

THEMATIC SPECIFICATIONS

COUNCIL OF EUROPE CHILD CONSULTATION METHODOLOGY TO INFORM THE
DEVELOPMENT OF THE COUNCIL OF EUROPE STRATEGY FOR THE RIGHTS OF
THE CHILD 2022-2027



**CHILD-FRIENDLY JUSTICE
FOR ALL CHILDREN**

GREECE - Minister of Justice

INTRODUCTION

Children deprived of liberty remain an invisible and forgotten group in society notwithstanding the increasing evidence of these children being in fact victims of further human rights violations. Countless children are placed in inhuman conditions and in adult facilities – in clear violation of their human rights – where they are at high risk of violence, rape and sexual assault, including acts of torture and cruel, inhuman or degrading treatment or punishment. European justice systems are not yet appropriate to the specific children vulnerability and needs. Children might be involved in legal proceedings either indirectly, when decisions have a relevant impact on their lives, such as in civil case of divorce or custody proceedings, or in case of juvenile offenders.

Juvenile justice is one of the areas where the demand for justice emerges most strongly. Providing inadequate and inappropriate responses for minors in conflict with the law can damage their future, sometimes forever, and further contribute to their instability. The stakes are high and the responsibility of policy-makers is enormous. yet, paradoxically, juvenile justice is often neglected, if not forgotten.¹

The UN Convention on the Rights of the Child (CRC) in Article 40(3) and (4) defines the juvenile justice system as a system of justice specifically for juveniles suspected, accused or found guilty of committing a criminal offence, which is in accordance with their well-being and proportionate to both their situation and the offence. Article 37 further provides that arrest, detention or deprivation of liberty shall be a measure of last resort.

Other international and regional instruments, as well as standards on juvenile justice, in line with the CRC, emphasise the educational purpose that the justice system must have, in the sense that the justice system must in no way be strictly punitive. Unfortunately, this is not always the case in practice. In fact, children are not always provided with access to the justice system and are not always informed of their rights or the legal decisions which affect them in a language they understand, as reported in 2017 by FRA.² Moreover, children continue to be excluded from meaningful participation in proceedings.

¹ Françoise TULKENS Vice-President of the European Court of Human Rights (ECHR) for Defence for Children International, manuale per gli stati membri dell'Unione Europea: Come tutelare i diritti dei minorenni in conflitto con la legge? (2018) <<http://www.defenceforchildren.it/risorse/pubblicazioni/205-manuale-per-gli-stati-membri-dell-ue-come-tutelare-i-diritti-dei-minorenni-in-conflitto-con-la-legge.html>>.

² FRA, 'Child-Friendly Justice - Perspectives and Experiences of Children Involved in Judicial Proceedings as Victims, Witnesses or Parties in Nine EU Member States' (2017), p. 62: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-child-friendly-justice-children-s-perspective_en.pdf.

A. THEMATIC PRIORITY AND KEY DEFINITIONS

When discussing the thematic priority it is important that the facilitators are sensible to the experiences of children and welcome their contributions in a constructive, inclusive and non intrusive manner. The discussion should be carried-out in a positive way, encouraging and empowering children, while promoting ownership of their words and experiences.

In particular, for the brainstorming exercise, it is essential that children express themselves through their own words, sharing their first thoughts on the thematic priority with minimum adult bias. On the other hand, and given the delicate themes addressed it is important to keep a light and supportive - but not superficial - environment in order for children to feel welcome and comfortable. To achieve such context it is useful to be very careful with language, using a positive and non-discriminatory language.

For instance, it can be useful to open the discussion framework to include positive examples. This can help children have a more broader perspective, sharing experiences of protection which can serve to inform the strategy as well.

B. REALITY CHECK: EVIDENCES, BIOGRAPHY AND POINT OF VIEW

After discussing the thematic priority and arriving to a definition that all the participants agree, the facilitator will present evidence of the current situation concerning the thematic priority - in a child-friendly language and in an accessible way - while engaging children, inviting them to share their experiences. The aim of this phase is to bring participants closer with the team, enabling them to shift from an abstract to a biographical perspective. That way their contributions and suggestions will hopefully be more tangible and concrete.

The evidences presented herein are part of research carried out by the Council of Europe's Child Rights Division and Defence for Children Italy. Facilitators are kindly invited to complete this section with country specific evidence or data and present it to children in a way they can understand.

The facilitator should present the evidences not from an authoritative point of view, but assuming a curious attitude, "let's find out together what the Council of Europe has found regarding this theme".

1) Minimum ages of criminal responsibility in Europe:³



³Crin, <<https://archive.crin.org/en/home/ages/europe.html#:~:text=No%2520person%2520can%2520be%2520subjected,1%252C%2520Section%25206>>

2) More than 7 million children are deprived of liberty per year.⁴

3) More than 19,000 children worldwide are in prison with their parents.

Quotes from fictitious children living in Europe:

“I don’t think I should be in jail. I have done nothing wrong. I crossed the border with my family just to have a better life.”

Karim, 16

“I understand now that I did something wrong but being in prison is not helping me to improve my life.”

Enzo, 17

“When I had a problem with the justice it was very important for me to meet and talk with the shelter’s social worker. She helped me to see things in a different way.”

Caterina, 17

⁴ <https://nochildbehindbars.com/the-un-global-study/>

C. WHAT SHOULD BE IN PLACE: HUMAN RIGHTS AND CHILD RIGHTS PRINCIPLES

This step aims to present some key human rights and child rights principles/norms, related to the thematic priority, in child-friendly language and an accessible manner for the participating children. The idea is for the children to learn about their own rights and to be prepared to form and share their opinions on “what should be in place for all children”.

Main articles of the Convention on the Rights of the Child connected with the thematic priority of freedom from violence for all children, in a child-friendly and accessible language:⁵

Article 2, Non-discrimination:

All children have all these rights, no matter who they are, where they live, what language they speak, what their religion is, what they think, what they look like, if they are a boy or girl, if they have a disability, if they are rich or poor, and no matter who their parents or families are or what their parents or families believe or do. No child should be treated unfairly for any reason.

Article 4, Making rights real:

Governments must do all they can to make sure that every child in their countries can enjoy all the rights in this Convention.

Article 12, Respect for children's views:

Children have the right to give their opinions freely on issues that affect them. Adults should listen and take children seriously.

Article 19, Protection from violence:

Governments must protect children from violence, abuse and being neglected by anyone who looks after them.

Article 28, Access to education:

Every child has the right to an education. Primary education should be free. Secondary and higher education should be available to every child. Children should be encouraged to go to school to the highest level possible. Discipline in schools should respect children's rights and never use violence.

⁵ <https://www.unicef.org/media/56661/file>

Article 30, Minority culture, language and religion:

Children have the right to use their own language, culture and religion - even if these are not shared by most people in the country where they live.

Article 37, Children in detention:

Children who are accused of breaking the law should not be killed, tortured, treated cruelly, put in prison forever, or put in prison with adults. Prison should always be the last choice and only for the shortest possible time. Children in prison should have legal help and be able to stay in contact with their family.

Article 40, Children who break the law:

Children accused of breaking the law have the right to legal help and fair treatment. There should be lots of solutions to help these children become good members of their communities. Prison should only be the last choice.

Article 41, Best law for children applies:

If the laws of a country protect children's rights better than this Convention, then those laws should be used.

Article 42, Everyone must know children's rights:

Governments should actively tell children and adults about this Convention so that everyone knows about children's rights.