects such as housing or schooling while excluding subjective emotional needs. This not only contradicts their right to be heard but also undermines the holistic application of the BIC. When making placement or custody decisions, courts and guardians should therefore consider what the child defines as home, including emotional bonds beyond parental relationships.

#### *Children's voices in BIC assessments*

Article 3 of the CRC establishes that the best interests of the child must be a primary consideration in all actions or omissions affecting the child whether undertaken by public or private social welfare institutions, courts, administrative authorities, or legislative bodies. General Comment No. 14 frames the BIC as a legal principle, a substantive right, and a procedural rule. Despite this framework, participants stressed that its implementation may sometimes neglect the child's expressed will, particularly in cases framed as protective interventions.

A judge from the Czech Republic explained that in parental dispute cases, the system tends to escalate conflicts instead of resolving them in a way that respects children's participation rights. Rather "no decision should be taken automatically, the court must serve the child", he said. In France, a 12-year-old girl was placed into institutional care on Christmas Eve, despite her stated wish to stay with her father. The reasoning behind the decision was that the father may have manipulated the child, yet no direct engagement with the girl's expressed views was ensured. This case later reached the ECtHR under Article 8 ECHR, challenging the lack of respect for her family life and her voice in the decision-making process.<sup>4</sup> The child was not heard in a meaningful way, and her perspective was not taken into account.

These examples demonstrate how courts and children's representatives may invoke "protection" to override children's views without adequate reasoning or procedural safeguards. This concern was echoed by several experts, who emphasized the need for children's representatives to authentically represent children's views, even when those differ from what the adults consider "best". According to one of the participants, adults tend to perceive a child's view as a result of manipulation, whereas this is not necessarily

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<sup>4</sup> *V.P. v. France*, ECtHR, Application No. 21825/20, Judgement of 7 October 2021.

the case. What is labelled as “manipulation” may in fact be the child’s genuine opinion, formed through their own experience or dialogue. Even where concerns about influence exist, this does not negate the child’s right to be heard as this experience may represent the child’s lived reality and will.

Thus, truly child-friendly justice must resist the presumption that “protection” is needed by default and instead ensure that the child’s lived reality is central to any best interests’ assessment.

## **2. Representation and guardianship: structural gaps and conflicts**

Representation and guardianship in legal proceedings concerning children was one of the most discussed topics during the workshop. Participants identified several shortcomings across jurisdictions. A particular concern was the dual role of child protection authorities as in the Czech Republic, where the same institution both initiates proceedings and acts as the child’s court-appointed guardian. This creates a clear conflict of interest and undermines the child’s right to independent and impartial representation.

This problem was illustrated in the case of a 14-year-old Roma boy in the Czech Republic who was removed from his grandmother’s care against his wishes.<sup>5</sup> The child protection authority both initiated the removal and represented the child in court, resulting in a direct conflict of interest. The appointed guardian acted contrary to the boy’s repeatedly expressed preferences, and his voice was ignored throughout the proceedings. This dual role has been criticized at both domestic and international level, and one of the main examples is the *B.J. and P.J. v. the Czech Republic* case before the CRC Committee where the Committee found that the Czech authorities had failed to adequately explain how the children’s best interests had been evaluated or systematically monitored during their removal and placement.<sup>6</sup> During the workshop, this case example highlighted the tension between the guardian’s duty to act in the child’s best interests and the need to respect the child’s expressed views. Participants discussed whether guardians should be allowed to exercise procedural rights in opposition to the child’s will. The CRC Committee has stated that when a child’s views conflict with those of their representative, a procedure should be in place to allow the child to request separate representation.<sup>7</sup>

Similar arrangements exist in Slovakia, even though there is greater institutional recognition of the problem. The Ministry of Justice has issued progressive guidelines to enhance child participation, and child interviews must be audio-recorded. Nevertheless, the structural conflict of interest persists. Although efforts are made to appoint a separate department within the same authority, this seldom resolves the issue, as staff often share

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<sup>5</sup> See further VOICE Project, Baseline Study on the Participation of Children in Legal Proceedings, pp. 16-18.

<sup>6</sup> *B.J. and P.J. v. Czech Republic*, CRC Committee, Communication No. 139/2021, View of 15 May 2023, para. 8.12.

<sup>7</sup> *B.J. and P.J. v. Czech Republic*, CRC Committee, Communication No. 139/2021, View of 15 May 2023, para. 8.14.

the same organizational culture and may prioritize institutional positions over the child's stated views.

In Austria, legal frameworks currently offer no effective judicial oversight over the child welfare system's actions once a child is in public care. Family courts do not consider themselves competent to evaluate how placements are handled, and at the same time administrative courts reject complaints on the grounds that State custody is a "private" matter. Consequently, no court exercises jurisdiction, and children are left without legal remedies often in unsuitable long-term care settings such as crisis institutions originally designed for short-term placements of six to eight weeks now housing children for over a year. These gaps in accountability appear inconsistent with Article 6 of the ECHR, which guarantees the right to a fair hearing.

In the United Kingdom similar concerns arise. When local authorities fail to follow care plans approved by a judge whether due to lack of funding or institutional neglect, families cannot return to court to seek redress unless they apply to terminate the care order altogether, which may not be in the child's best interest. In *Z v. the United Kingdom*,<sup>8</sup> children challenged the lack of an effective remedy that would allow them to hold responsible officials accountable and obtain enforceable redress for the conditions of their care. Although the degrading conditions they endured were recognized by the State, domestic courts rejected their claims for negligence against local authorities. The ECtHR ultimately found that the UK violated its obligations under Article 3 (prohibition of torture and inhuman or degrading treatment) and Article 13 (right to an effective remedy) of the ECHR. The Court concluded that the remedies available to the applicants were not sufficiently effective and emphasized that victims of human rights violations must be able to access courts with the power to award damages. It awarded compensation to the children, which, according to one workshop participant, made it one of the few systemic cases in Strasbourg to result in such redress.

At the workshop, several cross-cutting structural and procedural issues affecting child representation were discussed:

- 1) Many systems fail to distinguish clearly whether guardians should advocate for the child's best interests or act as the child's voice. In Austria, for example, some guardians draft submissions as if authored by the child. They often prioritize protection and best interests of the child over actual child participation. This blurred role often leads to the child's voice being filtered or overridden.

- 2) In cases involving sensitive issues such as domestic violence, reports prepared by psychologists or guardians are not always kept confidential. When courts deny confidentiality requests, children may suffer repercussions from family members, which

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<sup>8</sup> *Z and others v. The United Kingdom*, ECtHR, Application No. 29392/95, Judgment of 10 May 2001.

can discourage them from speaking freely. This ethical dilemma has serious implications for child safety and participation.

3) In Malta, children cannot independently request a legal representative; appointments must be initiated by an adult or ordered by the court on behalf of the child.<sup>9</sup> While the number of children's legal representatives assigned to the Family Court and Juvenile Court has increased to ten,<sup>10</sup> the current system relies on legal representatives who often work under demanding and unsustainable conditions, with limited time available to dedicate to each child. As a result, it might be challenging to ensure proper representation of the child and to build the trust with them, necessary for effective participation.

4) Across jurisdictions, there is an urgent need for targeted training for judges, lawyers, social workers, and guardians on children's rights, developmental psychology, and participatory methods. Without such training, professionals may default to adult-centric interpretations of the best interests of the child, sidelining the child's actual views.

The issues of representation and guardianship are thus central to the realization of Article 3 (BIC) and Article 12 (right to be heard) of the CRC. As highlighted in ECtHR jurisprudence, physical presence alone does not suffice, children must be afforded genuine, supported opportunities to participate in decisions that concern them.

### **3. Children with specific vulnerabilities**

#### *Barriers to participation for children with disabilities in legal proceedings*

One of the issues insufficiently addressed in justice systems is the exclusion or marginalization of children with intellectual or psychosocial disabilities. In practice, the right to be heard may be denied to children with disabilities due to both structural and attitudinal barriers. A major concern is the assumption by legal professionals that children with intellectual and psycho-social disabilities cannot meaningfully participate. As noted during the workshop children with intellectual disabilities are often excluded from proceedings altogether on the grounds that they are *unable to understand*. This practice not only violates the CRC but also contravenes the Convention on the Rights of Persons with Disabilities (CRPD), which affirms the right of persons with disabilities to participate in all decisions affecting them.

Participants emphasized that the burden of communication should not fall on the child, but rather on the system to create accessible conditions. As one participant put it: "Individuals interviewed in legal settings are expected to adhere to specific legal requirements and to behave accordingly. It is not the people interviewing who have to make the effort to understand. It is the person being interviewed who has to make the effort to be understood. And that strikes as fundamentally wrong."

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<sup>9</sup> See Minor Protection (Alternative Care) Act.

<sup>10</sup> TVM News, [Number of children's advocates is increased](#), 22 February 2024.

A practical example of this is the situation faced by children with disabilities in Austria. When a child with a disability seeks to attend school, the system first determines whether they should be placed in a special school. Only afterwards can the parents seek access to an inclusive school, but the child themselves has no legal say in the decision.

#### *Participation and representation of migrant and asylum-seeking children*

The workshop discussions also revealed serious concerns regarding the representation and rights of migrant and asylum-seeking children in legal proceedings. These concerns focused on structural conflicts of interest, limited participation, and lack of independent representation.

One key issue raised was that in some countries, such as the Czech Republic, the same State authority responsible for initiating asylum or care procedures also represents the child, creating a conflict of interest. Under the Czech Asylum Act, children cannot independently apply for international protection and must be represented by a parent, guardian, or, in the case of unaccompanied minors, have their application countersigned by the child protection authority.<sup>11</sup> This conflation of roles seriously compromises the integrity of representation and the child's ability to have their voice independently heard.

Furthermore, it was emphasized that unaccompanied minors often lack meaningful representation. While guardians may be appointed,<sup>12</sup> they are frequently overburdened and undertrained, and in some systems, such as Malta, this leaves migrant children especially vulnerable.

The workshop also acknowledged that migrant children are often placed in crisis care facilities not suited to long-term residence, and legal systems often fail to provide mechanisms to challenge inappropriate placements. As a result, these children have no clear legal pathway to demand better care or to challenge decisions made on their behalf.

#### **4. Promising good practices in child friendly justice**

Workshop participants highlighted a range of emerging and established good practices across jurisdictions aimed at strengthening the participation of children in legal proceedings. These practices seek to address the obstacles children face when attempting to exercise their rights.

##### *Child-friendly communication*

- In the Netherlands, video-based orientation tools and court tours are used to help children understand the legal process in advance.<sup>13</sup>

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<sup>11</sup> See further VOICE Project, Baseline Study on the Participation of Children in Legal Proceedings, pp. 23-24.

<sup>12</sup> See e.g. Article 21 Minor Protection (Alternative Care) Act.

<sup>13</sup> See e.g. YOPE Stream, [JOUW ZITTINGSDAG - een film van YOUNG PERSPECTIVES \(def\)](#), Vimeo, 2 July 2024.

- In Slovakia, the Ministry of Justice has prepared two informational leaflets for children: one on public hearings in civil non-dispute procedures, and another providing a basic overview of what to expect in court.<sup>14</sup>
- Child-friendly judgments are encouraged to help children understand judicial decisions. A notable example is a custody case in which UK judge Peter Jackson wrote his judgment in the form of a personal letter addressed to the child.<sup>15</sup> In it, he acknowledged the boy's wishes and explained the reasoning behind the decision in clear, compassionate, and age-appropriate language. Similar trends are emerging in the Netherlands, where judgments are increasingly written in child-friendly language.

#### *Empowering children in decision-making*

- Children should be given the opportunity to write letters directly to judges to express their views, as is practiced in the Netherlands.
- Family group conferencing is used in child protection cases in the Czech Republic to reduce top-down decision-making. This approach shifts responsibility from judicial actors back to families, who are supported by neutral facilitators who help develop care solutions together.<sup>16</sup>
- In Malta, an NGO initiative has created child participation assessment tools to collect feedback from children on practices that would support their participation. For instance, one suggestion from children—to clear the court one afternoon a week for a calmer environment—has not yet been implemented in law or practice.

#### *Children's privacy and protection*

- In the Netherlands, closed hearings are held to protect children's privacy and emotional well-being.
- Audio recordings of child interviews are made mandatory in Slovakia, ensuring an objective and transparent record of the child's statements.

#### *Legal representation and guardianship*

- In most legal proceedings in the Netherlands, children have the right to request a legal representative of their choice. This right ensures that children can select someone they trust and who they feel represents their interests, thereby contributing to better communication and more effective participation in proceedings.
- In Austria, guardians for children are appointed in family court proceedings. These guardians operate separately from the parties initiating the proceedings and are distinct from the parents and legal representatives to make sure that the child's voice

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<sup>14</sup> Ministry of Justice of Slovakia, [Metodika Participačné Práva Dieťaťa](#), 2024, pp. 35-36.

<sup>15</sup> [Re A : Letter to a Young Person](#), Family Division of the UK High Court, Case No. MA17P00163, 26 July 2017.

<sup>16</sup> See further VOICE Project, Baseline Study on the Participation of Children in Legal Proceedings, pp. 18-20.



is heard. The Ombuds Office for Children and Youth has launched a pilot project to extend this approach to asylum cases. This initiative acknowledges that while children may not always require a lawyer, they do need trained professionals. The approach also aims to address the unique challenge in asylum proceedings where decisions often prioritize refusal over child-centred outcomes.

- Training of judges, lawyers, and guardians in vulnerability-sensitive approaches is a pressing need. This should include training on child development, trauma-informed practices, and communication techniques adapted for children. Such training helps ensure sensitive, and effective interaction with children throughout legal proceedings. In the Netherlands, for instance, legal aid lawyers working in the area of child justice receive specific training. In Austria, special training is available for family and administrative judges regarding the needs of children in legal proceedings, though it is not mandatory.



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